courtkutchehry.com

Company : Sol Infotech Pvt. Ltd.

Website : www.courtkutchehry.com

Printed For :

Date : 24/08/2025

Gangaram Ranaba Vs Datto Appaji Powar and Others

Court: Bombay High Court

Date of Decision: Oct. 14, 1955

Acts Referred: Registration Act, 1908 â€" Section 32, 35, 58, 59, 60

Citation: AIR 1956 Bom 328 : (1956) 58 BOMLR 161 : (1956) ILR (Bom) 258

Hon'ble Judges: Gokhale, J; Chainani, J

Bench: Division Bench

Advocate: A.A. Adarkar, for the Appellant; V.H. Gumaste, for the Respondent

Judgement

Chainani, J.
The facts which are material for decision of this appeal are briefly these: The suit house originally belonged to defendants Nos.

1 and 2. On 5th July 1946, they agreed to sell this house to the plaintiff for Rs. 2000/-. Rs. 125/- were paid by the plaintiff as earnest money. The

balance was to be paid on the 17th September 1946, when the document was to be executed and registered.

On 17th September 1946, defendants Nos. 1 and 2 executed a sale deed in favour of the plaintiff. The plaintiff then presented it for registration,

but the Sub Registrar refused to register it. The plaintiff then applied to the Registrar, Kurundwad senior u/s 73 of the Indian Registration Act. On

the 25th July 1947, the Registrar directed that the document should be registered.

On the 8th March 1948 the State merged with the Indian Union. Thereafter the plaintiff applied to the Inspector General of Registration

complaining that he had not been informed about the result of his application to the Registrar.

This officer made inquiries and on the 26th August 1948 ho wrote to the District Registrar that the orders passed by the District Registrar,

Kurundwad senior on 25th July 1947, should be given effect to and that the plaintiff should be asked to present the document for registration

within 30 days from the date of the receipt of the order before the Sub Registrar, Angol: see Exhibit 41.

The District Registrar accordingly wrote to the plaintiff on 13th September 1948 asking him to present the document for registration within 30 days

before the Sub-Registrar, Angol. The plaintiff then presented the document for registration on the 16th September 1948 and it was registered.

Before then, on the 24th March 1947 defendants Nos. 1 and 2 sold the suit; house to defendant No. 3 who also obtained possession of it. The

sale deed in favour of defendant No. 3 was duly registered. On the 4th November 1949 the plaintiff filed the present suit for obtaining possession

of the suit property.

2. The defendants contended that the registration of the sale deed in favour of the plaintiff was not valid that the signatures of the defendants Nos. 1

and 2 on this sale deed had been obtained by fraud and that the plaintiff had not paid the consideration for the safe deed except Rs. 125/-. Various

other contentions were also raised, but we are not concerned with these in this appeal.

3. The trial court held that the registration of the document was valid but that Rs. 1800/-were due from the plaintiff. Accordingly the trial Court

passed a decree in favour of the plaintiff entitling him to recover possession of the suit house on his paying Rs. 1800/- to defendant No. 3.

4. Defendant No. 3 appealed to the District Court, The appeal was heard by the Assistant Judge who dismissed it with costs. Against this order

the present second appeal has been filed by the Defendant No. 3.

5. The appeal first came up for hearing be-fore Mr. Justice Bavdekar. He called for finding on the following two issues:

1. Whether the judgment of the Registrar was delivered upon a date of which notice had been given to both the parties in the appeal before him;

and

2. Whether the Registrar''s decision was as a matter of fact communicated to the plaintiff.

The lower appellate court has answered both these issues in the affirmative. When the appeal came up for hearing again before Mr. Justice

Bavdekar he decided to refer it to a division Bench as a question of law was raised before him on which there does not appear to be any previous

decision of this court.

6. The question is whether the registration of the sale deed executed in favour of the plaintiff which was presented before the Sub Registrar on the

16th September 1948 i.e., more than thirty days after the order of the Registrar passed on the 25th July 1947 is valid. The answer to it depends

upon the construction of the provisions of Section 75 of the Indian Registration Act. Sub-sections (1), (2) and (3) of Section 75 of the Act which

are material are in these terms:

(1) If the Registrar finds that the document has been executed and that the said requirements have been complied with he shall order the document

to be registered.

(2) If the document is duly presented for registration within thirty days after the making of such order the registering officer shall obey the same and

thereupon shall so far as may be practicable follow the procedure prescribed in Sections 58, 59 and 60.

(3) Such registration shall take effect as if the document had been registered when it was first duly presented for registration.

