
(2003) 02 RAJ CK 0025

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5480 of 1994

Gafur Khan and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 25-02-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan Registration Rules, 1955 — Rule 39
Registration Act, 1908 — Section 34, 35, 35(3), 69, 71

Citation : AIR 2003 Raj 233 : (2003) 3 RLW 1571 : (2003) 3 WLC 368

Hon'ble Judges : Rajendra Balia, J

Bench : Single Bench

Advocate : A.L. Chopra, for the Appellant; G.M. Khan, for the Respondent

Judgement

Rajendra Balia, J.—Heard learned counsel for the parties.

2. The facts giving rise to present writ petition are that the sale deed purported to be executed by Smt. Shahjadi Khatu W/o Salim Khan in favour of the petitioners on 12th May, 1993 and on that very day it was produced before the Sub-Registrar, Phalodi.

3. The Sub-Registrar made the following endorsement on the presentation disclosing that an enquiry required to be made u/s 34, was made by him about the due execution of document :

4. After the aforesaid endorsement was made, vide order dated 14th June, 1993 the Sub-Registrar. Phalodi, refused to register the document for the reason that he does not consider it in the interest of justice to register the said document. The entire order reads as under :

(Vernacular matter omitted.....Ed.)

5. An appeal was filed against the aforesaid two orders of Sub-Registrar before the Registrar, Jodhpur, on 17-7-1993 and preliminary objection was raised on

behalf of respondent Shahajadi Kathu that appeal is barred by time.

6. The Registrar, Jodhpur, while dismissing the appeal on merit held the appeal within limitation by referring to chronology of events, which is relevant for the present purposes also, held that the appellants before the Registrar, who are petitioners before this Court, had no knowledge about the order dated 14-6-1993 until 2nd July, 1993.

7. The chronology, which followed the presentation of document before the Sub-Registrar for registration and endorsement on the document as aforesaid is that on 16-5-1993, Smt. Shahajadi Khatu lodged an FIR alleging that Salim Khan has got the sale deed executed by her by misrepresenting that she has to execute certain documents for securing old age pension. Thus, Salim Khan has procured, by misrepresenting, her signature/thumb impression on the sale deed transferring her land, which she never intended to sell. She also alleged in the FIR that she has not received any consideration and has not parted with the possession of the land in question.

8. The petitioner had filed an application seeking release on bail on 26-8-1993 only. Prior to that on 2-7-1993 when he was informed about the order of refusal to register the document, he applied for the copy thereof on that very day and after obtaining the copy, has filed the appeal against said order on 17-3-1993 before the Registrar.

9. These orders are subject matter of challenge in this writ petition.

10. It has been contended by the learned counsel for the petitioners that document Annexure 1, which was duly executed and stamped, was presented by the executrix herself before the Sub-Registrar and the due execution of document was verified by the Sub-Registrar as required u/s 34 of the Indian Registration Act by obtaining affirmation from Smt. Shahajadi Khatu herself, who was present and identified by her lawyer Mohanlal before the Sub-Registrar. This fact is apparent from the endorsement made by the Sub-Registrar on the document on 12-5-1993 at 8.40 pm. She was identified by Mohanlal Saran, Advocate at Phalodi and it also bears the endorsement which is followed with photograph and thumb impression of the executrix, who had appeared before the Sub-Registrar.

11. Learned counsel for the petitioners urged that once enquiry u/s 34 was made and execution of document was admitted by the executrix in the presence of Sub-Registrar, he was under an obligation to register the document in terms of Section 60. Learned counsel urged that the Sub-Registrar or Registrar has no jurisdiction to make an enquiry into the genuineness of the document and genuineness of transaction nor about correctness of statements made in such documents. When on 12-5-1993 the document was presented for registration before the Sub-Registrar by the executrix herself and the execution of document was not denied by the executrix before the Sub-Registrar, its registration could not have been refused by the Sub-Registrar.

12. It was also contended by the learned counsel for the petitioners that the order passed by the Sub-Registrar on 14-6-1993 refusing to register the document, was in total breach of principles of natural justice. Once the document was presented and duly verified and endorsement was made on the date of presentation itself, no notice of any suspicion, if any, entertained by the Sub-Registrar about the document was given to the petitioners nor any alleged enquiry was conducted after notice to the petitioners or in their presence. The order dated 14-6-1993 itself shows that he has completed the requisite enquiry u/s 34 in the presence of executrix herself, at the time of presentation of document on 12-5-1983, which is evident from the endorsement on the document, yet on a specious ground he did not consider it to be in the interest of justice to register the document and refused registration. The order does not disclose any reason for non-registration. The order is not only without affording opportunity of hearing to the petitioners, where rights are vitally affected by such non-registration, but is also non speaking order. These defects in the original proceedings could not have been remedied by the Appellate Authority.

