

(1994) 06 KAR CK 0029
In the Karnataka High Court
Case No : W.A. No. 2667 of 1993

Devikarani Roerich

APPELLANT

Vs

K.T. Plantations Pvt. Ltd.

RESPONDENT

Date of Decision : 22-06-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Registration Rules, 1965 — Rule 171, 179, 182, 187
Registration Act, 1908 — Section 36, 72, 73, 74

Citation : (1994) ILR (Kar) 1788 : (1993) 4 KarLJ 742

Hon'ble Judges : S. Venkataraman, J; M. Ramakrishna, J

Bench : Division Bench

Advocate : V.H. Ron, for the Appellant; M.P. Eswarappa, Senior Advocate, K.G. Nayak, for R1 and B.V. Muralidhar, HCGP for R2, for the Respondent

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : Mary Joyce Poonacha (Mrs) Vs. K.T. Plantations Pvt. Ltd. and Others, (1995) 2 JT 540 : (1995) 2 SCALE 26 : (1995) 2 SCC 459 Supp : (1995) 1 SCR 491

Venkataraman, J.—The appellants are aggrieved by the order of the learned single Judge dismissing the Writ Petition wherein they had sought for a Writ of Certiorari quashing the entire proceedings in R.A.No.3/92-93 on the file of the District Registrar Sri G.R. Swamy, Urban District, Gandhinagar, Bangalore, including his order dated 25.5.93 (Annexure-Y) rejecting the appellants application for stay of those proceedings till the final disposal of the suit in O.S.122/92 pending on the file of the Prl. Civil Judge, Bangalore District, Bangalore, and the order dated 22.7.93 directing the examination of the witnesses on 28.7.93 and for a Writ of Prohibition restraining the second respondent District Registrar from proceeding further with the above appeal pending before him.

2. Some of the facts giving rise to the Writ Petition are as hereunder. The first

respondent who claims to have purchased certain properties from the first appellant under a Sale Deed dated 16.2.92 allegedly executed by the first appellant, presented it before the Sub-Registrar, Kengeri on 7.3.92 for registration. On that day on an application purporting to have made by the first appellant, the Sub-Registrar Gandhinagar was appointed as Commissioner to visit the first appellant at Hotel Ashoka where she was staying and to examine her regarding the execution of the document. The Sub-Registrar, Gandhinagar, by his report dated 18.7.92 informed the Sub-Registrar, Kengeri, that though he went to Hotel Ashok on 7.3.92 itself, "the execution proceedings could not be completed" as the first appellant did not appear before him. On 11.8.92 the first respondent filed an application u/s 36 of the Indian Registration Act ("the Act" for short) seeking issue of summons to the first appellant to appear before the Sub-Registrar to admit the execution of the documents. No order appears to have been passed on this application. In the meanwhile on 19.6.92 the first respondent filed a suit in O.S.122/92 against the appellants for declaration that the sale deed, dated 16.2.92 executed by the first appellant in his favour is valid and binding on her and for a permanent injunction restraining the appellants either from alienating the schedule property or from interfering with his possession of the suit property. In that suit the appellants denied the execution of the sale deed by the first appellant and made allegations of fraud and undue influence against the first respondent and another Devdas.

3. On 30.7.92 the Sub-Registrar passed an order refusing registration under Rule 171 (viii) of the Karnataka Registration Rules ("the Rules" for short) read with Section 34 of the Act on the ground that the executant failed to appear within the prescribed time limit. The first respondent tiled an appeal against that order of the Sub-Registrar u/s 72 of the Act before the second respondent-District Registrar. During the pendency of that appeal the appellants made an application before the District Registrar for either dismissing the appeal or staying further proceedings in the appeal till the final disposal of the suit O.S.122/92 which had been filed by the first respondent on the basis of the very sale deed, as the question whether the first appellant had executed the sale deed was an issue to be decided in the suit. The first respondent also filed an application before the District Registrar seeking permission to amend the memorandum of appeal by inserting the words "read with Sections 73 and 74" after the words "Section 72". In the affidavit filed along with that application the first respondent stated that the first appellant had not admitted the execution of the sale deed in response to the application filed by him, that she had also not appeared before the Commissioner appointed at her request for the purpose of registration and that as such it was necessary to bring the appeal even under Sections 73 and 74 of the Act. While the appellants opposed the amendment application filed by the first respondent, the first respondent opposed the application for stay filed by the appellants.

4. The District Registrar by his order dated 25.5.93 rejected the application for stay filed by the appellants. On 22.7.93 after hearing the arguments on the

amendment application filed by the first respondent, the District Registrar, after posting the case for orders to 28.7.93 simultaneously gave a direction that on that day witnesses would be examined. Challenging these orders the appellants filed the Writ Petition and sought for the reliefs mentioned above. It is also urged by the appellants in the Writ Petition that the second respondent District Registrar was biased against them.

5. The learned single Judge has held that as the suit filed by the first respondent was not a comprehensive suit for specific performance but a suit for declaration and permanent injunction, the proceedings before the District Registrar could not be stayed. He declined to express any opinion on the question as to whether the District Registrar could hold an enquiry and examine witnesses u/s 74 of the Act in an appeal filed u/s 72 on the ground that the District Registrar has not yet passed an order on the application for amendment filed by the first respondent. He negated the plea of bias against the District Registrar. In the result the Writ Petition was dismissed. *Mme. Devika Rani Roerich Vs. K.T. Plantations Pvt. Ltd.,*

6. Subsequent to the disposal of the Writ Petition the second respondent-District Registrar has allowed the application of the first respondent for amendment and has decided to hold an enquiry u/s 74 of the Act. In this appeal this order of the District Registrar has also been challenged by filing an application and producing a copy of that order.