7. Two arguments have been advanced before us. Mr. Adarkar who appears on behalf of the appellant-defendant No. 3 has urged that Sub-

section (2) prescribed a period of limitation of thirty days from the date on which the Registrar has made his order, and that if the document is not

presented within this period the Sub-Registrar has no jurisdiction to register it.

He has relied on -- "Mafizur Rahman v. Jamila Khatim" 42 CWN 1174 (A), in which it was held that the registration of document which is

presented for registration after more than thirty days of the passing of an order for its registration by the Registrar u/s 75 of the Registration Act, is

in valid.

Mr. Gumaste, who appears for the plaintiff has on the other hand contended that Sub-section (2) does not prevent the Sub-Registrar from

registering a document which is not presented within the prescribed period. If it is presented within this period there is an obligation on the Sub-

Registrar to register it, otherwise it is left to his choice whether he should or should not register it.

He has relied on the decision of the Privy-Council in -- "Chotey Lal v. Collector of Moradabad" AIR 1922 PC 279 (B). This case, is not referred

to in the judgment of the Calcutta High Court in "Mafizur Rahman v. Jamila Khatun (A)".

8. It seems to us that the question is really concluded by the decision of the Privy Council is "Chotey Lal v. Collector of Moradabad (B)". I may

however say with respect that if the question had been open I would in all probability have taken the same view. Under Sub-section (1) the

Registrar, is given the power to direct a document to be registered. Sub-section (2) states that the registering officer shall obey the order of the

Registrar, if two conditions are satisfied. These are that the document must be presented for registration within thirty days after making of the

Registrar"s order and that it must be duly presented.

The words ""duly presented"" evidently mean presented in accordance with all the formalities required by Section 32 of the Act. The Sub-section

does not say that the document should be registered only if these two requirements are satisfied. It does not impose a bar on the Sub-Registrar"s

carrying out the Registrar"s order in other cases. It only specifies the circumstances in which there will be an obligation on Sub-Registrar to obey

the Registrar"s order. In the other cases there will be no such obligation, hut there being no bar, he may if he so deems fit and proper comply with

the order.

9. The facts in -- "Chotey Lal v. Collector of Moradabad", (B), were that on behalf of the mortgagee a mortgage was presented for registration

before the Sub-Registrar. The Sub-Registrar endorsed upon the document that it had been presented ""under a power of attorney duly

authenticated"", but he refused to register the document since its execution had not been admitted as required by Section 35 of the Act. The

Registrar on appeal being satisfied on that point ordered u/s 75, Sub-section (1) that the document should be registered.

This order of the Registrar was passed on June 28, 1912. On July 22, the Collector acting as court of wards forwarded the mortgage and the

copy of the Registrar"s order by the post to the Sub-Registrar and asked for registration. The document was then registered. It was urged before

the Privy Council that Sub-section (2) of Section 75 required that the document should be duly presented and that as this had not been done the

registration was invalid. This argument was not accepted by the Privy Council.

10. Their Lordships observed ;

Upon the hypothesis that Section 75, Sub-section 2, may be dealing with a case such as the present in which original presentation has been

properly made and as every condition has been satisfied there would in their Lordships" opinion be nothing to prevent the District Registrar, when

he had determined the question of execution from directing that the registration should then be made.

The last words in Sub-section 3, which provide that the registration shall date back do not necessarily refer only a registration effected pursuant to

the provisions of Sub-section 2 but to every registration consequent on the order made by the Registrar. The main point about Sub-section 2 is

that it is mandatory in form and compels the registering officer to effect the registration if the document be duly presented.

If this procedure be followed and registration is refused the processes at the court are open for the purpose of compelling obedience, a privilege

that would not be enjoyed if the formalities were omitted. Their Lordships can find nothing in the Section to prevent the registrar or the Sub-

Registrar from registering a document which had been duly presented and the execution of which has been proved without requiring a repetition of

all the original steps but he cannot be compelled to register unless the document be ""duly presented"" a second time.

The view taken by the Privy Council in this case therefore is that after the Registrar has passed an order u/s 75(1) that a document be registered

the registration may be made apart from the provisions of Sub-section (2) of Section 75 i.e., even if the provisions of this Sub-section are not

complied with.

The effect of Sub-section (2) only is that if the document is presented as provided in this Sub-section the Registrar shall be bound to register it. But

there is nothing in Section which prevents the Sub-Registrar from obeying the Registrar''s order and registering the document even when it has not

been presented in the manner or within the time mentioned in Sub-section (2).