13. Be that as it may, the appellants referred an appeal u/s 72 of the Registration Act before the Registrar, who vide his order dated 25-10-1994 has dismissed the appeal for the two reasons. Firstly, that respondent No. 2, Sub-Registrar, Phalodi, has conducted an enquiry in the issue relating to agreement to sale, delivery of possession and the receipt of consideration by the transferor and found that neither the possession of the land has been delivered nor consideration has passed on to Mst. Shahajadi Khatu nor any such agreement has taken place and secondly, in relation to same document an FIR was lodged by the executant on 16-5-1993. After investigation into the allegations made in the FIR, the challan has been filed by the Investigating Agency in which the petitioners are also named as accused along with one Sultan Khan and therefore, the order refusing registration was justified.

14. Learned counsel contends that all the alleged proceedings of enquiry, if any, and findings recorded in such enquiry, were beyond the competence of the Registrar or Sub-Registrar and to give finding thereon. Except where execution of document is denied, where the executant claims that the document has been obtained by the deceit or the transaction was fraudulent, the same cannot be ground for Sub-Registrar to refuse to register the document, because the Registering Officers are not concerned with the validity of documents. The only duty cast on the Registering Officer in such event is to put a note about such assertion or denials be made in the endorsement as required u/s 58 of the Registration Act. That being the position, the Sub-Registrar was under an obligation to register the document in question, which was presented by executrix, whose identity was verified by the Registrar and she has acknowledged before the Sub-Registrar due execution of the document by herself in accordance with the provisions of the Registration Act. Under circumstance the document could not have been refused to register by the Sub-Registrar.

15. Learned counsel for the respondents-complainants, on the other hand, has urged that the transaction in question is a fraudulent one and the lady, who is an illiterate person and she was made to sign certain documents by representing that the same are for securing old age pension and her thumb impressions were obtained on the sale deed. In view of these allegations, which were prima facie found to be valid, the document has not been rightly registered by the Sub-Registrar and the order of Sub-Registrar has rightly been affirmed by the Registrar.

16. It was urged by Shri G.M. Khan, learned counsel for the respondents that since the challan was filed by the police for prosecuting the petitioners for committing forgery and cheating Mst. Shahajadi Khatu, prima facie case of forgery is established against the petitioners so also the findings reached by the Sub-Registrar in his report, which is in consonance with the findings reached by the Investigating Agency, make the transaction of sale having been entered with petitioner seriously suspect and in these circumstances, the Registering Officer had necessary power to refuse registration u/s 71 of the Indian Registration Act. Therefore, the order passed by the Sub-Registrar as affirmed by the Registrar cannot be said to be without jurisdiction.

17. It was also pointed out by the learned counsel for the respondents that an appeal lies against the order of Sub-Registrar u/s 72 refusing to direct registration of document in question, u/s 77 the remedy of petitioners was to file a civil suit within 30 days of making of the order of refusal seeking a decree directing documents to be registered in such office after it is duly presented for registration within 30 days after passing of such decree. Therefore, according to the learned counsel the writ petition is not maintainable and the petitioners ought to have filed civil suit for issuing such direction.

18. So far as maintainability of writ petition is concerned, it may be noticed that the writ petition was filed on 10-11-1994 within 60 days of order passed by the Registrar when filing of suit u/s 77 was still within limitation. In the first instance, a show cause notice was issued before admission to the respondents on 5-12-1994. In response to notice, the respondents appeared and in the presence of learned counsel for both the parties the petition was admitted on 6-5-1996. The order of admission has been recorded in the file of Civil Misc. Stay Application, which has been filed along with the writ petition.

19. Therefore, at this distance of time after the petition has been admitted after notice to the respondents and hearing them the preliminary objection for non-suiting the petitioners merely on the ground of availability of alternative remedy of suit cannot be sustained.

