

(1969) 01 KAR CK 0004
In the Karnataka High Court
Case No : Writ Petition No. 575 of 1966

Doddahalli Shivanegowda

APPELLANT

Vs

District Registrar of Registration, Bangalore Dist. and others

RESPONDENT

Date of Decision : 22-01-1969

Acts Referred:

Citation : AIR 1969 Kar 56

Hon'ble Judges : M. Santhosh, J;A. Narayana Pai, J

Bench : Division Bench

Advocate : Balagopalan for Doddakalegodwa, for the Appellant; Ramdas for Advocate General and B.S. Somasundara, for the Respondent

Judgement

1. Respondents 2 and 3 Gurukar Veerabhadrapa and S.V. Shivakumaraswamy executed on 22nd April 1963 a deed of sale in respect of survey Nos. 491, 492 and 493 of Morale Village, Kanakapura taluk, in favour of the petitioner Doddahatti Shivane Gowda. When the petitioner presented the same for registration before the 4th respondent the Sub-Registrar of Kanakapura, he refused to register the same for the reason that the executants did not present themselves before him. The petitioner thereupon presented an appeal u/s 72 of the Registration Act to the District Registrar, Bangalore District, the 1st respondent. It was disposed of by him on 2nd March 1966. On an examination of the material placed before him he came to the definite conclusion that there was overwhelming evidence that the sale deed had been duly executed. While observing that the legal position was that he should confine himself to an examination of the question whether or not there had been execution of the deed, he adverted also to certain other circumstances relating to a dispute or difference of opinion between the parties as to payment of consideration or delivery of possession and also whether one of them had any effect upon the other, and ultimately made the following order:

In the result, I uphold the contention of the petitioner, and I order that the Sub-Registrar may register the document provided he (the petitioner) pays the

balance of Rs. 15,000/- to the respondents.

2. The petitioner having taken back the deed filed before the District Registrar in connection with the appeal on 11th March 1966, presented it to the Sub-Registrar, Kanakapura, on 21st March 1966. As the exact date on which the petitioner had so presented the deed to the Sub-Registrar after the disposal of the appeal, was not capable of being gathered on the affidavits and materials placed before us, we directed the Government Pleader on the last occasion to obtain a report from the Sub-Registrar on the matter. The said report, now received, is taken on file of this writ petition. It is from the said report that we get the information that the deed was re-presented to him on 21st March 1966 for registration pursuant to orders of the District Registrar.

3. This Writ petition was filed by the petitioner on 13th April 1966 with a prayer that the direction contained in the appellate order of the District Registrar that the deed should be registered only upon the petitioner paying Rs. 15,000/- may be quashed as illegal and beyond the powers of the District Registrar.

4. The only point for consideration is whether a District Registrar disposing of an appeal u/s 72 of the Registration Act, has the power to impose such a condition. The relevant section is Section 75 of which sub-ss. (1) and (2) have a direct bearing on the question now before us. Those sub-sections read:

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.

5. Of the three sections enumerated above, it is sufficient to refer to Section 58. The said section requires the Registrar to endorse on the document certain particulars among which are those stated in Clause (c) of sub-section (1), viz.,

Any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration in whole or in part, made in his presence in reference to such execution.

Then follows?Sub-section (2) which reads: If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall at the same time endorse a note of such refusal.

6. These provisions of Section 58 make it abundantly clear that the registering officers under the Act have no power to enforce payment of any consideration as a condition precedent for the registration of the document. Where money is paid in the presence of the registering officer, he is required to endorse the fact on the

document at the time of registration. The question whether a statement contained in the document regarding payment of consideration is or is not true, is also not a matter for the registering officer to examine and decide.

7. The appellate authority cannot of course, in the ordinary circumstances, and in the absence of special provision in the relevant statute, have wider powers than the original authority in the matter of examining and deciding facts or questions of fact. Normally the appellate authority can either do itself or direct the original authority to do what under the law the original authority ought to have or should have done.

8. In the case of the Registration Act, the sections extracted above make it perfectly clear that the appellate authority, upon being satisfied as to the execution and the requirements of law referred to in Section 74 (b), is bound to order registration. Once that order is passed it is for the original authority, the Sub-Registrar, to follow the procedure prescribed in Sections 58, 59 and 60 to the extent applicable in the changed circumstances.

9. We, therefore, accept the argument that the District Registrar, while disposing of the appeal u/s 72 had no power or jurisdiction to direct payment of any sum of money as a condition precedent for getting the document registered. That direction, therefore; alone is hereby quashed.

10. As it appears from the report of the Sub-Registrar now received that the document has been re-presented before him within one month of the date of the appellate order of the District Registrar, the Sub-Registrar will now proceed to register the document in accordance with law.

11. The parties will bear their own costs.