11. As I have stated before the Sub-Registrar can be compelled under Sub-section (2) of Section 75 to obey the Registrar''s order directing

registration two conditions must be satisfied. These are (1) the document must be presented for registration within thirty days after the making of

the Registrar''s order and (2) it should be duly presented. In ''Chotey Lal v. Collector of Moradabad'', (B), the first condition was satisfied for the

document was sent to the Sub-Registrar on July 22, 1912, i.e., within thirty days of the Registrar''s order passed on June 28, 1912.

The second condition was however not satisfied for the document was not duly presented. In the present case the second condition, has been

satisfied but the first has not been. Mr. Adarkar has urged that the present case is therefore distinguishable from that which the Privy Council had

to decide. That no doubt is true. But the reasoning of the Privy Council will apply in the present case also.

The construction placed by the Privy Council on Section 75 is that a document may be registered under the authority of the order made by the

Registrar under Sub-section (1) even in cases not covered by the Sub-section (2). The Sub-Registrar can, therefore, in pursuance of the

Registrar''s order, register the document even if the first requirement of Sub-section (2). referred to above has not been satisfied.

12. The position therefore is that if a document is duly presented for registration within the thirty days after the making of the Registrar''s order

under Sub-section (1) of the Section 75 the Sub-Registrar cannot refuse registration but he is bound to register the document.

If however the document is not duly presented or is not presented within thirty days after the making of the Registrar''s order the Sub-Registrar

cannot be compelled to register the document but he may, in his discretion register the document.

The provisions of the Sub-section (3) which, as held by the Privy Council, refer ""to every registration consequent on the order made by the

Registrar, will apply to such registration also i.e., the registration shall take effect as if the document had been registered when it wag first duly

presented for registration.

13. The sale-deed executed in favour of the plaintiff was registered on the 16th September 1948 in pursuance of the instructions issued by the

Inspector General of Registration that the order issued by the District Registrar, Kurundwad on the 25th of July 1947 should be given effect to.

The registration was therefore made under the authority of the Registrar''s order passed in July 1947. It must consequently be held to be valid.

Under Sub-section (3) of Section 75, this registration takes effect from the date when the document was originally presented for registration on

14-1-1947. This document must therefore prevail over the sale-deed executed in favour of defendant No. 3 on 24-3-1947.

14. The appeal, therefore fails and is dismissed. As the respondent succeeds on a point which does not appear to have been argued in the lower

courts, we make no order as to costs of the Appeal.

Gokhale, J.

15. The short point which arises in this Second Appeal is as regards the construction of Section 75 of the Indian Registration Act, The title of the

plaintiff to the property in suit is based upon a sale deed which was executed by defendants Nos. 1 and 2 on the 17th September 1946 but which

came to be registered on 16th September 1948.

That sale deed is Exhibit 39. It was originally presented for registration on the 14th January 1947 but objections having been raised by defendants

Nos. 1 and 2 the Sub-Registrar, Angol, refused to register the document and the plaintiff had to appeal against that refusal to the District Registrar,

Kurundwad Senior, u/s 73 of the Indian Registration Act.

That appeal was allowed by the District Registrar on the 25th July 1947 and he ordered the sale deed to be registered. But the plaintiff did-not

present the deed for registration u/s 75(2) Of the Act within thirty days of the District Registrar''s order.

After the merger of the state of Kurundwad in the Indian Union an application was made to the Inspector General of Registration, Poona, by the

plaintiff and it appears that on 26th August 1948 the District Registrar of Belgaum was directed to ask the plaintiff to produce the sale deed for

registration.

The District Registrar, in his turn having written to the plaintiff to present the sale deed to the Sub-Registar, Angol, the document ultimately came to

be duly registered on the 16th September 1948. But in the meanwhile defendant No, 3 had already obtained a duly registered sale deed in his

favour from defendants Nos. 1 and 2 on the 24th March 1947 in respect of the suit property.

16. The principal point that was urged against the plaintiff''s title by defendant No. 3 was that the registration of the plaintiff''s sale deed was invalid

because it was in the contravention of the provisions of Sub-section (2) of Section 75 of the Registration Act, and therefore he could not get a

better title than that of defendant No. 3.

Mr. Adarkar who appears for the appellant defendant No. 3 has contended that the plaintiff cannot get the benefit of Sub-section (3) of Section

75 of the Act, unless the sale deed was duly registered in accordance with the provisions of Sub-section (2) of Section 75. He argues that in effect

what has been done in this case is to extend the time in favour of the plaintiff and this, says Mr. Adavkar, the Registrar has no power to do.

In support of his argument Mr. Adarkar has relied on the case reported in 42 CWN 1174 (A). On the other hand Mr. Gumaste who appears for

the plaintiff respondent has relied on the ruling of the Privy Council in AIR 1922 PC 279 (B), and he points out that the attention of the learned

Judge who decided -- "Mafizur Rahaman v. Jamila Khatun", (A), does not seem to have drawn to this ruling of Privy Council.