20. The principle is well settled that existence of alternative remedy is not absolute bar and does not affect the jurisdiction of this Court to entertain the petitions under Articles 226 and 227 in exercise of its extraordinary jurisdiction. The question of availability equally efficacious alternative remedy for securing

relief claimed in the writ petition is germane for considering the question whether this Court ought to exercise extraordinary jurisdiction in a particular case. However, two well known exceptions to the general rule in the matter of exercise of discretion are where the impugned order has been passed by the authority having no jurisdiction to make such order; and where the impugned orders have been passed in breach of principles of natural justice. Ordinarily, in such circumstance existence of an alternative remedy is not considered a valid ground for rejecting the petition on that ground. However, the two exceptions generally required, are not the exhaustive list of cases where the Court will or will not exercise its extraordinary jurisdiction when an alternative remedy is provided. It still depends on the facts and circumstances of each case.

21. The principle is also well settled that notwithstanding the existence of an alternative remedy, if the petition has been admitted by the Court after hearing the parties and remained pending for considerable long period which renders the alternative remedy out of reach or makes it inefficacious.

22. In this connection, reference may be made to *L. Hirday Narain Vs. Income Tax Officer, Bareilly*,

23. In the present case, it is apparent that not only the petition was admitted, but the petition has been admitted after due notice to the respondents and hearing them. The presumption is that in spite of preliminary objection as to maintainability of the writ petition, because of the availability of suit as an alternative remedy, this Court has admitted the petition, which was pending for hearing for more than two years.

24. Even otherwise, the remedy of regular civil suit for the limited purpose of seeking direction to register the document u/s 77 in the facts and circumstances of the present case, cannot be considered to be equally efficacious alternative remedy, which may persuade this Court not to exercise its extraordinary jurisdiction to examine the issue raised in the petition on merit at this stage particularly when parties have argued on merits of the case. Accordingly, the preliminary objection raised by Mr. G.M. Khan, learned counsel for the respondents, is overruled.

25. Coming to the merit of the case, it will be apposite to examine the scheme of registration of documents envisaged under the Registration Act and Rules framed thereunder. It may be understood at the outset that the registration by itself neither creates any right nor affect any right, but is only envisaging procedure by which any document is registered. Where a transaction is required by law to be reduced to writing and such writing is compulsorily required to be registered, the registration is the end stage of procedure for completion of transaction. The document or documents, which are not compulsorily registrable, may also be required to be registered at the option of parties to such documents. In that sense, the provisions of Registration Act are primarily the part of procedure and not of substantive law.

26. The object of registering a document is not to affect the transaction, but to give notice to the world that such a document has been executed to prevent fraud and forgery and to secure a reliable and comparable account of all transactions effecting the title of the property. The principle was stated long back by Privy Council In *Hemanta Kumarl Debi v. Midnapur Zamindari Co.* AIR 1919 PC 79 and *Tilakdhari Lal v. Khedan Lal*, AIR 1921 PC 112.

27. For the present purposes, the relevant provisions to be considered are how the document, which is presented before the Registrar, is required to be dealt with by the Registering Officer.

28. Section 32 provides who can present the document for registration. In the present case there is no dispute about the fact that the document was presented by a person competent to present it. In fact, the document has been presented by executrix of document herself. There is no violation of that part of the provision. According to Sub-Registrar the document has been presented by none other than respondent No. 4 Shahjadi Khatu W/o Salim Khan, who has executed the said document.

29. Section 33 is a provision ancillary to Section 32, which provides in what circumstances and what sort of powers of attorney are to be recognised for the purposes of Section 32. As the executrix herself has presented the document, this provision also does not require to be dealt with in detail.

30. Section 34 requires that Registering Officer before registering a document must satisfy himself that the person executing such document or their representatives, assign or authorised agents appear before the Registering Officer within the time allowed for presentation and on their appearance the Registering Officer shall enquire whether or not such document was executed by the person or persons by whom it purports to have been executed. He also has to satisfy himself as to the identity of the person appearing before him and alleging that he has executed the document and in the case of any person appearing as a representative, assign or agent to satisfy himself about the right of such person so to appear.

31. Section 35 details the procedure, which is to be followed by the Registering Authority when a document is admitted to be executed or denied to be executed respectively. Section 35(1)(a) requires the Registering Officer to satisfy himself whether person appearing before him as an executant, admits the execution of document and in that case the Registering Officer is under an obligation to register the document as directed under Sections 58 to 61 inclusively.

32. Sub-section (2) of Section 35 authorises the Registering Officer in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, examine any one present in his office.

