

(2008) 06 CAL CK 0043

Calcutta High Court

Case No: C.O. No. 3107 of 2007

Samar alias Samaresh Paul and
Others

APPELLANT

Vs

Ashutosh Saha and Others

RESPONDENT

Date of Decision: June 24, 2008

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 47
- Constitution of India, 1950 - Article 227
- Registration Act, 1908 - Section 28, 30, 30(2)

Hon'ble Judges: Biswanath Somadder, J

Bench: Single Bench

Advocate: Hiranmoy Bhattacharya and Chandra Nath Sarkar, for the Appellant; Sulekha Mitra for Opposite Party Nos. 1 and 2, for the Respondent

Final Decision: Dismissed

Judgement

Biswanath Somadder, J.

Heard the learned Advocates appearing on behalf of the parties.

2. This is an application under Article 227 of the Constitution of India directed against an order dated 4th May, 2007 passed by the learned Civil Judge (Senior Division), Purulia in Miscellaneous Case No. 20 of 2006 arising out of Title Execution Case No. 4 of 2006.

3. By the order impugned, the learned Court below was pleased to dismiss the defendants' application u/s 47 of the Code of Civil Procedure. The petitioners are the defendants in the learned Court below.

4. The short point that has been sought to be raised by the learned Advocate appearing on behalf of the petitioners is with regard to the learned Court below not taking into consideration the relevant provision of the Registration Act, 1908,

particularly, section 28 of the said Act, which is with regard to place for registering documents relating to land. According to the learned Advocate for the petitioners, the sale deed dated 21st December, 1983 was not registered with the sub-registrar's office at Purulia u/s 28 of the Registration Act, 1908, and in spite of suit property being situated under its jurisdiction and it was registered in Calcutta. Under these circumstances, the learned Advocate for the petitioners submits that the learned Court below ought to have allowed the prayer for declaring decree under execution to be a nullity and to be in executable decree.

5. On the other hand, learned Advocate appearing on behalf of the opposite party Nos. 1 and 2 submits that the learned Court below in the order impugned took due note of the provision of the Registration Act, 1908, while deciding the matter. She submits sub-section (2) of section 30 of the Registration Act, 1908 was applicable in the facts and circumstances of the instant case since the registration of the sale deed took place on 21st December, 1983. It may not be out of place to, refer to sub-section (2) of section 30 of the Registration Act, 1908 (which was subsequently omitted by Act 48 of 2001 w.e.f. 24th September, 2001).

Section 30 (2) :

(2) The Registrar of a district in which a Presidency town is included and the Registrar of the Delhi district may receive and register any document referred to in section 28 without regard to the situation in any part of India of the property to which the documents relates.

6. Relying on the aforesaid provision, the learned Advocate for the opposite party Nos. 1 and 2 submits that the sub-section (2) of section 30 provided for registration by the Registrar of a district in which a Presidency town was included, with regard to any document referred to in section 28, without regard to the situation in any part of India to the property in which the document relates. She thus submits that this being the position in law, there is on error in appreciation of law by the learned Court below and the order impugned is liable to be sustained.

7. After considering the submissions made by the learned Advocates appearing on behalf of the respective parties and upon perusing the instant application as well as the order impugned and after taking into consideration the relevant provisions of the Registration Act, 1908, particularly, sub-section (2) of section 30 of the said Act (before it was omitted in 2001), I am of the opinion that there is no infirmity of reasoning or any error of law in the order impugned, which warrants interference of this Court in exercise of its jurisdiction under Article 227 of the Constitution of India.

8. In the circumstances, the instant application stands dismissed.

9. There shall, however, be no order as to costs.

10. Urgent Xerox certified copy of this order, if applied for, be given to the parties.