

Dinesh Takkar Vs Govt. Of Nct Of Delhi & Ors

Court: Delhi High Court

Date of Decision: Dec. 16, 2021

Acts Referred: Constitution Of India, 1950 " Article 162, 300A

Registration Act, 1908 " Section 34, 35, 82

General Clauses Act, 1897 " Section 21

Specific Relief Act, 1963 " Section 31

Hon'ble Judges: Yashwant Varma, J

Bench: Single Bench

Advocate: Shadan Farasat, Shourya Dasgupta, Vinay Gupta, Vinay Gautam, Anil Dwedi, Anuj Narian

Final Decision: Dismissed

Judgement

Yashwant Varma, J

1. Although learned counsels representing the respondents are present, none has appeared for the petitioner when the matter was called.

2. This writ petition has been preferred challenging the order of 2 March, 2020 passed by the District Magistrate, West acting as the Appellate

Authority, under the Registration Act, 1908 [the Act]. In terms of that order the Appellate Authority has set aside the decision taken by the Sub

Registrar concerned in refusing to register a sale deed which had come to be duly presented for registration by respondent Nos. 4 and 5. The case of

the petitioner in the writ petition is that he is the bona fide purchaser of plot No. 197-C comprised in khasra No. 852 situated in village Tihar, New

Delhi. It is asserted that the aforesaid plot was in the joint ownership of the Inder Gopal and Girdhar Gopal. Girdhar Gopal is stated to have executed a

registered Will bequeathing his share in that property to the sixth respondent in terms of a sale deed dated 4 July, 2019. It is in terms of that bequest

that the sixth respondent is stated to have executed a sale deed in favour of the petitioner. It is further averred that the fifth respondent thereafter

executed another sale deed in favour of respondent No. 4 on 11 July 2019 with respect to the same property. It is this instrument which forms the

subject matter of dispute. Although the appellate authority records that the said instrument came to be duly registered on 14 July, 2019, that recordal of

fact is disputed by learned counsel for respondents 5 and 6 who asserts that the Sub Registrar stayed his hands upon the receipt of representations

made by the respondent No. 5 and before the act of registration was complete.

3. The vendor, respondent No. 5 herein is stated to have made two representations dated 19 and 23 July 2019 bringing to the notice of the Sub

Registrar that the sale deed which had been executed and presented for registration was liable to be ignored since she came to execute the same on

account of incorrect information provided by respondent No. 4 and on account of misrepresentation. The Sub Registrar by his order of 24 July 2019

proceeded to pass an order refusing registration of that instrument. Aggrieved by the aforesaid order, an appeal came to be preferred by respondent

No. 4. It is that appeal, which has come to be allowed by the District Magistrate by the impugned order of 2 March, 2020.

4. The District Magistrate has in some detail noticed the contents of the representations which were made by respondent No. 5 before the Sub

Registrar and which appeared to have been taken into consideration by that authority in support of its decision to refuse registration. The order records

that the fifth respondent moved the Sub Registrar doubting her competence to make the conveyance in favour of the fourth respondent in light of an

oral family settlement which is stated to have been arrived at as a consequence of which she was unsure whether she retained the right or authority to

execute the sale deed in favour of respondent No. 4. It was in the aforesaid backdrop that she asserted that the same had come to be executed on

account of various misrepresentations made by respondent No. 4 and therefore sought to resile from the transaction.

5. The District Magistrate taking into consideration the statutory provisions as engrafted in Sections 34 and 35 of the Act, has come to conclude that

the Sub Registrar clearly erred in refusing to register the instrument which had been validly presented. It also took note of the decision of the Supreme

Court in *Satya Pal Anand Vs. State of Madhya Pradesh & Ors.* (2016) 10 SCC 767 to conclude that disputes like those voiced and addressed by the

fifth respondent cannot form subject matter of adjudication or consideration of the Sub Registrar and ultimately it is for parties to settle their rights

before the appropriate forum. It has accordingly framed a direction commanding the Sub Registrar to complete the process of registration.

6. Mr. Shadan Farasat, learned Additional Standing Counsel, appearing for respondent Nos. 1 to 3 has referred to the relevant provisions made in the

Act to submit that the Sub Registrar essentially discharges an administrative function and has to proceed to register instruments that may be presented

strictly in accordance with the procedure prescribed in Sections 34 and 35. According to Mr. Farasat, once the statutory conditions which warrant

registration of an instrument presented are fulfilled, the Sub Registrar has no authority or jurisdiction to evaluate the validity of the transaction which

forms part of that instrument or to adjudge the entitlement of respective parties. Mr. Farasat has drawn the attention of the Court to the following

principles as enunciated by the Supreme Court in Satyapal Anand.

