
(2010) 03 PAT CK 0130
In the Patna High Court

Durga Prasad Das @ Durga Prasad Dhobi APPELLANT
Vs
The State of Bihar and Others RESPONDENT

Date of Decision : 15-03-2010

Acts Referred:

Citation : (2010) 03 PAT CK 0130

Final Decision : Dismissed

Judgement

Ramesh Kumar Datta, J.—Heard learned Counsel for the petitioner and learned Counsel for respondent Nos. 5 to 7. No one appears for respondent No. 8 despite valid service.

2. The writ petition has been filed for quashing the order dated 21.3.2003 passed by the Collector, Aurangabad (Respondent No. 2) in Registry Case No. 10/1997 by which he has set aside the order dated 29.10.1997 passed by the District Sub-Registrar, Daudnagar (Respondent No. 4).

3. The petitioner admittedly executed a document on 18.2.1997 in favour of respondent Nos. 5 to 7 in respect of land appertaining to Khata No. 58, Plot No. 1050 measuring 3 decimal situated at village Gorkatti, P.S. Goh in the District of Aurangabad. On account of strike in the Government offices throughout the State the same was presented for registration on 30.4.1997 by respondent Nos. 5 to 7.

4. The claim of the petitioner is that the consideration money of Rs. 38,000/- was not paid despite the recital with respect to payment of Rs. 37,000/- out of 38,000/- as contained in sale deed itself and the remaining amount of Rs. 1000/- was to be paid at the time of registration of the document and for the said reason the petitioner finding that the respondents are refusing to pay any money, he sold his land to respondent Nos. 8 and 9 (subsequently deleted at the risk of the petitioner) on 5.6.1997 after payment of consideration amount. It is also admitted by the petitioner that the document had been handed over to the respondent No. 5.

5. The respondent Nos. 5 to 7 claim that a prayer was made before the District

Sub-Registrar to issue summons to the petitioner but since no heed was paid to the same, respondent No. 5 filed a Miscellaneous Case No. 6/1997 before the District Registrar (Collector) u/s 68 of the Act for necessary direction to the District Sub-Registrar to issue summons to the petitioner and for further needful. By order dated 9.9.1997, the Registrar ordered the Sub-Registrar, Daudnagar to follow the procedure prescribed by the Indian Registration Act. The respondent No. 5 appeared before the District Sub-Registrar on 22.10.1997 and filed a petition for issuance of summons against the petitioner and by order dated 29.10.1997 the District Sub-Registrar refused to issue summons on the ground that the period of limitation for filing the fee, etc. u/s 36 of the Act was only four months and even thereafter within a further extended period of four months on condonation of delay, the same can be done but despite the expiry of eight months the prescribed fee, etc. has not been paid and therefore, no summons can be issued and accordingly no registration was possible.

6. Aggrieved by the said order the respondent No. 5 filed an appeal u/s 72 of the Act before the Collector, Aurangabad which was registered as Registration Case No. 25/1997. After notice the petitioner appeared in the said case but on 21.3.2003 when the matter was finally heard, the senior Lawyer of the petitioner did not participate in the argument and the case was accordingly heard ex parte. By the order dated 21.3.2003, which has been impugned in the writ petition, the Collector held that from perusal of the document, it is evident that the vendor, Durga Prasad Dhobi (petitioner) sold the land in dispute and received Rs. 37,000/- out of settled money of Rs. 38,000/-; on the margin of the sale deed the executant petitioner had himself written in his own handwriting regarding receipt of Rs. 37,000/- and rest of Rs. 1,000/- to be paid at the time of exchange of receipt (Badlain). He also found that the vendor-petitioner has put his signature on each and every page of the sale deed which proves his willingness for selling the land and it was further recited in the sale deed that it would come into effect from the date of execution. For the said reasons the District Registrar (Collector) came to the conclusion that the petitioner has himself sold the land in favour of respondent Nos. 5 to 7, and according to the provisions of Transfer of Property Act, the title of the land vests in the vendee and the vendee becomes the absolute owner of the land. It was also noted in the said order that as per the report of the Anchal Amin, the respondent No. 5 was found in possession over the land in dispute. For the said reasons, the refusal order of the Sub-Registrar, Daudnagar was set aside and he was directed to issue a fresh notice to the vendor to appear before him for acceptance of execution of document failing which he would allow the compulsory registration on receipt of the rest amount and vendor will deposit cost of issuance of notice.

7. Learned Counsel for the petitioner submits that the order of the Collector is without jurisdiction as the appeal has been entertained on 8.5.1997 while the proceedings were still pending before the District Sub-Registrar.

8. It is contended that the Collector has proceeded in the matter in haste and

has passed ex parte order without giving due opportunity to the petitioner to contest the matter in the appeal.

9. Learned Counsel also submits that the District Sub-Registrar has rightly held the application for issue of summons as being time barred since more than eight months had crossed and there was no application even for condonation of delay as required by law.

