

(2014) 12 AP CK 0014

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12362 of 2009

G. Krishna Reddy

APPELLANT

Vs

The Government of A.P.

RESPONDENT

Date of Decision : 04-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Registration Act, 1908 — Section 23, 24, 25, 25

Citation : (2015) 2 ALD 474 : (2015) 1 ALT 579

Hon'ble Judges : S.V. Bhatt, J

Bench : Single Bench

Advocate : T. Sharath, Advocate for the Appellant; Badri Premnath and V. Venkataramana, Advocate for the Respondent

Judgement

S.V. Bhatt, J.—The petitioners pray for Mandamus declaring the registration of document No. 1350/2008 on 23.02.2008 by 4th respondent/Joint Sub-Registrar-II, Office of the District Registrar, Ranga Reddy District, as without jurisdiction, illegal and contrary to Sections 24 and 34 of the Registration Act (for short the Act) and consequently invalidate registration of document No. 1350/2008 i.e., agreement of sale-cum-irrevocable power of attorney.

2. The circumstances leading to issue between parties are not in serious dispute, but the legal effect of these circumstances is the issue for consideration.

3. The petitioners claim right and title to the property in an extent of Ac.01-37 gts in Sy. No. 54/2 of Hafeezpet Village, Serilingampalli Mandal, Ranga Reddy District and an extent of Ac.3-22 gts in Sy. No. 56 of Hafeezpet Village. Through registered sale deed dated 02.12.2006, the petitioners purchased the property from B.V. Rama Devi. The petitioners claim to be in possession and enjoyment of the petition land. On 03.01.2008, the petitioners claim to have obtained release deed (document No. 73/2007) from the members of Nimmala family for the survey numbers referred to above. The cause of action in the writ petition is that on 28.02.2007, the family members of Nimmala executed agreement of sale-

cum-general power of attorney in favour of respondent Nos. 23 to 25. On 03.05.2007, the document was presented for registration before the 4th respondent. The document was kept pending till 23.02.2008. It is further stated that respondent Nos. 13 and 21 were not present for completing registration within the time stipulated by law.

4. On 12.02.2008, the 13th respondent presented for registration and on 21.02.2008, Respondent No. 21 presented for registration. On 23.02.2008, agreement of sale-cum-irrevocable power of attorney was registered by the 4th respondent as document No. 1350/2008. The case of petitioners is that Sections 23, 24, 32 and 34 of the Act are mandatory and the 4th respondent has jurisdiction to register the document within the period of four months from the date of execution of the deed. Under Section 34, a further period of four months is available for presenting the document for registration. The execution of documents is admittedly on 28.02.2007. After the expiry of eight months period from the date of execution, the 4th respondent has no jurisdiction to permit respondent Nos. 13 and 21 for registration. The registration on 23.02.2008 is illegal and without jurisdiction. The petitioners contend that the property covered by document No. 1350/2008 dated 23.02.2008 in favour of respondents 23 to 25 and the property claimed by the petitioners through the deeds referred to above is same. The petitioner as an interested person in the property assails the action of 4th respondent in registering document No. 1350/2008.

5. Sri T. Sharath, learned counsel for the petitioners, reiterated the contentions referred to above and also relied upon the decisions reported in THAYYIL MAMMO AND ANOTHER V. KOTTIATH RAMUNNI AND OTHERS and G. KADAMBARI V. DISTRICT REGISTRAR OF ASSURANCES, HYDERABAD AND OTHERS.

6. The 3rd respondent filed counter-affidavit. It is stated that the document dated 23.02.2008 was presented on 03.05.2007 for registration by 14 executants as against 16 executants. The document was kept pending for want of presence of the remaining two executants. On 12.02.2008, one of the remaining executants presented for registration. Respondent No. 21/16th executant presented the document for registration on 21.02.2008. The 2nd respondent admits that due to pressure of work and due to oversight the document was registered beyond the four months stipulated under the enactment. The said act of registration and release of document is due to oversight and work pressure. The further lapse admitted is that there is no reference to the District Registrar for condonation of delay. The connivance alleged to the official respondents is denied.

7. Respondents 23 to 25 filed counter-affidavit and contend that the writ petition is liable to be dismissed in view of the ratio laid down by this Court in YANALA MALLESHWARI AND OTHERS V. ANANTHULA SAYAMMA & OTHERS. The assertion of title in the writ petition is outside the scope of writ jurisdiction. The right and title claimed by the petitioners through Ramadevi and also the release deeds is challenged. It is stated that having regard to the dispute of title for the property,

the prayer in the writ petition is misconceived. The execution of agreement of sale-cum-irrevocable power of attorney document No. 1350/2008 dated 28.02.2007 by the members of Nimmala family in favour of respondent Nos. 23 and 25 is valid and legal. Reference is made to the pending suit in O.S. No. 937 of 2008, on the file of I-Additional Senior Civil Judge, Ranga Reddy, for permanent injunction against these respondents. The remedy available to petitioners against document No. 1350/2008 is to file a suit. As regards the statutory violation complained in the writ affidavit, the reply of the respondents is that they are not attracted to the circumstances of the case. There is no defect in presentation and the respondents take shelter under Section 47 of the Act. In addition to the above, at the time of hearing, learned Senior Counsel appearing for respondents 23 to 25 relied upon the decisions reported in RAMESH CHAND ARDAWATIYA V. ANIL PANJWANI and RAFIQUE BIBI (DEAD) BY LRS. V. SAYED WALIUDDIN (DEAD) BY LRS. AND OTHERS for the proposition that the subject document is an agreement of sale-cum-irrevocable power of attorney and the agreement itself does not confer title and sale of such property shall take place on terms settled between the parties under the agreement and for the proposition that right remedy must be sought by right persons.