“ 36. If the document is required to be compulsorily registered, but while doing so some irregularity creeps in, that, by itself, cannot result in a

fraudulent action of the State Authority. Non-presence of the other party to the extinguishment deed presented by the Society before the Registering

Officer by no standard can be said to be a fraudulent action per se. The fact whether that was done deceitfully to cause loss and harm to the other

party to the deed, is a question of fact which must be pleaded and proved by the party making such allegation. That fact cannot be presumed. Suffice

it to observe that since the provisions in the 1908 Act enables the Registering Officer to register the documents presented for registration by one party

and execution thereof to be admitted or denied by the other party thereafter, it is unfathomable as to how the registration of the document by following

procedure specified in the 1908 Act can be said to be fraudulent. As aforementioned, some irregularity in the procedure committed during the

registration process would not lead to a fraudulent execution and registration of the document, but a case of mere irregularity. In either case, the party

aggrieved by such registration of document is free to challenge its validity before the civil court.

41. Section 35 of the Act does not confer a quasi judicial power on the Registering Authority. The Registering Officer is expected to reassure that the

document to be registered is accompanied by supporting documents. He is not expected to evaluate the title or irregularity in the document as such.

The examination to be done by him is incidental, to ascertain that there is no violation of provisions of the 1908 Act. In Park View Enterprises it has

been observed that the function of the Registering Officer is purely administrative and not quasi judicial. He cannot decide as to whether a document

presented for registration is executed by person having title, as mentioned in the instrument. We agree with that exposition.

48. Taking any view of the matter, therefore, we are of the considered opinion that, the High Court has justly dismissed the writ petition filed by the

appellant with liberty to the appellant to pursue statutory remedy resorted to by him under the 1960 Act or by resorting to any other remedy as may be

advised and permissible in law. All questions to be considered in those proceedings will have to be decided on its own merits.”

7. Mr. Farasat, has additionally placed reliance upon the decision of this Court in Areness Foundation v. Government of NCT of Delhi and Anr 2018

SCC OnLine Del 12004. where following the principles in Satyapal Anand, the Court held: -

12. From the reading of the above paras of the judgment of the Supreme Court in Satya Pal Anand (supra), the following emerges:

(i) The role of Sub Registrar (Registration) stands discharged, once the document is registered.

(ii) There is no express provision in the Registration Act which empowers Registrar to recall registration.

(iii) The fact whether the document was properly presented for registration cannot be reopened by the Registrar after its registration.

(iv) The power of the Inspector General is limited to do superintendence of registration offices and make rules in that behalf. Even the Inspector

General has no power to cancel the registration of any document, which has already been registered.

18. Suffice to say in view of the law laid down by the Supreme Court in Satya Pal Anand (supra) it must be held that Registrar has no powers under

Section 82 of the Registration Act nor can invoke Section 21 of the General Clauses Act, to annul a registration of a document. Accordingly, the

circular dated July 13, 2016 to the extent it empowers the Registrar to annul a registered document is ultra vires the Registration Act, 1908 and is set

aside.

8. The Court also deems it apposite to advert to the decision rendered by the Full Bench of the Allahabad High Court in Smt. Kusum Lata v. State of

U.P. & Ors. 2018 SCC OnLine All 5943 where upon a review of the provisions of the Act it was held:-

5. Unless and until there is an express provision in the Act or in the Rules, no Government Order could be issued giving power to a

Registering Authority to annul a document on the administrative side. Such powers given would be wholly arbitrary and against the provisions of the

Act. The State Government cannot, while taking recourse to the executive power of the State under Article 162, deprive a person of his property.

Such power can be exercised only by authority of law and not by a mere executive fiat or order. Article 162, as is clear from the opening words, is

subject to other provisions of the Constitution. It is, therefore, necessarily subject to Article 300-A. The word "law" in the context of Article 300-A

must mean an Act of Parliament or of a State Legislature, a rule, or a statutory order; having the force of law, that is positive or State made law.

7. In light of whatever stated above, we are having no doubt in arriving at the conclusion that once a sale deed has been registered, the Registering

Authority is having no power or authority under the Act, 1908 to cancel the registration, even if an allegation of impersonation/fraud is alleged.

12. The writ petition, hence, is dismissed. The petitioner may prosecute her cause by way of suit proceedings. The reference is answered in the terms

that a sale deed registered under the Act cannot be cancelled or set aside by registering authority or by any authority invoking administrative powers,

if the registration is questioned even on the count of impersonation/fraud.

9. Learned counsel appearing for the fifth respondent however submits that the vendor recognised and realised that the sale had come to be made

without any valid authority inhering in her to make that disposition. It was submitted that once the vendor had come to realise that she had no right to

make that dispossession in favour of respondent No. 4, she had no option but to bring those facts to the notice of the Sub Registrar and accordingly

request that authority to desist from completing the act of registration.

Learned counsel contends that if the Sub Registrar were compelled to register the instrument that was presented, it would lead to an incongruous

situation of two registered documents existing in respect of the same property. It is these rival submissions which fall for determination.