10. It is also urged by learned Counsel that there being no consideration money paid, the sale deed was not valid and hence its registration was rightly refused by the District Sub-Registrar. It is alleged by learned Counsel that the fact of the consideration money not having been paid has not been denied in the counter affidavit.

11. It is lastly urged by learned Counsel, relying upon a decision of this Court in the case of Kamal Rai @ Chathu Rai Vs. State of Bihar and Others, in which it was held that the District Collector has no jurisdiction to give direction to the District Sub-Registrar not to admit any registerable document presented for registration, that the Collector has illegally passed the impugned order dated 21.3.2003.

12. Learned Counsel for respondent Nos. 5 to 7, on the other hand submits that the question of limitation only arises in terms of Section 23 of the Act with respect to presenting the document for registration and in the present matter the document itself having been executed on 18.2.1997 was presented for registration on 30.4.1997 well within the period of four months prescribed for the same. That having been done, there would be no occasion for any further limitation for the purpose of filing process fee, etc. for the issuance of notice.

13. Learned Counsel contends that as a matter of fact, it is the District Sub-Registrar who had behaved in a biased and prejudiced manner in not issuing the summons to the petitioner despite an oral prayer having been made in this regard which compelled the respondents to approach the Collector by filing Miscellaneous Case No. 6/1997.

14. Learned Counsel further submits that factually a wrong contention has been made by learned Counsel for the petitioner that the appeal had been filed on 8.5.1997 while the matter was still pending before the District Sub-Registrar since on that date only a Miscellaneous Case had been filed u/s 68 of the Registration Act seeking a direction upon the District Sub-Registrar to issue summons to the petitioner so that he may come and admit the execution of the deed. It is submitted by learned Counsel that the appeal itself has been filed u/s 72 of the Act after the order dated 29.10.1997 was passed by the District Sub-Registrar. Hence, there is no question of any lack of jurisdiction on the part of the Collector in view of the specific statutory provisions contained in this regard.

15. It is further submitted by learned Counsel for respondent Nos. 5 to 7 that there has been clear denial of the contention raised in the writ petition regarding

nonpayment of consideration money in para-5 of the counter affidavit where it is clearly stated that Rs. 37,000/- out of the sale consideration of Rs. 38,000/- was paid at the time of execution of the sale deed and the remaining Rs. 1,000/- was to be paid at the time of registration.

16. It is however, argued by learned Counsel that under the law non-payment of consideration money is no ground for refusal to register a document as what is to be seen is whether the document itself is genuine and not whether it is valid. In support of the said proposition learned Counsel relies upon a decision of a Division Bench of this Court in the case of Jogesh Prasad Singh and Others Vs. Ramchandar Prasad Singh and Others, in paras 6 and 12 of which it has been held as follows:

6. - The next point is the scope of a suit u/s 77. It is now well settled that in such a suit the Court is concerned with the genuineness of the deed and not its validity: *Kanhaya Lal v. Sardar Singh* 29 All 284 : 4 A.L.J. 171; *Balambal Amal v. Arunachala Chetti* 18 Mad. 255 and *Raj Lakhi Ghose v. Debendra Chandra* 24 Cal. 668 : 1 C.W.N. 444. In the words of Fazl Ali, C.J.

the Court is only concerned with the genuineness of the document sought to be registered, that is, whether the document is executed by the person by whom it is alleged to be executed and not its validity *Jhaman Mahton Vs. Amrit Mahton and Others*,

We have, therefore to see whether the document before us is a document which was executed by the defendants first party as alleged.

12. - It has been urged before us that, even so, the execution must be taken to be incomplete because on the terms of the document the payment of Rs. 32,000/- in cash was a condition precedent. Our attention has not been drawn to any provision in the document which makes it a condition precedent to the execution. Whether the money was paid or not was immaterial so far as the due execution of the document was concerned. Whether the document so executed is legally operative or not, and, whether the consideration for it has been paid or not, are matters which are open to contest in a regularly constituted proceeding under the provisions to Section 92, Evidence Act.

17. On the basis of the above, it is urged by learned Counsel that the execution itself having been admitted by the petitioner even in the writ petition itself, there was no occasion for the District Sub-Registrar to have refused to register the document on non est ground.