33. Sub-section (3) of Section 35 deals with the case where any person by whom the document purports to be executed denies its execution or the person

executing the document appears to be dead. In that event the Registering Officer is required to refuse to register the document. Admittedly, in the present case, when the executrix appeared before the Registering Officer on 12-5-1993, she was identified by a lawyer before the Sub-Registrar and the Sub-Registrar has recorded admission of executrix that she has executed the document. There was no room for the Sub-Registrar thereafter to have taken recourse to Sub-section (3). Moreover, on the basis of the impugned order also it was not a case where the person by whom the document purports to be executed has denied its execution before Registering Officer or for that any other contingency envisaged under Sub-section (3) of Section 35 existed, which could enable the Sub-Registrar to refuse registration of the document in question under it.

34. As it has been noticed while considering the facts that Smt. Shahjadi Khatu has, after about 5 days of presentation of document for registration before the Sub-Registrar, lodged an FIR alleging that the document has been fraudulently and deceitfully got executed from her by representing that she is to sign/thumb papers for securing pension for her, but instead her property has been got transferred. This also suggests that document in question was executed by her. Section 35 does not confer any jurisdiction on the Registering Officer to hold enquiry on such allegations levelled after or before the procedure of Section 34 has been completed. The effect of completing the required procedure u/s 34 is that the document presented for registration is admitted to registration.

35. It is noticed above that u/s 35, once a document is admitted to be executed by a person by whom it purports to be executed by asking him/her when he/ she is present in person before the Registering Authority, he is required to act in accordance with Sections 58 to 61 of the Registration Act. This takes us to examine the provisions of Sections 58 to 61 to find whether an enquiry, which has been undertaken by the Registering Officer, is envisaged under those provisions.

36. Sections 58 to 61 form the scheme of the procedure on admitting the document to registration. Section 58 requires that after the document has been admitted to registration, there shall be endorsed upon it from time to time the following particulars namely; (i) the signatures and addition of every person admitting the execution of the document, and, if such execution has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent, (ii) the signature and addition of every person examined in reference to such document under any of the provisions of the Act and (iii) 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.

37. Importantly, Sub-section (2) of Section 58 mandates that if any person admitting the execution of document refuses to endorse the same, the Registering Officer shall register the document and shall endorse the copy of

such refusal. Apparently, refusal of a person to endorse the particulars to be entertained after entered in the document after to be registered where the person has admitted its execution before the Sub-Registrar cannot be considered as an impediment in its registering.

38. On the other hand, the expression used by the legislature makes it imperative that such refusal to endorse cannot be a ground for postponing or refusing the completion of registration of such documents which has crossed stages of Sections 34 and 35.

39. Section 59 requires the Registering Officer to affix the date and his signature to all endorsements made under Sections 52 and 58, relating to the same document and made in his presence on the same day. That is duty cast on the Registering Officer to put his hand along with the date on which the endorsement stated in Sections 58 to 61 has been made. Such affixation of his signature and date is not envisaged to be postponed for a later date.

40. Section 60 mandates that after such of the provisions of Sections 34, 35, 58 and 59 as apply to any document presented for registration have been complied with, the Registering Officer shall endorse thereon a certificate containing the word "registered," together with the number and page of the book in which the document has been copied and such certificate shall be signed, sealed and dated by the Registering Officer, and shall then be admissible for the purpose of proving that the document has been duly registered in the manner provided by this Act.

41. Section 60 clearly goes to show that after the document has reached the stage of passing requirement of Sections 34, 35, 58 and 59, the Registering Authority has been put under obligation to endorse the certificate on the document, which is before him by writing the word "registered" together the number and page of the book in which the document has been copied.

42. Section 61 is follow up action to Section 60, which requires that the endorsements and certificate referred to in Sections 59 and 60 are required to be copied into the margin of the Register Book and the copy of the map or the plan mentioned in Section 21 is to be filed in Book No. 1. On copying of such endorsement and certificate in the Register Book, the registration of document is deemed to be complete and thereafter, the document is to be returned to the person as a duly registered document.

43. The aforesaid scheme of the procedure required to be adhered to by the Registering Authority when a document is presented before him for registration, does not envisage any such enquiry into the genuineness and validity of the transaction or correctness of facts stated in the document as to consideration or any other facts about genuineness of such document. In fact requirement to satisfy about execution of document by the person purporting to have executed the document on presentation, satisfied the fact that such a document has been executed by the person appears to have executed the document. Circumstance

in which such document has been executed relate to validity of transaction evidenced through such document, which is not the domain of Registering Authority to enquire.

44. The Registering Officer after recording satisfaction about due execution of document presented before him, is required to endorse every act that has been transacted in his presence at the same time on the document namely; admission or refusal of person who purports to have executed the document made before him, the payment of consideration, if any, which has been made in his presence. The identification of any of the persons appearing before him by any person in his office is also to be endorsed on the document.