17. Now, Sub-sections (1), (2) and (3) of Section 75 of the Registration Act are in these terms:

(1) If the Registrar finds that the document has been executed and that the said requirements have been complied with he shall order the document

to be registered.

(2) If the document is duly presented for Registration within thirty days after the making of such order the registering officer shall obey the same

and thereupon shall so far as may be practicable follow the procedure prescribed in Sections 58, 59 and 60.

(3) Such registration shall take effect as if the document had Been registered when it was first duly presented for registration.

It would appear from Sub-section (2) of Section 75 that two conditions have to be satisfied. Firstly the document must be presented for

registration within thirty days after the making of the order contemplated under Sub-section (1) of Section 75 and secondly the presentation of the

document must he a presentation duly made, that is to say in accordance with the formalities prescribed for the presentation of documents. If these

conditions are fulfilled it would be obligatory on the registering officer to obey the Order of the Registrar made under Sub-section (1).

18. The argument that was addressed to their Lordships of the Privy Council in -- "Chotey Lal v. Collector of Moradabad", (B) was that since the

presentation of the document for registration in that case was defective the document could not be said to have been validly registered.

It appears from the facts of that case that the District Registrar"s order for registration was made on 28th June 1912 and the Collector acting as

Court of Wards forwarded by post the document along with the copy of the Registrars order to the Sub-Registrar on 22nd July 1912. The

document was then registered and that registration was held to be valid by the Privy Council.

Mr. Adarkar urges that the Privy Council case is distinguishable because the presentation of the document there was within thirty days of the

Registrar''s order, The defect in the presentation in that case was that it was not made in accordance with the provisions of Section 32 of the

Registration Act. This is undoubtedly so.

But it would appear from the decision of the Privy Council that their Lordships took the view that the Sub-Registrar has the power to register a

document in pursuance of the Registrar''s order apart from the provisions of Sub-section (2) of Section 75. That would follow from the

observation of the Privy Council that the

last words in Sub-section (3) which provide that the registration shall date back do not necessarily refer only to a registration effected pursuant to

the provisions of Sub-section (2) but to every registration consequent on the order made by the Registrar.

If the procedure laid down in Sub-section (2) was followed namely that there was a due presentation within thirty days after the making of the

Registrar''s order then it would be the duty of the registering officer to obey the Registrar''s order.

The provisions of Sub-section (2) of Section 75 are mandatory and require the registering officer to effect the registration if the document is

presented in accordance with the conditions laid down in Sub-section (2) of Section 75. If the procedure under Sub-section (2) of Section 75 is

followed but registration is refused then as their Lordships observe ""the processes of the court are open for the purpose of compelling obedience, a

privilege that would not be enjoyed if the formalities were omitted"".

That is an advantage which flows from the provisions of Sub-section (2) of Section 75. That does not mean however that the Sub-Registrar is hot

competent to register the document in pursuance of the order made by the Registrar under Sub-section (1) of Section 75, if the document is not

presented in accordance with the provisions of Sub-section (2). In that case of course the registering officer cannot be compelled to register the

document.

But in my view there is nothing in Sub-section (2) of Section 75 which precludes the registering authority from registering a document in

accordance with the order of Registrar, even if the document is not duly presented for registration within thirty days after the making of the

Registrar''s order. It is not alleged in the present case that there was any defect in the first presentation of the document on 14th January 1947.

The only bar to the registration of the document was the refusal of the Sub-Registrar to register it owing to the objections raised by the defendants

Nos. 1 and 2. In appeal that order was reversed and the Registrar ordered that the document should be registered. As the document subsequently

came to be presented beyond thirty days of the Registrar''s order of 25th July 1947, the plaintiff could not have compelled the Sub-Registrar to

register the document relying on the provisions of Sub-section (2) of Section 75.

But that did not take away the Sub-Registrar"s power to register the document in pursuance of the directions given by the Inspector General of

Registration and the District Registrar and in conformity with the original order of the Registrar dated 25th July 1947 and he having exercised the

power and registered the document I do not think that the validity of that registration can be successfully challenged by reason of the provisions of

Sub-section (2) of Section 75 of the Act.

19. In my opinion therefore the Sale deed in favour of the plaintiff (Exhibit 39) is validly registered and under the provisions of Sub-section (3) of

Section 75 of the Registration Act that registration must take effect from the date when it was first duly presented for registration viz., 14th January

1947. The plaintiff"s title would therefore prevail over that of the defendant No. 3.

20. I therefore agree with the order proposed by my learned brother.

21. Appeal dismissed.