7. The learned Counsel for the petitioner has, with reference to the various provisions of the Act and Rules, contended that, in this case as the Sub-Registrar refused registration only on the ground that the executant did not appear before him within the stipulated period under Rule 171 (viii) read with Section 34 of the Act, only an appeal u/s 72 could be filed and the first respondent has also filed an appeal u/s 72, that holding an enquiry u/s 74 would arise only in a case where the registration is refused by the Sub-Registrar on account of express or deemed denial of execution by the person by whom it purports to have been executed, that as in this case there was no express denial of execution before the Sub-Registrar nor had the Sub-Registrar refused registration on the ground of deemed denial in accordance with Rule 171(xi) read with Section 35 of the Act, the District Registrar had no jurisdiction to either permit the first respondent to amend the memorandum of appeal by adding Sections 73 and 74 or to hold an enquiry u/s 74 and that as such his order in this regard has to be quashed. He also contended that there is material to show that the second respondent-District Registrar is biased against the appellants and as such he should be prohibited from hearing the appeal. He reiterated his contention that the proceedings in the appeal before the second respondent have to be stayed pending disposal of the suit in O.S.122/92 as the question regarding execution of the document is an issue involved in that suit. He submitted that the learned single Judge made a mistake in thinking that the suit was for a declaration of title though the declaration that is sought for is not with regard to first respondent's title but only with regard to the validity and binding nature of the sale deed against the

first appellant.

8. The learned Counsel for the first respondent contended that on the material on record it can be inferred that the first appellant has denied the execution of the document, that u/s 72 of the Act the District Registrar is competent to hold an enquiry u/s 74 regarding the execution of the document, that the first respondent filed the application for amendment out of abundant caution and that the order of the District Registrar is not without jurisdiction which calls for interference by the High Court in its jurisdiction under Articles 226 of the Constitution. With regard to the appellants prayer for stay of the proceedings he contended that the scope of the suit was quite different, that it is only the Registrar who can deal with the question of registration of the document, that it is only when the Registrar refuses to register the document then a suit u/s 77 of the Act will have to be filed for registration of the document and that except in a suit u/s 77 the Civil Court has no jurisdiction to go into the question of registration of the document and that there was no scope for stay of the proceedings before the Registrar. He refuted the allegations of bias in the District Registrar and contended that the Writ of Prohibition cannot be granted in such a case. The learned Govt. Advocate pointed out that before the District Registrar the correctness of the order passed by the Sub-Registrar refusing registration was in question, that the Civil Court has no jurisdiction to go into that question in the suit filed by the first respondent and that as such the District Registrar was justified in refusing to stay the proceedings.

9. The Points that arise for Consideration are:

- (1) Whether in an appeal u/s 72 of the Act it is open to the District Registrar to hold an enquiry regarding the execution of the document as contemplated under Sections 73 and 74 of the Act and the relevant Rules?
- (2) Whether the order of the second respondent allowing the application for amendment filed by the first respondent and permitting evidence regarding the execution of the document being adduced is illegal and is liable to be quashed?
- (3) Whether the proceedings before the District Registrar require to be stayed pending disposal of O.S. 122/92?
- (4) Whether the appellants have made out bias on the part of the second respondent-District Registrar against them?

10. For a proper adjudication of the first Point it is better to refer to some of the provisions of Act and the Rules which have a bearing on that point. Section 23 provides that no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution. Section 28 stipulates that except as otherwise provided every document should be presented for registration in the office of the Sub-Registrar within whose sub-district the whole or some portion of the property to which the document relates is situate. Section 30 empowers the Registrar to

receive and register any document which might be registered by any Sub-Registrar subordinate to him. Section 32 specifies the persons who are competent to produce a document for registration. Section 34 stipulates that subject to certain Sections mentioned therein no document shall be registered unless the persons executing such document or their representative, assigns or agents authorised in that behalf appear before the Registering Officer within the time allowed for presentation under Sections 23 to 26. Proviso enables the registration of a document even in a case where the person concerned is not able to appear within that period of four months on payment of certain fine subject to the condition that the delay does not exceed four months.

Sub-section (3) of Section 34 provides that the registering officer should enquire whether or not the document was executed by the person by whom it purports to have been executed, satisfy himself as to the identity of the persons appearing before him claiming to be the executant and in the case of a person appearing as a representative or agent satisfy himself about the right of such persons to appear.

12. u/s 35(1) if the executant or, if he is dead, his representative admits the execution then the document will have to be registered. Sub-section (2) provides that to satisfy himself about the identity of the person who has appeared before him as executant the registering officer may examine any one present in the office. Sub-section (3) stipulates that if the person by whom the document purports to be executed or his representatives, in a case where the executant is dead, denies execution or where it appears to the registering officer that the person concerned is a minor or an idiot or a lunatic, then the Registering Officer shall refuse to register the document.

13. Section 36 prescribes the procedure where appearance of the executant or witness is desired. Section 38 mentions the persons who are exempt from appearance at the registration office and provides for examining such persons on commission.

14. Section 71 stipulates that every Sub-Registrar refusing to register a document except on the ground of territorial jurisdiction should make an order of refusal and give reasons for such refusal. Sub-clause (2) of Section 71 prohibits any Registering Officer from accepting for registration a document which bears the endorsement "registration refused" unless and until there is a direction for registration of that document under the provisions of the Act.

15. Sections 72 to 75 which require examination for the purpose of this case are as hereunder:

"72(1). Except where the refusal is made on the ground of denial of execution, an appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration (Whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-Registrar is subordinate, if presented to such Registrar within thirty days from the date of the

order; and the Registrar may reverse or alter such order.

(2) If the order of the Registrar directs the document to be registered and the document is duly presented for registration within thirty days after the making of such order, the Sub-Registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in Sections 58 59 and 60; and such registration shall take effect as if the document had been registered when it was first duly presented for registration.