45. In other words, he has to faithfully record on the document what is being transacted in his office and his endorsement and copy of document must find place in the Register Book as a testimony of such transactions having taken place. The procedure prescribed for Registering Officer to follow on receipt of document for registration does not provide for any such enquiry into the genuineness of document or the transaction as has been undertaken by the Sub-Registrar or the Registrar in the present case.

46. This is further fortified from the Rajasthan Registration Rules, 1955 framed in exercise of power u/s 69. The Rule 39, which is relevant for the present purposes, reads as under :

39. Registering Officers not concerned with validity of documents. -- Registering Officers should bear in mind that they are in no way concerned with the validity of documents brought to them for registration and that it would be wrong for them to refuse to register on any such grounds as under:--

(1) that the executant was dealing with property not belonging to him;

Provided that the Registering Officer shall not register the document unless he satisfied himself that the property does not belong to the Govt. or any Local Body;

(2) that the instrument infringed the rights of third person not parties to the transaction;

(3) that the transaction was fraudulent

(4) that the executant was not agreed to certain conditions of the document:

(5) that the executant was not acquainted with the conditions of the document:

(6) that the executant declared that he had been deceived into executing; and

(7) that the executant is blind and cannot count.

These and such like are matters for decision it necessary, by competent courts of law, and registering officers, as such, have nothing to do with them. If the document be presented in a proper manner, by a competent person, at the

proper office, within the time allowed by law and if the registering officer be satisfied that the alleged executant is the person he represent himself to be, and if such person admits execution, the registering officer shall make a note of such objections of the kinds mentioned in grounds (1) to (7) above, as may be brought to his notice in the endorsement required by Section 58.

47. The aforesaid rule in unequivocal terms denies the Registering Officer any authority to hold any enquiry into the question whether the transaction was fraudulent or whether the executant declared that he had been deceived into execution of such document. Whether the transaction is fraudulent or whether the document has been executed by deceit, is not the business of Registering Authority to enquire. Clause 3 and Clause 6 of Rule 39 invites special attention in that regard.

48. Rule 40 envisages that where a person admits the execution of a document, but denies the receipt in whole or part of the consideration recited therein, the registration shall not be refused because of such denial, but a note of the denial shall be made in the endorsement required by Section 58.

49. Rule 41 envisages that after the presentation of a document for registration, if the executant does not appear or refuses to enforce his attendance under Part VII of the Act, it may be returned, if claimed back or if it not claimed back even after the expiry of four months. The order of refusal may be recorded thereon.

50. Rule 42 significantly mandates positively where an executant appears and admits execution and his identity is established, the registration should be completed even though one or both of the parties may after this stage, desire to withdraw the document for registration. Rule 42 reads as under :

42. Registration to be completed necessarily. -- (1) If the executant appears and admits execution and his indentity is established, the registration should be completed even though one or both of the parties may after this stage, desire to withdraw the document for registration. If after admission of execution, the executant refuse or neglects to sign the endorsement, the registering officer should note this refusal prescribed in Section 58 of the Act.

51. The scheme of Rules 39 to 42 clearly indicates that the Registering Authority has no jurisdiction to enquire into the facts in which the Sub-Registrar and the Registrar have indulged themselves in the present case. The rules framed under the statute, are part of the statute and binds the implementing agency and the implementing agency had no jurisdiction to ignore the mandate of rules and to act in contravention thereto. In the present case, the endorsement made by the Sub-Registrar on 12-5-1993 quoted in extenso hereinabove, shows that the document has been presented by the exectutrix herself, the Registering Officer has enquired and satisfied himself whether the executant has executed the document and has also satisfied himself about the identity of person, who has appeared before him as the person executing the said document, who was duly identified by a lawyer. Therefore, the compliance of Section 34 was fully made, is

apparent.

52. It may be noticed that at no stage the identity of person appearing before the Sub-Registrar on 12-4-1993 as executant of the document has been challenged by anyone nor any aspersions have been made against the Sub-Registrar.

53. On the other hand, the Sub-Registrar in his order himself says that on 12-5-1993 when the document was presented on that very day, he has completed the enquiry about the due execution of the document by the executrix and has put endorsement along with his seal on that document. It is only after these formalities have been completed and he satisfied himself about due execution of document and identity of person presented before him as an executrix of the document that he on his own entertained suspicion looking to the age of the executrix and thought it fit to hold an enquiry. In the order Annexure 2, apart from the aforesaid reason for holding enquiry nothing has been stated for assuming jurisdiction to hold the alleged enquiry. It does not reveal that any objection was received by him against the registration from any quarter or whether the executrix has denied execution of document or requested him to refuse to registration for any reason. The finding, if any, recorded by him, during the alleged enquiry held by him, on his own does not find place in the order. He has refused to register the document on the spacious ground "in the interest of justice."