8. The learned Senior Counsel contends that the petitioners do not have locus standi to assail registration of document No. 1350/2008 dated 23.02.2008. The petitioners are not parties to the document and a civil suit is pending between the parties. On the complaint of breach of Sections 23, 24, 32 and 35 of the Act, it is firstly contended that the act of registration is a mere endorsement and the execution is distinct and independent. Even if respondents 13 and 21 did not present the document before 4th respondent for registration within the time stipulated by law, the registration of document in its entirety is not affected and on the principle of doctrine of severability, the registration insofar as respondents 13 and 21 alone would suffer from defect in procedure. The learned counsel submits that with the completion of registration, the remedy available to petitioners, even if they have locus, is by filing suit.

9. The following points arise for consideration:

"(i) Whether the time stipulated under Sections 23 and 34 of the Registration Act, 1908 is mandatory or directory?

(ii) Whether the registration of document No. 1350/2008 dated 28.02.2007 contravenes Sections 23, 24, 32 and 34 of the Registration Act, 1908?

(iii) Whether the petitioners have locus standi to assail the registration of document No. 1350/2008; and

(iv) Whether the registration is illegal insofar as respondents 13 and 16 are concerned on the principle of doctrine of severability?"

POINTS I TO IV:

10. The circumstances of the case are briefly summed up before considering the

scope of relevant sections under the Act. The petitioner claims to have purchased the petition land through registered sale deeds dated 02.12.2006 from one B.V. Ramadevi and also the release deed dated 03.01.2008. The parties to release deed dated 03.01.2008 and the executants of the agreement of sale-cum-irrevocable general power of attorney document No. 1350/2008 belong to Nimmala family. The subject matter of these deeds is property covered by Sy.Nos. 54/2 and 56.

11. On 28.02.2007, the suit document was executed by respondent Nos. 1 to 22. The document was presented for registration on 03.05.2007. As noted earlier, respondent Nos. 13 and 21 presented themselves for registration on 12.02.2008 and 21.02.2008 respectively. On 23.02.2008, the document executed on 28.02.2007 is registered as document No. 1350/2008. Now the point is whether the registration of document No. 1350/2008 is tenable in law.

12. Sections 23, 24, 32 and 34 of the Act are as follows:

"23. Time for presenting documents - Subject to the provisions contained in sections 24, 25 and 26, 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: PROVIDED that a copy of a decree or order may be presented within four months from the date on which the decree or order was made or, where it is appealable, within four months from the day on which it becomes final.

24. Documents executed by several persons at different times:- Where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution.

32. Persons to present documents for registration:-

Except in the cases mentioned in 24[sections 31, 88 and 89], every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration office-

(a) by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or

(b) by the representative or assignee of such a person, or

(c) by the agent of such a person, representative or assign, duly authorised by power-of-attorney executed and authenticated in manner hereinafter mentioned.

34. Enquiry before registration by registering officer: -

(1) Subject to the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the person executing such document, or their representatives, assigns or agents authorised as aforesaid, appear before the registering officer within the time

allowed for presentation under sections 23, 24, 25 and 26:

PROVIDED that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, in addition to the fine, if any, payable under section 25, the document may be registered.

(2) Appearances under sub-section (1) may be simultaneous or at different times.

(3) The registering officer shall thereupon-

(a) enquire whether or not such document was executed by the person by whom it purports to have been executed;

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and

(c) in the case of any person appearing as a representative, assignee or agent, satisfy himself of the right of such person so to appear.

(4) Any application for a direction under the proviso to Sub-section (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

(5) Nothing in this section applies to copies of decrees or orders.

13. A plain reading of Section 23 of the Act discloses that no document shall be accepted for registration unless presented for the purpose of registration to the Registrar under the Act within four months from the date of execution. Section 24 deals with a case of several persons executing a document at different times and the period of four months is reckoned within four months of execution by respective executants. In the writ petition, though the executants are many but the execution is on 28.02.2007. Section 32 Part VI of the Act deals with presenting documents for registration. Any document registered under the Act except instances covered by Sections 31, 88 and 89, whether such registration be compulsory or optional shall be presented within time at the proper place for registration by the executant or a person claiming under the same or as the case may be. The requirement of Section 32 is that the person executing the document shall present before the Registrar for registration. Section 34 stipulates that no document shall be registered under the Act unless the person executing such document or their representatives, assigns or agents authorized as aforesaid, appear before the Registering Officer within the time allowed for presentation under Sections 23, 24, 25 and 26. Proviso enables condonation of delay for a further period of four months, subject to imposition of fine not exceeding 10 times the amount of actual registration. From the above, it is evident that Part IV of the Act deals with time of presentation of document and the time permitted for presentation of registration is four months from the date of execution and under Section 34 the prohibition is on registration if the

presentation deviates Sections 23 to 26 of the Act. The executant is required to be present under Section 32 of the Act. The prohibition contained under Section 34 is that no document shall be registered under this Act unless a person executing such a document appears before the registering authority within the time allowed for presentation under Sections 23 to 26 of the Act. Four months grace period on payment of fine is provided available.