18. Learned Counsel further counters the submission of learned Counsel for the petitioner regarding the subsequent sale made on 5.6.1997 stating that the said sale has no relevance as u/s 47 of the Registration Act, the operation of a document dates back from the date of its execution and not from the time of its registration. In support of the same, learned Counsel relies upon a Division Bench decision of this Court in the case of *Jamuna Prasad v. Bhuneshwar Thakur*

and Ors. AIR 1988 Patna-113 : 1987 PLJR 251, in para-10 of which it has been held as follows:

10. The next question for consideration is as to whether the Act prescribes different dates since when documents executed shall commence to operate i.e. in case of normal registration, with effect from the date of the execution of the document and in case of compulsory registration with effect from the date of its presentation. In my opinion, reading the different provisions of the Act, there does not appear to be any reason to hold that a document executed through normal procedure is to be operative with effect from the date of its execution; whereas a document executed through the procedure of compulsory registration is to operate only with effect from the date it is presented for registration. If the contention raised on behalf of the appellant is accepted, it will lead to an absurd result inasmuch as the person who had to pursue the procedure for compulsory registration, in view of the denial of execution by the executant; ultimately for no fault of his, may lend to a situation, where he finds that the whole exercise has ended in futility, as his vendor had executed another sale deed before the earlier sale deed had been presented for registration. The framers of the Act while enacting Sub-section (3) of Section 75 of the Act only wanted to bridge the gap between the date of the presentation for registration and the date of the compulsory registration by the statutory fiction. Thereafter, in my view, Section 47 of the Act shall be applicable even in respect of such registered documents. In other words, Sections 47 and 75(3) of the Act have to be read together harmoniously. The result whereof will be that after a document is registered compulsorily by virtue of Sub-section (3) of Sections 75 and 47, it shall become operative not only from the date of presentation for registration but from the date of its execution. A learned Judge of Mysore High Court in the case of Azeezulla Sheriff and Others Vs. Bhabhutimul, has also taken the view that once a document is compulsorily registered, it shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made. With due respect for the learned Judge who decided the case of Bibi Zamirunissa v. Sk. Quadoos (Supra), I am unable to agree with the view expressed in that judgment.

19. On a consideration of the submissions of learned Counsels for the parties, this Court does not find any force in the submission of learned Counsel for the petitioner. It is evident that Miscellaneous Case No. 6/97 had been filed on 8.5.1997 for the sole reason that the District Sub-Registrar had refused to proceed in accordance with the requirements of the Registration Act for reasons best known to him and once direction of the Collector was issued by order dated 9.9.1997, the respondent Nos. 5 to 7 duly filed the application for issuance of summons to the petitioner. The filing of the said application could not be said to be hit by the provisions of Sections 23 and 25 of the Act. In fact, Section 25 of the Act has no application in the facts of the present case as the document itself had been presented for registration within four months of its execution as provided by Section 23 of the Act. Thereafter, there would be no occasion for

invoking the provisions of limitation and it has to be treated that the document had been filed within the period prescribed by law. Any delay thereafter appears to be solely on account of the unreasonable stance of the Sub-Registrar which compelled the respondent Nos. 5 to 7 to approach the Collector to get appropriate direction. This Court is surprised how the District Sub-Registrar has taken into account the delay which has been solely occasioned by his failure to comply with the provisions of the Act in issuing the summons to the executant petitioner and his non-appearance at the time of registration earlier. Since there was no occasion for filing an application for condonation of delay while filing the subsequent application and filing process fee, etc. for the same, the conduct of the District Sub-Registrar in the present matter appears to be wholly unjustified and his stand contrary to the provisions of the Statute.

20. It is also evident that the order dated 21.3.2003 has been passed by the Collector on the basis of the subsequent appeal u/s 72 filed by the respondent Nos. 5 to 7 against the order dated 29.10.1997 and it cannot be said that the said order or proceedings are beyond jurisdiction.

21. This Court also does not find any substance in the submission of learned Counsel for the petitioner that the Collector has acted in haste and no proper opportunity was given to the petitioner to present his case. It has been clearly mentioned in the order itself that on the date of argument, i.e., 21.3.2003 the opposite party (petitioner herein) filed a time petition whereas the last opportunity had already been granted on 13.1.2003; as such the case was heard ex parte. In view of the said statement in the order itself, this Court finds that it is the petitioner and his counsel who are solely responsible for not participating at the stage of arguments and it cannot be said that any opportunity was denied to him before the impugned order was passed by the Collector.

22. This Court is also of the view that the alleged non-payment of consideration money has no relevance at all in view of the law laid down by the Division Bench of this Court in Jogesh Prasad Singh's case (supra). However, the said allegation also cannot be entertained in the writ jurisdiction as there is a clear finding by the Collector in the impugned order on the basis of the receipt given at the side of the sale deed duly signed by the petitioner himself that he had received Rs. 37,000/- out of Rs. 38,000/- the sale consideration and the balance of Rs. 1000/- was payable at the time of registration.

23. The subsequent sale to respondent No. 8 and respondent No. 9 (subsequently deleted at the risk of the petitioner himself) also can be of no relevance as the right to get the document registered arose on 18.2.1997 when the sale deed was executed and the same was further crystallized on its presentation for registration on 30.4.1997 by respondent No. 5. Hence execution of sale deed on 5.6.1997 in favour of respondent Nos. 8 and 9 can have no effect on the right of the respondent Nos. 5 to 7 to get the sale deed registered.

24. Thus, in the light of the aforesaid discussions, this Court does not find any

merit in the writ application. It is accordingly dismissed.