54. However, from the copy of document along with endorsement as well as the order (Annexure 2), it is apparent that the procedure required u/s 34 was duly followed on 12-5-1993 when the document was presented . Nothing has been stated that such endorsement was not made by Sub-Registrar on 12-5-1993 or that the executrix has not presented such document before the Sub-Registrar. It was only afterwards that looking to the age of the executant and surrounding circumstances, he entertained some doubt, we are left to guess as to in what context the age of executant, who was about 50 years at the time the document was executed, and in what circumstance the Sub-Registrar thought it just to hold enquiry. The Sub-Registrar does not disclose where he came to know about the surrounding circumstances relating to execution of document when it is nobody's case that anybody has raised any objection to registration of said document before him or even the executant, who has admitted due execution before him has raised any objection thereto before him thereafter. He could not at the time of making endorsement, imagined about complaint filed on 17-5-1993 about transferring her property through misrepresentation.

55. The Sub-Registrar is not given jurisdiction to hold roving enquiry on his own suspicion about the genuineness of facts stated in the document about which no objections were raised before him and they do not relate to ancillary subjects in respect of which a Registering Officer can have jurisdiction to enquire into, like the due payment of stamp duty under the Stamp Act. Once the Sub-Registrar, who has recorded the statement of executrix that she has duly executed the

document, which was presented by her on 12-5-1993 and about whose identity he satisfied himself by securing identity of the executrix through lawyer and has put his signatures and endorsement thereon, he had no authority to hold a roving enquiry into due execution thereof or material relating to contents of document sought to be registered by him as a Court of enquiry.

56. Apparently, the Sub-Registrar or the Registrar has acted in contravention of Rule 39 read with Rule 42 while refusing to register the document even after the same was presented by the person by whom it purported to be executed, she appeared before the Sub-Registrar and the execution of document was admitted by her. Her identity was verified through the Advocate on 12-5-1993. As per endorsement document was read over and explained to her, and she admitted to have executed the same. No other objection as to delivery of possession of the property in question or consideration was raised before the Sub-Registrar nor it is the case of the respondents that the Sub-Registrar was ever represented about the matters about which she has lodged an FIR.

57. In these proceedings, it is not even the case of the respondents that endorsement dated 12-5-1993 made by the Sub-Registrar was erroneous or does not depict the correct happenings before the Sub-Registrar. In fact, the order Annexure 2 itself records the said endorsement made by the Sub-Registrar, was made on completing the required formalities about verifying the identity of person, executing the same and that it was executed by the said person. As per the Scheme of the Registration Act and Rules framed thereunder there was no option thereafter with the Sub-Registrar, but to register the same. Clearly, it is a case in which the Sub-Registrar has later on changed his mind and passed the impugned order of refusing to register the document on wholly irrelevant considerations and by entering into the field of enquiry over which he has no jurisdiction to traverse.

58. One can only guess that the course has been adopted by the Sub-Registrar because of the FIR lodged by Mst. Shahjadi Khatu 5 days after the document in question was presented before Sub-Registrar and endorsement was made thereon on 12-5-1993. The grounds for lodging FIR were that her property has been got transferred by obtaining her signatures/thumb impression by representing to her that it relates to her pension papers. Nowhere she implicated the Sub-Registrar, who has endorsed on 12-5-1993 that she has admitted the execution of document after the same was read over and explained to her. Even on FIR, the allegation does not travel beyond the one envisaged under Rules 39 and 40. These allegations for the reasons discussed above do not give Sub-Registrar jurisdiction (sic) the document which has been admitted to be executed by executrix.

59. At this stage, learned counsel placing strong reliance on Section 71 of the Registration Act, urges that, Sub-Registrar has jurisdiction to refuse to register the document which gives him a wide discretion and power to refuse on any ground other than for denial of execution by the person also, who purports to be

executant of the document.