73(1). When a Sub-Registrar has refused to register a document on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution, any person claiming under such document, or his representative, assign or agent authorised as aforesaid, may, within thirty days after the making of the order of refusal, apply to the Registrar to whom such Sub-Registrar is subordinate in order to establish his right to have the document registered.

(2) Such application shall be in writing and shall be accompanied by a copy of the reasons recorded u/s 71, and the statements in the application shall be verified by the applicant in manner required by law for the verification of plaints.

74. In such case, and also where such denial as aforesaid is made before a Registrar in respect of a document presented for registration to him, the Registrar shall, as soon as conveniently may be, 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.

75.(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."

16. Section 76(1) stipulates that the Registrar refusing to register a document except on the ground of territorial jurisdiction or refusing to direct the registration of a document u/s 72 or 75 shall make an order giving reasons. Sub-clause (2) provides that there shall be no appeal against the order of the Registrar under that Section or Section 72.

17. Section 77 provides for a suit for decree directing the registration of a

document in a case where Registrar refuses the registration of a document u/s 72 or Section 76.

18. Coming to the Rules, Rule 171 enumerates the cases where registration of a document can be refused. In all 22 grounds on which registration could be refused have been mentioned with reference to relevant Section of the Act. Clause (viii) mentions the ground of failure to appear within the prescribed time by the executing parties or their representative, assigns or agents as one ground. This has reference to Section 34. Clause (xi) reads as hereunder:

"Section 35.- that execution is denied by any person purporting to be an executing party or by his agent;

Note.-When a Registering Officer is satisfied that an executant is purposely keeping out of the way with a view to evade registration of document or has gone to a distant place and is not likely return to admit execution within the prescribed time, registration may be refused, the non-appearance being treated as tantamount to denial of execution."

Chapter XXV deals with appeals and enquiries. Rule 175 states that an appeal u/s 72 or an application u/s 73 shall be presented in writing to the Registrar of the District accompanied by a copy of the refusal order appealed against and the original document in respect of which the order was passed. Rule 176 states as to who can prefer an appeal u/s 72 or file an application u/s 73 of the Act. Rules 179, 182 and 187 on which reliance is placed by the learned Counsel for the respondent during the arguments read as under:

"179. Procedure of disposing Appeal.-(i) An applicant in this Rule shall mean an appellant u/s 72 or a party at whose instance an enquiry u/s 74 is commenced and shall include subject to provisions of Rule 176, also an agent or a vakil.

(ii) On the presentation of an appeal u/s 72 or an application u/s 73 and in the case of original enquiry u/s 74, a date shall be fixed for the hearing of the appeal or application or for the enquiry.

(iii) Such date shall be notified to the applicant and also published on the notice board of the Registrar's Office.

(iv) Within one week of the date of such publication, the applicant shall pay the process fee necessary for the issue of notice to the opposite party (hereinafter called the respondent) and for summonses for securing the attendance of witnesses; provided that the Registrar may extend the time for such payment from time to time on sufficient cause being shown.

(v) If on the date of hearing-

(a) neither party appears, or

(b) the applicant does not appear and the respondent appears and contests the registration of the document, or

(c) the respondent does not appear and it is found that notice has not been served upon him in consequence of the failure of the applicant to pay the requisite fee for such service, the Registrar shall make an order refusing to direct registration of the document:

Provided that it shall be open to the Registrar to adjourn the enquiry from time to time for sufficient cause.

182. Procedure when refusal is based on non-appearance of executants.-Where a refusal order is based on the ground that the executant is purposely keeping out of the way in order to evade registration or has gone to a distant place and is not likely to return to admit execution and the non-appearance is treated as tantamount to denial of execution, the application may be accepted by a Registrar u/s 73, and the fact of execution enquired into as if execution has been specifically denied.

187. Order refusing to register for non-appearance of executant.- In cases where the refusal order of a Sub-Registrar is based on the ground that the executant did not appear even after the expiry of the full time allowed:-

(i) if the present ant had taken no steps to enforce the appearance of the executant, the latter cannot constructively be held to deny execution and the refusal order falls under subsection (1) of Section 34 and the appeal u/s 72;

(ii) if, however, such steps have been taken and processes issued, although abortively, the non-appearance is tantamount to denial of execution, the refusal order falls under Sub-section (3) of Section 35 and no appeal lies u/s 72 although an application may be made u/s 73."

19. A careful reading of the relevant provisions of the Act and Rules makes it clear that a distinction is made between a case where Sub-Registrar refuses the registration on the ground that the person by whom it purports to be executed denies its execution and a case where the Sub-Registrar refuses registration on any ground other than denial of execution by the person concerned. Even when a party admits execution the Sub-Registrar may refuse registration for various reasons. In all cases where the registration is refused except on the ground of denial of its execution by the person concerned, only an appeal u/s 72 is contemplated. Section 72 itself specifies as to what the District Registrar can do in the appeal. The District Registrar can either reverse or alter such order and while doing so he can direct the registration of the document by the Sub-Registrar. If such a direction is given by the District Registrar in the appeal, the Sub-Registrar is bound to register it, if it is presented before him within 30 days of such order. Section 72 does not contemplate any enquiry being made with regard to the execution of the document.

