

MRS. MARY JOYCE POONACHA
v.
M/S K.T. PLANTATIONS PVT. LTD.

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JANUARY 19, 1995

[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

B

Registration Act, 1908—Sections 34(3), 72 & 73—Registration—Sale deed for land—Executant not present at time of registration—Execution of sale deed in controversy—Civil suit pending—Registration refused—Appeal—Prayer to stay proceedings—Whether Registrar was right in proceeding with hearing of appeal—Held, No.

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One D had allegedly executed a sale deed but the same was not registered. Respondent filed a civil suit for declaration that the said sale deed executed by D in his favour was valid and binding on her. The alleged executant D denied the execution of the sale deed and the agreements to sell in favour of the respondent No. 1. She alleged that the agreements and deed of sale were initiated by fraud and were unenforceable in the eye of law.

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The Sub-Registrar refused to register the document. On appeal, when the Registrar was proceeding to hear the appeal to register the document, the appellant sought for stay of further proceedings in view of the pendency of the suit. The Registrar declined to stay the proceedings. The appellant filed writ petition in the High Court which was dismissed. Writ Appeal filed against the judgment was also dismissed. Hence this Appeal.

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The question raised for consideration was whether the District Registrar was right in proceeding with the hearing of the appeal and whether the High Court was right in declining to stay the proceedings before the District Registrar.

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Allowed the appeal, this Court.

HELD : 1.1. Under Ss. 72 and 73 of the Registration Act, undoubtedly, the existence of the power of the Registrar to proceed with the appeal is not disputed and cannot be disputed. But the question is of the

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- A** propriety and justness of the exercise of the power; whether he was right in his exercise of discretion to proceed with the hearing of the appeal. When the executant had denied the execution of the alleged sale deed and passing of the consideration and the dispute when was pending trial in the civil suit filed by the alleged vendee itself, the appropriate course should have been that the Registrar should have stayed his hands and directed the plaintiff to obtain appropriate direction from the Civil Court or a decree. When the appellant approached the High Court, the High Court also should have directed the Civil Judge to dispose of the suit. Then the Registrar should have heard the appeal. Instead, the High Court dismissed the Writ Petition and Writ Appeal. Therefore, the orders of the High Court are set aside. The District Registrar shall not proceed further with the hearing of the matter till the civil suit is disposed of. [495-A-D]

- D** 1.2 When execution of sale deed is in controversy and is subject matter of a suit, s.77(2) lifts the bar of s.49(3) and enables the court to look into the document for adjudicating the controversy. In these circumstances, the trial court is directed to look into the document only for the limited purpose of finding out whether D had executed the impugned sale deed alleged to have been executed by her and not for any other purpose. [495-F-G]

- E** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3094 of 1995.

From the Judgment and Order dated 22.6.94 of the Karnataka High Court in W.A. No. 2667 of 1993.

- F** P.C. Jain, S.K. Kulkarni, Jayavittal Kolar, D.L.N. Rao, Shankar Narayanan and Ms. Sangeeta Kumar, (N.P.) for the Appellant.

R.F. Nariman, Eshwarappa, Nangin Reddy, J.B. Dadachanji, S.Sukumaran and P.D. Tyagi for the Respondents.

- G** The following Order of the Court was delivered :

Leave granted.

- H** We have heard the counsel on either side at length. This appeal by special leave arises from the order of the Division Bench of the High Court of Karnataka, dated 22.6.1994 made in W.A.No. 2667/93.

The facts relevant for the disposal of this appeal are as under :

One Devika Rani had allegedly executed an agreement on July 30, 1991 and supplemental agreement on September 21, 1991 respectively to sell 223 acres of land in Tataguni Estates on the outskirts of Bangalore City. It had been claimed that in furtherance thereof she had executed a sale deed, said to be on 16.2.1992 but the same was not registered. Respondent No. 1 filed O.S. No. 122/92 in the court of City Civil Judge, Bangalore Rural for declaration that the said sale deed dt. 16.2.92 executed by Mrs. Devika Rani Reerch in its favour was valid and binding on her and also for mandatory injunction restraining her from creating any encumbrances on the said property or from transferring it and for a further perpetual injunction restraining her from interfering with his alleged possession and enjoyment of the property. Devika Rani filed her written statement on 2.7.1992 whereby she denied the execution of the sale deed and the agreements to sell in favour of the respondent No. 1 and of the passing of consideration under them. Thus, according to the defendant, she did not execute any agreement to sell or any sale deed in favour of the respondent No.1 in respect of the suit schedule property and the same is bogus and vitiated by fraud and misrepresentation.