60. Section 71 of the Registration Act cannot be read in isolation from the Scheme of the Act. The statute has made provisions laying down the circumstances in which the Registering Officer can refuse to register a document, except on the ground that the property to which it relates is not situate within his sub-district. That is to say that the Sub-Registrar is not empowered to register the document relating to property situated beyond his territorial jurisdiction, Secondly, u/s 20(1) the Registering Officer has been given discretion to refuse to accept for registration any document in which any interlineation or alteration appears, unless the persons executing such document, attest with their signatures or initials, such interlineations, blanks, erasures or alterations. In case the Registering Officer decides to register any document, which has interlineations, blanks, erasures or alterations at the time of registering the same, he is required to make a note in the register of such interlineations, blanks, erasures or alterations. That is to ensure authenticity of the document registered as on the date of registration and to guard against future interpolation in the documents.

61. Section 35(3) is yet another contingency envisaged under the provisions of the Act, which entitles the Registering Authority to refuse to register the document. The contingencies under Sub-section (3) of Section 35 are where (1) any person by whom the document purports to be executed denies its execution, or (ii) any such person appears to be registering officer to be a minor, an idiot or a lunatic, or (iii) any person by whom the document purports to be executed is dead, and his representative or assign denies its execution.

62. Pausing here a while, the Sub-Registrar in its order Ex. 2 had said that "looking to her age and surrounding circumstance, he thought it fit to hold an enquiry into the genuineness of document". The circumstance, which gives the Registering Officer jurisdiction to refuse to register a document on that ground are where any such person appears to be minor, an idiot and lunatic. Admittedly, in the present case, the executrix was not minor, she was a lady of about 50 years at the time of execution of document nor she appears to be lunatic at the time of presentation nor there is any whisper in the order that any of the conditions mentioned in Sub-section (3) of Section 35, exists.

63. Be that as it may, Section 35(3) is another provision pointing out the circumstances in which the Registering Officer is entitled to refuse to register the document. Sub-section (2) of Section 71 envisages that no Registering Officer shall accept for registration a document so endorsed unless and until under the provisions hereinafter contained, the document is directed to be registered. The power u/s 71 vesting with the Sub-Registrar to refuse to register the document is not uncanalised or unbridled to hold enquiry into every aspect of the matter between the parties or the dispute as to the genuineness of transaction of the circumstance in which the document was executed, de hors the statute. The Registering Officer including Sub-Registrar is to act within the domain of statute

to fulfil the object of the statute and not to travel beyond it.

64. It may further be noticed that Section 71(1) requires, except on the ground that property to which it relates is not situate within the sub-district of the Sub-Registrar, when he refuses to register the document and record his reasons for such order in his Book No. 2. It spells out that where denial to register a given document is not that property is situated outside the territorial jurisdiction of Sub-Registrar, he must record reasons for the same and order must show which of the contingencies on the existence of which he is authorised to refuse registration under the provisions of statute exist in such event. The Registering Authority is a creature of statute and cannot travel beyond the limits set by the statute itself.

65. Where the Registration Act provides certain contingencies in which the Registering Officer is enabled to refuse to register a document presented before him for registration and also provides by a separate provision that authority refusing to register any document, must record his reasons, therefore, can lead to only one conclusion that such reason must relate to one or more contingencies envisaged under the Act, which empowers the Registering Officer to refuse to register a document. Such a provision cannot be read in a manner to confer an additional power of general nature making specific provision in that regard nugatory and redundant. Section 71 clearly postulates that authority of a Registering Officer in refusing to register a document under the statute is subject to fair procedure. The order must be reasoned. Except in the case of refusal founded on denial of its execution by the executant the orders are appealable.

66. Therefore, Section 71 in the context is part of procedure to be followed by Sub-Registrar in refusing to register a document as provided under the statute.

67. In this connection, reference may be made to *Mahaliram Singhania v. Upendranath Pandey*, ILR 1996 Pat 879 (sic) wherein the High Court said that there is no provision in the Act empowering a Registrar to refuse registration of a document on the ground of undervaluation or to enquire into the correctness of the valuation given in the document.

68. Reference in this connection may be made to Bench decision of this Court in *Jeewan Ram Vs. State of Rajasthan and Another*, In this case the Court said (Para 4) :

"it was no part of the duty of the Sub-Registrar to go outside the powers conferred on him under Sections 34 and 35, of Registration Act and such provisions of other laws which have been made definitely supplemental to the Registration Act. Sections 34 and 35, Registration Act provide what a registering officer has to see before registering a document, Briefly speaking, he has to see that the document is presented in the manner prescribed by the Registration Act and by a person authorised to present it and before an officer authorised to register it. Before registering a document, the registering officer has to enquire whether or not the document was executed by the person by whom it purports to

have been executed. He has also to satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document. In the case of any person appearing as a representative, assign or agent, he has further to satisfy himself of the right of such person so as to appear. Thereafter, he cannot refuse to register the document except on the grounds mentioned in Section 35(3), Registration Act, or under the provisions of any other law which has been definitely made supplemental to the Registration Act. It is not the business of the registering officer to see whether a particular document is against any other law in force for the time being if the conditions prescribed for registration under Sections 34 and 35, Registration Act or any supplemental law are satisfied".