20. Section 73(1) applies only to a case where the Sub-Registrar has refused registration on the ground of denial of its execution by the person concerned. Section 74 which provides for an enquiry regarding execution of the document is

made applicable to a case where the Sub-Registrar has refused registration on the ground of denial of execution and to a case where the document is for the first time presented before the District Registrar for registration u/s 30 and the person concerned denies its execution before the Registrar himself. At this juncture it may be noted that Section 35 which prescribes the procedure to be followed on admission of the execution or denial of the execution, specifically states that where the Registering Officer is a Registrar he shall follow the procedure prescribed in Part XII when the person by whom the document purports to be executed, denies execution. Section 75 provides that if after such enquiry the Registrar finds that the document has been executed by the person concerned and that other requirements have been complied with, he should order registration of the document. It is worthwhile to note that Section 76 which requires the Registrar to give reasons for his order of refusal, refers to two types of refusal by him. One type of refusal is refusal to register the document except on the ground of territorial jurisdiction or on the ground that he opines that the document should be presented before the Sub-Registrar himself. This refusal would arise when a document is for the first time presented before him u/s 30 for registration. The second type of refusal is refusal to direct registration either in appeal u/s 72 or u/s 75. Section 77 which provides for a suit also refers to refusal of the Registrar to order registration u/s 72 or Section 76. It is therefore clear that in an appeal u/s 72 the Registrar can either direct registration or refuse to direct the registration and that that is distinct from a refusal to direct registration after an enquiry u/s 74. There is nothing in Sections 72 to 76 which would indicate that even in an appeal u/s 72 an enquiry regarding execution of the document can be held. As an appeal would arise only in cases where the registration is refused on a ground other than the denial of execution by the person concerned, it is obvious that there would be no occasion to hold an enquiry regarding execution of the document u/s 74 in an appeal.

21. Though there is no specific provision in the Act with regard to deemed denial of execution, the Rules have made a provision empowering the Registering Officer to refuse registration on the ground of denial of execution in some cases where the person concerned does not appear before the Registering Officer. As already seen the Note below Clause (xi) of Rules 171 authorises a Registering Officer who is satisfied that the executant is purposely keeping out of the way with a view to evade registration of the document or has gone to a distant place and is not likely to return to admit execution within the prescribed time, to refuse registration treating the non-appearance as amounting to denial of execution. Rule 182 specifically provides that where the Sub-Registrar refuses registration treating the non-appearance of the executant as amounting to denial of execution an application may be accepted by the Registrar u/s 73 and the fact of execution may be enquired into as if the execution has been specifically denied, Rule 187 which deals with the order refusing to register for non-appearance of the executant has already been quoted above. The above Rule also shows that an application u/s 73 and consequential enquiry u/s 74 can be made only when

there is express or deemed denial of execution of the document by the executant.

22. The learned Counsel for the first respondent relying on the Decision in Muthu Goundan and Others Vs. Pachayammal and Others, contended that in view of the Rules 107, 179 and 181 of the Rules an enquiry can be conducted even in an appeal u/s 72 of the Act. In Muthu Goundan's case a suit for declaration that a will was not genuine was filed. In that suit the deposition of a witness who was examined by the District Registrar in an appeal u/s 72 of the Registration Act was sought to be marked. It was contended that u/s 72 the District Registrar was not competent to record evidence and that as such that deposition was not admissible. The High Court after referring to Rules 171 and 173 of the Madras Registration Rules held that as Rule 171 covers not only an application filed u/s 73 but also an appeal falling u/s 72 and in regard to both those proceedings power is reserved to the applicant to apply for and obtain the production of witnesses whom he considers necessary for the case and that Rule 173 contemplates Registrar taking further evidence in an appeal, the deposition recorded by the District Registrar was admissible. It is also observed that if the appeal before the District Registrar is a continuation of the original proceedings before the Sub-Registrar there was no justification for holding that the District Registrar does not possess the same powers as the Sub-Registrar himself, so long as no rules of natural justice are abrogated by him. Rules 179 and 181 of the Karnataka Registration Rules are similar to Rules 171 and 173 of the Madras Registration Rules.

23. Before considering Rules 179 and 181 we may refer to Rule 107. Rule 107 states that the signature of witnesses examined in the course of an enquiry before the Registrar u/s 74, whether in reference to an appeal case or as regards a document the execution of which has been denied before him, need not be endorsed on the document in respect of which the inquiry is made. This Rule would no doubt indicate that even in an appeal u/s 72 there is scope for an enquiry and recording of evidence. The Sub-Registrar may refuse registration of a document even though the execution is admitted by the person concerned if he is of the opinion that such person is a minor or an idiot or a lunatic. He may also refuse registration on the ground that it is presented by a person who has no right to present it or on the ground that he is not satisfied as to the identity of the person appearing before him as the executant. Another ground on which registration may be refused by the Sub-Registrar is that the alleged death of a person by whom the document purports to have been executed has not been approved. In all such cases an appeal will have to be filed u/s 72 and in such an appeal the parties may seek to adduce some additional evidence in support of their case. In such cases it is open to the District Registrar to make a further enquiry and record further evidence. But what we are now concerned is as to whether in an appeal u/s 72 the District Registrar can hold an enquiry u/s 74 with regard to the execution of the document. Merely because the Rules indicate that the evidence could be recorded even in an appeal u/s 72, it cannot be concluded that evidence regarding execution of the document could be recorded

in such an appeal. It may be noted that Rules 179 and 181 do not refer to the nature of the enquiry to be held. While the enquiry to be held u/s 74 is with regard to the execution of the document, the enquiry that may be held in an appeal u/s 72 could be with regard to various other grounds on which the Sub-Registrar has refused registration. Though Rule 179 prescribes the procedure for an appeal u/s 72 and an application u/s 73 and there is a provision for even an appellant u/s 72 seeking issue of summons to the witness, that cannot be a ground to hold that an enquiry u/s 74 is contemplated even in an appeal u/s 72. The Rules cannot enlarge the scope of an appeal prescribed by the Act.