Respondent No. 1 has been consistently making efforts and attempts to grab the property of the defendant and their earlier suit No. O.S. 3692/92 which was filed in the City Civil Court at Bangalore was withdrawn by them. The present suit had been filed with an additional relief of declaration also. Evidently, the plaintiff was filing speculative and false suits so as to somehow coerce the defendant to sell away her estate to the plaintiff. This defendant had not executed any agreement or supplementary agreement to sell nor had made any application to the Income Tax Authorities nor had she executed an absolute sale deed. The entire agreement of sale and sale deed are nothing but sham and bogus and a collusive job of K.T. Bhagath, the Managing Director of the K.T. Plantations and R. Devdas and Jude Devdas. The agreements to sell and deed of sale were vitiated by fraud and were unenforceable in the eye of law. This defendant reiterated that she has not handed over possession of the suit schedule property to respondent No.1 and that she was in possession and enjoyment of the suit schedule property as its absolute owner thereof. In support thereof, she has raised several contentions which are not relevant for the disposal of this appeal.

The Sub-Registrar, Kengeri in his endorsement dated 30.7.92 refused

- A to register the document, the sale-deed. This situated led respondent No.1 to file an appeal before the District Registrar within thirty days on 28.8.92. When the Registrar was proceeding to hear the appeal to register the document the appellant sought for stay of further proceedings to view of the pendency of the suit but he declined to stay the proceedings. Now it is an admitted fact that Devika Rani died subsequently. The appellant filed
- B W.P. No. 22677/93 in the High Court and the learned Single Judge by his order dated 23.9.93 dismissed the same. On small appeal, as stated earlier, the Division Bench dismissed the Writ Appeal, Thus, this appeal by special leave.

- C The only question that arises in this appeal is whether the Dist. Registrar was right in proceeding with the hearing of the appeal and whether the High Court was right in declining to stay the proceedings before the District Registrar. On a consideration of the facts and circumstances of the case, we are of the view that both the District Registrar committed a palpable error of law in proceeding with the matter and the
- D High Court was unjustified in refusing to interfere.

Section 34(3) of the Registration Act, 1908, (for short, 'the Act'), empowers the Registrar when a document is presented for registration to enquire and satisfy himself on certain matters. Section 34(3) reads :

- E "34(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.*" (Emphasis supplied)

- G The Sub-Registrar is required to satisfy himself with the due execution of the document/deed said to have been executed by Devika Rani since she herself was not present at the time of registration of the document. Consequently, the appeal came to be filed. It was within his power that before proceeding to register the alleged conveyance said to have been executed by Devika Rani to satisfy himself whether or not she executed it
- H and whether or not the person presented on her behalf was authorised to

have it registered on her behalf. He was also empowered to summon her to appear before him before proceeding to register the document. Under the circumstances he refused to register the document. Under ss.72 and 73, of the Act, undoubtedly, the existence of the power of the Registrar to proceed with the appeal is not disputed and cannot be disputed. But the question is of the propriety and justness of the exercise of the power. Whether he was right in his exercise of discretion to proceed with the hearing of the appeal. As stated earlier, when the executant has denied the execution of the alleged sale deed and passing of the consideration as on 2.7.92 and the dispute when was pending trial in the civil suit filed by the alleged vendee itself. The appropriate course should have been that the Registrar should have stayed his hands and directed the plaintiff to obtain appropriate direction from the Civil Court or a decree. When the appellatant approached the High Court, the High Court also should have directed the Civil Judge to dispose of the suit. Then the Registrar should have heard the appeal. Instead, the High Court dismissed the Writ Petition and Writ Appeal. Therefore, the orders of the High Court are set aside. There shall be a direction to the District Registrar not to proceed further with the hearing of the matter till the civil suit is disposed of. The trial court is directed to dispose of the suit as expeditiously as possible within a period of one year from today. Depending upon the result in the suit, the District Registrar shall take further action.

It is true as rightly contended by Shri R.F. Nariman, the learned senior counsel, that by operation of the prohibition contained in s.49 of the Act the unregistered impugned document effecting the immovable property cannot be looked into. Since the suit is not against an order under sec.77 of the Act, lifting of the bar provided by sec. 77(2) will come to the aid of the plaintiff. It indicates that when execution of sale deed is in controversy and is subject matter of a suit, s.77(2) lifts the bar of s.49(c) and enables the court to look into the document for adjudicating the controversy. In these circumstances, we direct the trial court to look into the document only for the limited purpose of finding out whether Devika Rani had executed the impugned sale deed alleged to have been executed by her and not for any other purpose. Status quo as on date of suit shall continue till the suit is disposed of.

The appeal is accordingly allowed but, in the circumstances, without costs.

A.G.

Appeal allowed.