69. Apparently, the impugned order does not satisfy the touch stone of valid order in terms of the aforesaid principle.

70. The order, which has been quoted in extenso hereinabove does not show any reason which can emanate from the statute, which confers jurisdiction on the Registering Officer to refuse to register the document.

71. From the above discussion, it is apparent that the impugned order by Sub-Registrar has been passed beyond his jurisdiction merely by entertaining suspicion about the correctness of facts stated in the document that too much late after requirements of Sections 34 and 35 were duly complied with and endorsement to that effect was made on the document on 12-5-93.

72. After the document was presented before him by the executrix about whose identity he satisfied himself. She has admitted execution of document before him. After the due execution of document was admitted before the Sub-Registrar on 12-5-93, there was no room for the Sub-Registrar to invoke the provisions of Sub-section (3) of Section 35 or for that matter to go into the question of genuineness of the transaction or question whether the document has been got executed by the person concerned through deceit. The said enquiry is not envisaged under any of provisions of the statute and has been specifically prohibited under Rules 39 and 40. The impugned orders are in breach of mandate of the provisions of the Registration Act and the Rules framed thereunder.

73. Once the requirements of Sections 34 and 35 are satisfied and the case does not fall u/Ss. 34 and 35, the Registering Officer is under an obligation to register the same except if he is able to point out any grounds mentioned in Section 35(3) or under any other provisions of Registration Act or any other law supplemental to the Registration Act. It is not the business of the Registering Officer to see whether a document is against any other law in force for the time being if the conditions prescribed for registration under Sections 34 and 35 of the Registration Act of supplemental law are satisfied. The genuineness of transaction, document and correctness of facts stated in the document are not the matters in which the Registering Officer can enquire into and refuse

registration of the document presented before him.

74. Apart from the aforesaid apparent lack of jurisdiction and the impugned orders being contrary to the provisions of law, the orders have been passed in patent breach of principles of natural justice by collecting the material at the back of the affected parties and without even giving them opportunity of hearing or making available to them the material relied against them.

75. It may be relevant to notice here that after presentation and admission of execution of document the criminal prosecution launched against the petitioners vide FIR filed on 16th May, 1993, which appears to have weighed heavily with the Registering Officer in referring to register the document, has resulted in acquittal of the petitioners by the trial Court. The judgment dated 25-10-94 has been placed on record by the petitioners. The said judgment reveals that Devilal Sub-Registrar and Mohanlal counsel, who has identified Smt. Shahjadi Khatu before the Sub-Registrar had been relied on by the prosecution and their statements are in consonance with the endorsement made on the document on 12-5-93.

76. I am further informed that leave to appeal against the said judgment has since been granted by this Court and the appeal is pending in this Court.

77. The subsequent desire of the executant to withdraw from the transaction for the reasons stated by her, which can be duly agitated for getting the relief before appropriate Civil Court/Criminal Court cannot clothe the Registering Authority with the jurisdiction to refuse to register the document when duly presented and the provisions of Sections 34 and 35 in respect thereof have been duly satisfied even before the FIR was lodged. The other circumstance, which is relevant to notice is that no complaint whatsoever has been made by the respondent No. 4, who had admitted to have executed that document before the Sub-Registrar or Registrar at any stage requesting him not to register the document.

78. In these circumstances, the petition succeeds. The impugned order passed by the Sub-Registrar on 14-6-93 (Annexure 2) and the order passed by the Registrar on appeal on 25-10-95 (Annexure 3) are quashed and the Sub-Registrar is directed to proceed with the registration of the document in question, which is stated to be still in possession of the Registering Authority and has not been returned to the presenter of the document as per statement of learned Counsel for Smt. Shahjadi Khatu.

79. It is made clear that any observations made above in relation to power of Registering Authority to refuse to register the document presented has no reflection on the merit of the allegations levelled against the petitioners by the respondent No. 4 so as to affect the pending criminal appeal or to affect any other proceedings that the parties may take recourse to for getting their civil rights decided.

80. There shall be no order as to costs.