24. In Muthu Goundan's case the representatives of the deceased testator had denied execution of the will by the testator before the Sub-Registrar. As the Sub-Registrar refused to register the will an appeal u/s 72 had been filed before the District Registrar. The District Registrar dealt with the matter, before him as arising out of an application u/s 73 in respect of an order of refusal passed by the Sub-Registrar. It was contended that the Sub-Registrar had not refused registration on the ground of (SIC) of execution and that as such no evidence could have been recorded u/s 72. Though the High Court was doubtful whether the refusal of the registration was made for reason other than the denial of execution by a representative of the testator, proceeded on the assumption that it was so and held that even in an appeal u/s 72 the District Registrar was competent to record evidence in view of Rules 171 and 173 of the Madras Rules. That Decision does not specifically lay down that in an appeal u/s 72 the District Registrar is competent to hold an enquiry regarding execution of the document. This Decision in the light of the Rules would only show that even in an appeal u/s 72 a District Registrar can record evidence. It cannot be of much help on the point now at issue.

25. Another Decision relied on by the learned Counsel for the first respondent is the one in DODDAHALLI SHIVANEGOWDA vs. THE DIST. REGISTRAR OF REGISTRATION, B'LORE AND ORS 1969(1) Mys.L.J. 52. In that case the Sub-Registrar refused registration for the reason that the executants did not present themselves before him. The petitioner then presented an appeal before the District Registrar. The District Registrar on an examination of the material placed before him came to the conclusion that the document had been duly executed. While directing registration of the document he imposed a condition that the petitioner should pay the balance of sale consideration. The imposition of this condition was challenged before this Court. The only point that arose for consideration and which was actually considered in that case was whether a District Registrar while disposing of an appeal u/s 72 of the Act has the power to impose such a condition. It was held that he did not have such a power. The question as to whether in an appeal u/s 72 of the Registration Act the District Registrar can hold an enquiry u/s 74 has not arisen for consideration and it has also not been considered. As such this Decision does not throw any light on the point at issue.

26. The learned Counsel for the respondent contended that the Registrar has got plenary powers u/s 30 to get a deed registered when the same is presented before him, that when the document was presented before the District Registrar along with appeal, the District Registrar can in exercise of his power u/s 30, hold an enquiry u/s 74 regarding execution of the document. In support of his contention he relied on the Decisions in Daulat Ram Vs. Jai Dai, and Ka PLINIS MYRTHONG vs. RIANG PYRBOT AND ORS AIR 1965 Assam & Nagaland 42. In the first case the Sub-Registrar had refused registration of a will on the ground that there were some suspicious circumstances regarding execution. In the appeal the Registrar directed registration of the will. In the Writ Petition it was contended that in the case of refusal of registration on the ground of denial of execution only an application u/s 73 had to be filed and that an appeal was not maintainable. The Punjab High Court observing that there might have been an error in describing the proceedings before the Registrar as an appeal and that it has to be treated as an application u/s 73(1), declined to interfere with the order of the Registrar who had determined the case after holding an enquiry u/s 74. In Ka Plinis Myrthang's case a contention was raised that u/s 35 of the Act once the execution was denied, the Registrar was not competent to register the deed. In support of this contention reliance was placed on Rule 71 which stated that if some of the heirs of the deceased executant admit the execution and others do not admit execution of the document, then the registration shall be refused. The High Court pointed out that Rule 71 only lays down the power of Registering Officer and that however Section 35 read with Section 74 clearly authorises the Registrar to direct registration even in a case where execution is denied by the heirs of the deceased executant. These Decisions do not in any way indicate that the Registrar can exercise his power u/s 30 to hold an enquiry u/s 74 in a case where the Sub-Registrar has refused registration on a ground other than the denial of execution and an appeal is filed against that order u/s 72. Section 30 comes into operation only when the document is presented before the Registrar for the first time for registration and under that provision the Registrar acts as Registering Officer. If in such a case there is express implied denial of execution, then unlike a Sub-Registrar who is obliged to refuse registration, the Registrar can proceed to hold an enquiry u/s 74 and if the execution is proved he can proceed to order registration of the document. But if a document is first presented before a Sub-Registrar and he refuses to register it on any ground other than denial of execution, then the only remedy available to the party is to file an appeal u/s 72. Merely because the document is also produced along with the appeal the District Registrar cannot consider it as a case of presentation u/s 30 or to exercise his power u/s 30. Section 71(2) specifically prohibits a Registering Officer from accepting for registration a document containing an endorsement of refusal by the Sub-Registrar, unless and until under the provisions of Sections 72 to 77 the document is directed to be registered. As already pointed out a Registrar who accepts a document for registration u/s 30 acts as a Registering Officer and the bar u/s 71(2) would apply to him also if he purports to act u/s 30. The Registrar cannot therefore treat the document