14. This Court in SMT. G. KADAMBARI W/O G. KESAVULU v. DISTRICT REGISTRAR OF ASSURANCES AND OTHERS, after considering the scheme of time, place and period for registration, held as follows:

"In Daw Nyi Ma v. Ma E Tin AIR 1938 Rangoon 53, the Rangoon High Court, while considering the scope of Section 25 of the Registration Act, held that the Sub-Registrar is not empowered to extend the time beyond the standard four months, which power is only under the Registrar himself under Section 25 of the Registration Act, had no jurisdiction to proceed with the registration of a document, which is already four months old. Where, therefore, a document already four months old is registered by a Sub-Registrar, the registration is bad.

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14. In the light of the provisions of Sections 23 and 25 of the Act, which are mandatory in nature and in the light of the legal position as referred above and in the light of the foregoing discussion, I am of the view that the impugned orders passed by the respondents were in accordance with law and they are neither illegal nor arbitrary, therefore, I do not find any grounds to set aside the orders by invoking the extraordinary writ jurisdiction under Article 226 of the Constitution of India."

15. In the opinion of this Court, Section 23 imposes a restriction on the registering authority not to accept the document for registration if the document is not presented beyond the period of four months from the date of its execution. The exceptions are in cases where a suit is pending before the Court and the documents are executed abroad. Either under Section 23 or by way of a combined reading of Sections 23 and 34 of the Act, the period for acceptance of a document for registration is eight months from the date of execution. In the opinion of this Court, from the language employed by the legislature, the procedure and the time limit covered by Sections 23 and 34 are mandatory in nature. In the case on hand, admittedly the registration by 4th was completed on 23.02.2008. Having regard to the finding recorded above, the registration by 4th respondents on 23.02.2008 is illegal and without jurisdiction. Consequently, the registration of document dated 28.02.2007 is liable to be declared as such.

16. The submission of learned counsel for respondents that the petitioners have no locus standi at all as they are not parties to the documents executed on 28.02.2007, is untenable for the following reasons:

"The petitioners claim right and title to the property through documents dated 02.12.2006 and 03.01.2008. The executants of release deed are none other than respondents 5 to 22. Respondents 23 to 25 claimed same property through and from respondents 5 to 22. The earliest document in favour of petitioners is dated 02.12.2006 in respect of the same property."

17. For the purpose of deciding locus of petitioners, this Court observes that the petitioners are not total strangers and the property claimed by the petitioners and respondents 23 to 25 is one and the same. If a document is brought into existence concerning the property claimed by them through document dated 02.12.2006 and the same is registered by the 4th respondent, the petitioners are entitled to take recourse to the remedy available under Article 226 of the Constitution of India. Therefore, the objection of locus of petitioners raised by respondents 23 to 25 is untenable.

18. The act of registration is an endorsement by the officer under the Act. For doing the said act of endorsement, the Act provides for mode and manner of exercising such authority. As already noted, whether the document requires registration or not but when the document is presented for registration, the same shall be within a period of eight months from the date of execution. If a document is presented beyond the period of registration or all the executants do not present themselves within a period of eight months, the Registrar under the Act has no power to accept the document for registration. Therefore, no endorsement of registration can be made. The registration though is an endorsement by the 4th respondent, such endorsement must satisfy by law. This Court is unable to apply the principle of doctrine of severability in the manner contended by the respondents. As already stated, the prohibition is against the Registrar from registering a document. For the Registrar to complete registration, the document shall comply with all the requirements of law. In the case on hand, respondent Nos. 13 and 21 are admittedly executants and not presented within 8 months. They are required to be present for accepting the document for registration and also endorsing the act of registration. Unless and until all the executants appear before the Registrar for accepting the document for registration, the Registrar on his own accord cannot register the document by excluding respondents 13 and 21 herein. When such course is impermissible before the Registrar, by applying the principle of severability, this Court cannot exclude respondents 13 and 21 for any purpose and save the registration insofar as others are concerned. Either the registration is fully compliant or not is the question for decision. If the registration is not conforming to the requirements of law, the registration of document No. 1350/2008 is illegal. It is made clear that in the present writ petition, this Court is considering only the registration or act/endorsement of document No. 1350/2008 on 23.02.2008 but not the execution of agreement of sale-cum-irrevocable power of attorney.

19. For the above reasons, the writ petition is allowed as indicated above. There shall be no order as to costs.

20. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.