

(1964) 12 P&H CK 0013
In the Punjab And Haryana At Chandigarh
Case No : Civil Miscellaneous No. 980 of 1963

Daulat Ram

APPELLANT

Vs

Jai Dai

RESPONDENT

Date of Decision : 03-12-1964

Acts Referred:

Registration Act, 1908 — Section 41, 71, 72, 73, 73(1)

Citation : AIR 1965 P&H 378

Hon'ble Judges : Shamsher Bahadur, J

Bench : Single Bench

Judgement

(1) What has been called in question in this petitioners under Article 227 of the Constitution of India is the appellant order of the Registrar Kulu, directing that the will of the deceased Beli Ram he registered and setting aside the order of the Sub-Registrar declining got register it.

(2) The testator Beli Ram died on 30th April, 1962, and thereafter his sister Jai Dai applied for registration of the will said to have been executed by him on 19th of April, 1962. in her favour. This application was opposed by Daulat Ram the surviving son of the testator and it was asserted by him before the Sub-Registrar that the will was not genuine and the deceased was not of sound disposing mind before his death. Some defects in execution were also pointed out. The Sub-Registrar after recording the evidence declined to register the will and the Registrar in the appeal by Jai Dai set aside the order of the Sub Registrar and directed him to registrar the document.

The petitioners Daulat Ram feeling aggrieved has moved this Court in it extraordinary jurisdiction under Article 227 of the Constitution of India. It has been very strenuously contended by Mr. Shambhu Lal Puri the learned counsel for the petitioners that the appeal was not entertainable by the Registrar and on this ground this order should be vacated. u/s 71 of the Indian Registration Act (hereinafter called the Act), Sub-Registrar refusing to register a document.

"shall make and order of refusal and record his reasons for such order in his Book and endorse the words "registration refused" on the document."

Section 72 empowers the Registrar to entertain an appeal against the order of the Sub-Registrar refusing to admit a document to registration except "where the refusal is made on the ground of denial of execution." When the registration of a document is refused by a Sub-Registrar on ground of denial of section (1) of Section 73 to establish the right to have the document registered. The learned counsel submits that the registration of the document having been disallowed substantially on ground of execution the Registrar has no jurisdiction to entertain the appeal. He could have been moved only by an application under sub-section (1) of section 73 "within thirty days after the making of the order of refusal." In it is mentioned that what was being dealt with was an "application u/s 73 of the Indian Registration Act." In the operative part of the order the Registrar no doubt has mentioned that he order of the Sub-Registrar refusing the registration of the will is not sustainable" and the appeal was accepted.

The reasons assigned by the Sub-Registrar for his order refusing to register the document mentioned for suspicious circumstances these being difference in spacing between lines the non-production of the attesting witness Bela Ram the scribe Nesu Ram not being a licenced petitioners writer and the endorsement at the back of will by the testator being ineffective to establish execution and Mr. Puri is right in saying that the registration of the will was refused on the ground of the denial of execution. An appeal u/s 72 could not be entertained but there was no bar to the Registrar hearing an application u/s 73(1) of the Act. What the Registrar has to do u/s 74 on such an application is to enquire--

"(a) whether the document has been executed;

(b) whether the requirements of the law for the time being in force have been complied with on the part of the applicant or person presenting the document for "registration as the case may be so as to entitle the document to registration."

(3) Section 74 empowers the Registrar on the finding that the document has been executed and the requirements have been complied with to order the registration of the document. The Registrar in case he refuses to register a document has to give reasons for it u/s 76. A suit is entertainable u/s 77 of the act in a civil Court where the Registrar refuses to register a document either u/s 72 or section 76 Mr. Puri has contended that whereas the refusal to register would have entitled Jai Dai to bring a suit in a civil Court Daulat Ram is left without a remedy by the order of the Registrar. This argument of the learned counsel envisages that the registration of a document is for all practical and authorities to adopt u/s 41 of the Act have to be registered in the same manner as other documents and shall be registered "if the registering officer is satisfied--

"(a) that the will or authority was executed by the testator or donor as the case may be;

(b) that the testator or donor is dead; and

(c) that the person presenting the will or authority is u/s 40 entitled to present the same."

It is clear beyond doubt that the registration denotes nothing more than what it purports to be. The registration of a document merely shows that the document was duly presented by the person authorised to do so and has received the publicity-by the process of registration its execution having been established by the registration authority. The wider questions about the disposing mind of the testator or the power of the to testator to make will or his capacity are all matters for consideration by appropriate court are all matters for consideration by appropriate Court either in probate proceedings or in civil suits.

It cannot be said that the petitioners for all times has been precluded from raising the defence that the will as against him was not a valid document. The enquiry and scope of the registering authorities is limited and I see no ground to reach the conclusion that the Registrar and the Sub-Registrar had acted beyond the bounds of their authority or jurisdiction. The right of the petitioners to question the validity of the will has not been affected in any manner by the order of the Registrar. The Registrar may have erred in describing the proceeding before him as an appeal and not a application, as it undoubtedly was under sub-section (1) of section 73. The determination by the Registrar u/s 74 related to the proper execution of the document and the fulfillment of the requirements of law. The Registrar in the impugned order has given detailed reasons on these matters in giving the decision that the document should have been registered by the Sub-registrar.

It is also well to observe that the Registrar even under his plenary powers of section 30 "may in his might be registered by any Sub-Registrar subordinate to him." In my opinion this petition under Article 227 is misconceived and there is no ground for interference of this Court. As there has been some mistake on the part of the Registrar in treating the application for registration as an appeal. I would not burden the petitioner will costs.

(4) The petitioners will therefore stand dismissed without any order as to costs.

(5) Petition dismissed.