presented before him along with an appeal u/s 72 as a document presented before him u/s 30 for registration and follow the procedure applicable in such a case. In KRISHNASWAMI NAICKER vs. NALLA GOUNDER AIR 1945 Madras 309 to which a reference was made by the learned Counsel for the respondent, the Sub-Registrar before whom a document was produced for registration construed the absence of the executant as a denial of execution and refused registration. The respondent therein applied u/s 73 of the Registration Act to the District Registrar who without inquiring about the execution, dismissed the application u/s 74(b) on the ground that the respondent had not complied with Section 145(2) of Madras Estate Law Act and as such requirements of law had not been complied with. The respondent then filed a suit u/s 77. The Munsiff upheld the order of the District Registrar and dismissed the suit. The Sub-Judge however allowed the appeal. The High Court while observing that the statute gives greater power to District Registrar than what is given to the Sub-Registrar, however held that, the District Registrar was bound to refuse registration of a document if the requirements of the law have not been complied with and that as such, the Munsiff was correct in upholding the order of the District Registrar. The respondent's Counsel relying on the observation that the District Registrar has greater powers than the Sub-Registrar, contended that it is open to the District Registrar to hold an enquiry regarding registration even when the Sub-Registrar had refused registration on account of the non-appearance of the executant. There can be no dispute that the powers of the District Registrar are greater than the powers of a Sub-Registrar under the provisions of the Act. When an executant denies execution before the Sub-Registrar the Sub-Registrar is bound to refuse registration. But when the Registrar acts as a registering officer and the executant denies execution or when an application is made to him u/s 73 the District Registrar has the power to hold an enquiry and order registration in spite of the denial of execution by the executant. But this does not mean that the District Registrar can hold an enquiry regarding the execution of a document in an appeal u/s 72 where the registration is refused by the Sub-Registrar on a ground other than the express or implied denial of execution. BANASETTAPPA vs. THE DISTRICT REGISTRAR, BANGALORE AND ANOTHER 1965(2) Mys.L.J. 733 which was also cited by the learned Counsel for the respondents does not deal with the question on hand. None of the Decisions cited by the learned Counsel for the respondent indicate that in an appeal u/s 72 the Registrar can proceed to hold an enquiry u/s 74. The various provisions of the Act and the Rules clearly indicate that normally in an appeal filed only u/s 72 of the Act the District Registrar cannot hold an enquiry u/s 74 regarding execution of the document. But this does not mean that in no case where the appeal is u/s 72 an enquiry u/s 74 can be held. There may be cases where the executant fails to appear before the Sub-Registrar within stipulated period inspite of some steps taken to secure his presence or where there is material to indicate that the executant is purposely evading to appear before the Sub-Registrar or has gone away to a far off place and is not likely to return within time to appear before the Sub-Registrar. The Rules as well as decided cases show that in such cases the

Registering Officer can treat the failure of the executant to appear before him as amounting to denial of execution and to refuse registration u/s 35. If in a case where the Sub-Registrar could have considered the failure of the executant to appear before him as a denial of execution and refused registration u/s 35, he does not exercise that discretion but refuses registration u/s 34 merely on the ground of non-appearance of the executant, it is certainly open to the party claiming under the document to contend in an appeal filed u/s 72 that the order of refusal to register passed u/s 34 by the Sub-Registrar is erroneous and that the order should have been passed u/s 35 on the ground of deemed denial of execution. It cannot be gainsaid that in an appeal u/s 72 in such a case the Registrar has power to hold that the Sub-Registrar ought to have refused registration u/s 35 on the ground of deemed or implied denial of execution and not u/s 34. If he comes to that conclusion the question is whether the Registrar cannot then proceed to hold enquiry u/s 74 treating the appeal itself as both an appeal u/s 72 in so far as it challenges the correctness of the order of the Sub-Registrar regarding the ground for refusal of registration and as an application u/s 73 with regard to the further action to be taken, once it is found that the Sub-Registrar ought to have refused registration u/s 35.

27. The learned Counsel for the appellants relying on the Decision in AIR 1940 318 (Oudh) contended that in such a case Registrar has to remand the matter to the Sub-Registrar. The point that now arises for consideration had not arisen in that case. That Decision only indicates that the Registrar can in certain cases remand the matter to the Sub-Registrar. In a case of the type referred to above no purpose would be served by remanding the matter to the Sub-Registrar as the Sub-Registrar cannot take any further steps, when once the District Registrar holds that the registration should have been refused u/s 35 on the ground of deemed denial of execution. It is only the Registrar who has to hold enquiry u/s 74. As such the Registrar in such a case must be held to be competent to proceed to hold an enquiry u/s 74 and to pass appropriate order u/s 75 or 76 of the Act.

28. After careful consideration of all the provisions of the Act and Rules we are of the opinion that normally in an appeal u/s 72, the District Registrar cannot hold an enquiry u/s 74 regarding the execution of the document. However in a case where the Sub-Registrar refuses registration on the ground of non-appearance of the executant within the prescribed time u/s 34 though he could have refused registration u/s 35 on the ground of deemed or implied denial, then it is open to the aggrieved party to file an appeal u/s 72 read with Section 73 challenging the order of the Sub-Registrar and requesting the Registrar to treat the refusal as one u/s 35 and to hold an enquiry regarding execution of the document. In such an appeal if the District Registrar opines that the Sub-Registrar ought to have refused the registration on the ground of deemed denial u/s 35, he would be competent to modify the order of refusal passed by the Sub-Registrar and then proceed to hold an enquiry u/s 74, even though there may not be a specific reference to Section 73 in the memorandum of appeal.

29. Now coming to the facts of this case it is no doubt true that the first respondent has filed an appeal u/s 72 and one of the grounds urged by him is the Sub-Registrar ought to have considered his application u/s 36 and issued summons to the executant before passing the impugned order. But in the memorandum of appeal the first respondent has mentioned about the failure of the first appellant to appear before, the Commissioner when the latter went to her place of residence and also about the efforts made by him to contact the first appellant and as to how he was prevented from meeting her. In the prayer column he sought for not only setting aside the order of the Sub-Registrar but also for a direction for registration of the document. The memorandum of appeal was verified as is required in the case of an application u/s 73 though there was no need for verification of a memorandum of appeal. Because there was no specific plea in the appeal memo that on the available material the order of refusal passed by the Sub-Registrar must be treated as a refusal u/s 35 and not u/s 34 and that an enquiry regarding execution must be held, the first respondent filed the application for amendment to make out that the appeal is not only u/s 72 but also under Sections 73 and 74. In support of that application it was pointed out that the first appellant had not admitted the execution of the document in response to the application filed by him and that she had also failed to appear before the Commissioner and as such it is necessary to amend the appeal to bring it under Sections 73 and 74. In effect the first respondent wanted the Registrar to treat the case as one of refusal on the ground of deemed denial of execution.