10. Having heard learned counsels for parties, the Court firstly takes note of the provisions made in Sections 34 and 35 of the Act and which must

necessarily guide the exercise of powers conferred on the Sub Registrar. Those two provisions read thus:

“34. Enquiry before registration by registering officer

(1) Subject to the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act,

unless the persons executing such document, or their representatives, assigns or agents authorised as aforesaid, appear before the registering officer

within the time allowed for presentation under sections 23, 24, 25 and 26:

Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in

appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, in

addition to the fine, if any, payable under section 25, the document may be registered.

(2) Appearances under sub-section (1) may be simultaneous or at different times.

(3) The registering officer shall thereupon—

(a) enquire whether or not such document was executed by the persons by whom it purports to have been executed;

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and

(c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

(4) Any application for a direction under the proviso to sub-section (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the

Registrar to whom he is subordinate.

(5) Nothing in this section applied to copies of decrees or orders.

35. Procedure on admission and denial of execution respectively

(1) (a) If all the persons executing the document appear personally before the registering officer and are personally known to him, or if he be

otherwise satisfied that they are the persons they represent themselves to be, and if they all admit the execution of the document, or

(b) if in the case of any person appearing by a representative, assign or agent, such representative, assign or agent admits the execution, or

(c) if the person executing the document is dead, and his representative or assign appears before the registering officer and admits the execution, the

registering officer shall register the document as directed in sections 58 to 61, inclusive.

(2) The registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or

for any other purpose contemplated by this Act, examine any one present in his office.

(3) (a) If any person by whom the document purports to be executed denies its execution, or

(b) if any such person appears to the registering officer to be a minor, an idiot or a lunatic, or

(c) if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution,

the registering officer shall refuse to register the document as to the person so denying, appearing or dead:

Provided that, where such officer is a Registrar, he shall follow the procedure prescribed in Part XII:

Provided further that the State Government may, by notification in the Official Gazette, declare that any Sub-Registrar named in the notification shall,

in respect of documents the execution of which is denied, be deemed to be a Registrar for the purposes of this sub-section and of Part XII.

11. Section 34 enjoins a Registering Officer to ensure that the persons executing the document or their representatives, assigns or agents appear

before it and duly address the authority with respect to the execution of the instrument. In terms of sub-section (3) thereof, the Registering Authority

is to enquire whether the document was executed by persons by whom it purports to have been executed, satisfying itself as to the identity of the

persons appearing and thereafter proceed to register the instrument. Section 33 refers to the various forms of powers of attorney which would be

recognised in law and would thus be deemed to be sufficient to evaluate the authority of the person acting as an attorney of the executing party and

appearing before the Registering Officer for the purposes of registration of an instrument. Similar provisions with respect to the course of enquiry that

must be undertaken and the subjects in respect of which satisfaction must be accorded by the Sub Registrar before proceeding to register an

instrument stand engrafted in Section 35.

12. On a conjoint reading of the aforesaid provisions of the Act, it is manifest that the authority of the Sub Registrar while discharging functions under

the Act is clearly administrative in character. In any case the enquiries which are statutorily required to be undertaken by him cannot extend to or be

recognised as conferring on him the powers to adjudicate or evaluate the rights of parties to make a disposition or transfer. Those rights must be left to

be determined by a competent court. All that the Sub Registrar is enjoined in law to do is to assure itself of the identity of persons who are stated to be

parties to the instrument in question, ensure that the statutory formalities contemplated have been complied with and upon making due enquiries in that

regard, proceed further to register the instrument. The Act nowhere contemplates the Sub Registrar from entertaining complaints or representations

that may come to be submitted by parties seeking to resile from the bargain comprised in the instrument. The procedure prescribed under the Act

contemplates the Sub Registrar accepting the instrument for the purposes of registration only after calling upon parties to declare whether they have in

fact executed the instrument, verifying the identity of parties and ensuring that the instrument is compliant with all other requirements as mandated by

law. As was elucidated by the Supreme Court in *Satyapal Anand*, it is this limited jurisdiction and role which stands assigned to the Sub Registrar. The

Court also bears in mind the remedies enshrined in Section 31 of the Specific Relief Act, 1963 which confers an adequate right of recourse to the fifth

respondent. All rights of that respondent, if such a course were adopted shall, though needless to say, in any case be open to be pursued.

13. In view of the aforesaid discussion, the Court is of the considered opinion that the District Magistrate was clearly justified in requiring and calling

upon the Sub Registrar to complete the registration of the instrument in question and to act further in discharge of the obligation which otherwise

stands placed on that authority under the Act.

14. Accordingly and for all the aforesaid reasons, this Court finds no justification to interfere with the order impugned. The writ petition along with the

pending application fails and shall consequently stand dismissed.