30. The District Registrar in his order has taken note of the fact that the first appellant did not appear before the Sub-Registrar, Gandhinagar, who had been appointed as Commissioner on the request of her representative and who had gone to her place of residence. Relying on the Decision in Radheshyam Saraf Vs. Registrar of Assurance, Calcutta and Others, he has inferred denial of execution by the conduct of the first appellant. He has also referred to his powers u/s 30 to hold an enquiry u/s 74. He has referred to some observations in Mulla's Registration Act and in another text book. He has held that merely because there is reference only to Section 72 in the memorandum of appeal he is not precluded from holding an enquiry u/s 74.

31. The question is whether the above order of the District Registrar can be said to be illegal or without jurisdiction so as to call for interference by this Court. In Radheshyam's case referred to above a document had been presented before the Registrar and a commission was taken for examining the executant at their residence. When the Commissioner went there the parties were absent. The Registrar refused registration on the ground that the petitioner did not take steps to prove the fact of execution by executants within the statutory period. That order was challenged before the High Court. The High Court held that a willful refusal or neglect to attend and admit execution in obedience to summons for that purpose is a refusal to admit, that on the facts of that case non-appearance of the respondents before the Commissioner amounted to neglect to attend and

admit execution if not a willful refusal to do so and as such it is to be treated as a denial of execution within the meaning of Section 35 read with Section 74 of the Act. The High Court took note of the fact that the respondents-2 and 3 had objected to the admissibility of the document to hold that their absence before the Commissioner amounted to negligence. The registrar was therefore directed to hold an enquiry u/s 74.

32. In this case, as already pointed out, even in the appeal memorandum there is reference to the failure of the first appellant to appear before the Commissioner when he visited her place of residence. This fact as well as the fact that the first respondent was prevented from contacting the first appellant to request her to appear before the Sub-Registrar for admitting execution have been alleged even in the application u/s 36 filed before the Sub-Registrar. No doubt the appellants have denied that the first appellant had given any letter to the Sub-Registrar requesting appointment of Commissioner. But the fact remains that the Commissioner was appointed and his report shows that though he visited Hotel Ashok the first appellant did not appear before him on the pretext that she was not well. The District Registrar taking into consideration this circumstance has opined that the conduct of the first appellant amounts to denial of execution and that the registration must have been refused on that ground. He has therefore permitted the amendment and decided to hold the enquiry. It may be noted that before the impugned order was passed, the appellants had filed their written statements in O.S.122/92 denying the execution of the document and alleging fraud and undue influence against first respondent. That such a statement had been filed by the appellant was brought to the notice of the District Registrar by the appellants in their application seeking stay of the proceedings. Infact a copy of the written statement was also produced before the District Registrar. In the light of the stand taken by the appellants there was every justification for the District Registrar to hold that the conduct of the first appellant in her failure to appear before the Commissioner amounted to denial of execution. Merely because the first respondent had also applied for summons u/s 36, it cannot be said that he is precluded from contending that the failure of the first appellant to appear before the Commissioner was itself sufficient to treat the case as one of implied denial of execution. When the first appellant has made it clear that she has denied the execution of the document, no injustice is caused to her by the District Registrar deciding to hold an enquiry regarding execution. On the facts and circumstances of this case it cannot be said that the District Registrar had either no jurisdiction at all or exceeded his jurisdiction in passing the impugned order. This is not a fit case where this Court should interfere with that order which is essentially just and proper. It is no doubt true that the District Registrar has wrongly referred to his power u/s 30 of the Act as one of the reasons for permitting enquiry u/s 74. But that will not render the entire order illegal. In this connection we may refer to the Decision in Kuppa Goundar Vs. Joint Sub-Registrar, III, Salem and Others, In that case in an enquiry u/s 73 the Registrar wanted to examine a court witness to find out the truth. That order was

challenged in the Writ Petition, The Madras High Court upholding that order has observed that, quasi judicial tribunals entrusted with the duties of decision and adjudication have really an uncharted field of enquiry which they can resort to, untrammelled by strict rules of procedure or evidence, and that however it does not mean that they can hold a roving enquiry or act contrary to the Rules of natural justice. In the present case the District Registrar after hearing both sides and on the basis of the material on record has passed the impugned order in exercise of the jurisdiction vested in him.

33. The learned Counsel for the appellants pointed out that as per Rule 187(i) as the first respondent had not taken steps to enforce the appearance of the executant before the Sub-Registrar, it is not permissible to constructively hold the failure of the party to appear before him as amounting to denial of execution and District Registrar could not have treated the appeal as also an application u/s 73. We have to read Rule 187 along with Section 38. If a commission has been issued for examining the executant at the place of his or her residence then that has to be treated as step taken to enforce the appearance of the executant and the failure of the executant to appear before the Commissioner could constructively be treated as denial of execution.

34. After considering the facts of this case, we do not think that this Court should interfere with the order of the District Registrar allowing the amendment" sought for and treating the refusal of registration as one u/s 35 and deciding to hold an enquiry u/s 74.

35. Coming to the prayer of the appellants for stay of the proceedings before the District Registrar, it is seen that the suit is filed by the first respondent for declaration that the sale deed is valid and binding on the first appellant and for permanent injunction. It is no doubt true that the first appellant has denied the execution of the sale deed in that suit. That suit itself has been filed during the pendency of the appeal before the District Registrar. Without the sale deed being registered it would be inadmissible in evidence in the suit and necessarily the Civil Court would not be in a position to decide whether the sale deed is valid or not. In fact the first appellant herself in her written statement has taken up the plea that as the sale deed is not registered it is null and void and is not admissible in evidence and that it will have no effect on the schedule property. The learned Counsel for the appellants contended that the first respondent has not sought for declaration of title as observed by the learned single Judge and that for the purpose of relief of permanent injunction based on his possession the sale deed even though unregistered, would be admissible in evidence u/s 49 of the Act read with Section 53-A of the Transfer of Property Act. The main relief that is sought for in that suit is with regard to the validity and binding nature of the sale deed. For that purpose unless the document is registered it would not be admissible. The main defense taken in the suit by the appellants is that the first respondent has played fraud and that her signatures have been taken on some papers by exercising undue influence. For the purpose of registration of a

document the District Registrar cannot go into the question of validity of the document or about the allegations of fraud and undue influence. The scope of the enquiry before the District Registrar is limited and the question of execution of the document will have to be gone into for the limited purpose of deciding whether the document has to be registered or not. In the suit filed by the first respondent the question of registration of the document is not involved. Even to proceed with the plaintiffs claim that the sale deed is valid and binding on the appellant, the document has to be first got registered. Even the learned Counsel for the appellant during the course of arguments submitted that the even if the document is registered it will not preclude the executant from denying execution. Thus it is seen that while even if the District Registrar were to hold an enquiry and order registration it would not in any way prejudice the appellants case regarding execution of the document, if the proceedings before the District Registrar are stayed the Civil Court would not be able to decide whether the document is valid and binding on the first appellant.

36. The learned Counsel for the appellant cited some Authorities to contend that it is proper to stay the proceedings before the District Registrar. In RANGARAO vs. RAGHAVENDRACHARYA ILR 1973 Mys 211 the question whether a transaction is contrary to any of the provisions of the Karnataka Land Reforms Act had arisen in a suit. That question had to be decided by the prescribed authority under the Land Reforms Act and not by any other authority. This Court held that where an adjudication on that question is necessary before the Civil Court can grant the relief, then that Court has to stay the proceedings in such suit u/s 151 CPC till the party challenging the transaction gets the question decided by the authority concerned.

37. In KALLAPPA SANGAPPA SALAGATTI vs. DEPUTY COMMISSIONER AND ORS 1987 (1) KLJ 250 proceedings were pending under the Karnataka Land Reforms Act and Urban Land Ceiling Act in respect of certain property. The validity of a notification issued under the Urban Land Ceiling Act calling upon the petitioner to surrender possession of the land was challenged and this Court applying the doctrine of *lis alibi pendens* held that the latter proceedings under the Urban Land Ceiling Act have to be stayed till the outcome of the proceedings under the Karnataka Land Reforms Act. The above doctrine has been explained in that Decision. Where actions in personam are started in two Courts of concurrent authority the plea of *lis alibi pendens* is a good defense to the second action.

The above two Decisions are not appropriate to the facts of this case.

38. It cannot be said that the Civil Court alone has got jurisdiction to decide about the question of execution of a document which is required to be registered. The law confers power on the District Registrar to go into that question for purposes of either registering or refusing to register a document. So far as, the Doctrine of *lis alibi pendens* is concerned, if at all it is applicable, it would apply to the second action. The appeal before the District Registrar was pending when the suit was filed. As such that plea cannot be put forward in the appeal.

39. The learned Counsel for the appellant pointed out that in W.P.19919 and 19920 of 1989 this Court while refusing the prayer of the petitioner for stay of further proceedings in the appeal before the District Registrar pending disposal of a suit has observed that the suit was not for a declaration that there was no transaction of sale between the petitioner and the respondents which was made the subject matter of the sale deed and that as such merely because the petitioner had filed a suit for perpetual injunction the proceedings before the District Registrar could not be stayed. He contended that by implication it has been held that if the suit was for a declaration that there was no transaction at all between the parties, then the proceedings before the District Registrar could be stayed. We are unable to agree with this contention. No such implication arises from that Judgment.

40. Considering the scope of the enquiry before the District Registrar and the scope of and contentions raised in the suit, there is no justification to stay the proceedings before the District Registrar. We do not therefore find any good ground to interfere with the order of the learned Single Judge in this regard.

41. With regard to the allegation of bias against the particular Registrar, the learned Counsel for the appellants strongly relied upon the circumstance that even before the order on the application for amendment filed by the first respondent was passed, the District Registrar had observed that evidence would be recorded on the same day and that this clearly showed that, the District Registrar had prejudged the matter. He further pointed out that on the very day on which the case was posted for orders the District Registrar has accepted the list of witnesses and list of documents produced by the first respondent. It is seen that on 22.7.93 after hearing both sides on the application for amendment, the District Registrar has recorded that the orders would be pronounced on 28.7.93 and that on the same day enquiry would be taken up. This would show that after hearing arguments the District Registrar had come to the conclusion that he had to allow the application for amendment and had to hold the enquiry, However, he has given the date for passing the formal order on 28.7.93 and because the respondent was bringing his witnesses even on the earlier dates and was insisting that enquiry should be taken up, he has observed that after passing the formal order he would proceed to hold the enquiry. In fact the appellants themselves in their Writ Petition have stated that there were heated arguments and exchange of words between the Counsel for the first appellant and the first respondent and that the District Registrar observed that he would formally pass orders on I.A.'s on 28.7.93 and would take up the enquiry on the same day. As such the date was given only for passing the formal order and even on the date of hearing of the arguments the District Registrar must have indicated that he would allow the application. Merely because the District Registrar after hearing both sides gives expression to his opinion and gives another date for passing the formal order and further directed the parties to be ready for enquiry on that day, it cannot be said that he is biased against the appellants. There has been keen contest between the appellants and the respondents and as the appellants

allegations themselves show, there appears to have been some heated exchange of words between the Counsel and obviously when the District Registrar after considering the material on record opined that he is competent to hold the enquiry and that he would pass necessary order, the appellants have jumped to the conclusion that the District Registrar is biased against them. There does not appear to be any reasonable ground for the appellants to apprehend bias on the part of the District Registrar. As such the prayer of the appellants to prohibit the second respondent to hear the appeal cannot be entertained, even if such a prayer was legally tenable.

42. For the foregoing reasons this appeal is dismissed with costs.