

(1976) 06 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : Writ Petition No. 73 of 1974

Haji Habib Ullah and Ors.

APPELLANT

Vs

Registrar, and Others

RESPONDENT

Date of Decision : 14-06-1976

Acts Referred:

Jammu and Kashmir Registration Act, 1977 — Section 58(2), 75

Citation : (1976) JKLR 430 : (1976) KashLJ 426

Hon'ble Judges : Mian Jalal-Ud-Din, J

Bench : Single Bench

Advocate : Z.A.Shah, K.N.Raina, Advocates appearing for the Parties

Judgement

(1) This is a writ petition under Article 226 of the constitution of India read with section 103 of the State constitution seeking to quash the direction

made by respondent No. 1 to respondent No. 2 in his order dated 2281974 to admit the instrument of sale to registration on payment of Rs.

27900/ to the respondents 3 to 6 by the petitioners.

(2) Briefly speaking the facts that have given rise to this petition are that respondents 3 to 6 executed a sale deed on 269^973 and sold the

property mentioned therein for a consideration of Rs. 80,000/ in favour of the petitioners. Out of the sale proceeds an amount of Rs. 27900/ is

outstanding. Respondents 2 to 4 did not appear before the SubRegistrar for registering the document and eventually the Sub Registrar refused

registration on the ground of nonappearance of the respondents 2 to 4. This order was made on 17 1 1974. The petitioners preferred 'an appeal

against the order of refusal of registration of the document before the Registrar respondent No. 1. The Registrar while allowing the appeal under

section 72 of the Registration Act directed that the document shall only be admitted to registration on payment of unpaid consideration money. The

petitioners thereupon again presented the document for registration before the SubRegistrar who refused to register it on the ground that until the

outstanding consideration was paid by the petitioners to the respondents 2 to 4 the deed will not be registered.

(3) The petitioners have moved this court in writ. Their contention is that the direction given by the Registrar in this order that the document will be

admitted to registration, only on payment of the outstanding consideration money is in excess of the powers of the Registrar and without

jurisdiction. Under the provisions of the Registration Act the registering Officer has got no power to enforce payment of any consideration as a

condition precedent for the registration of the document. It is, therefore, prayed that the aforesaid direction be quashed as without jurisdiction and

the Sub Registrar directed to admit the document to registration without the aforesaid condition.

(4) No body has appeared on behalf of respondents 1 and 2.

Mr. K. N Raina appearing on behalf of respondents 3 to 6 has filed objections to the petition. It is averred therein that the petitioners have not

come with clean hands and that their aim is to get the sale deed registered without paying the balance sum of Rs. 27900/-. They have got no

intention to pay the balance of the consideration. There is, therefore, no wrong in the direction given by the Registrar in his order asking the

petitioners to pay the amount to respondents 3 to 6. The petitioners are not entitled to seek a my relief from the court.

(5) I have heard the learned counsel for the parties.

Mr. Z. A. Shah appearing for the petitioners has submitted that the impugned direction given by the Registrar in the appellate order is in excess of

his powers and without jurisdiction. While inviting my attention to the relevant provisions of the Registration Act he has urged that the right to get a

document registered is a vested right which cannot be denied to the petitioners by putting riders thereon. Section 73 of the Registration Act confers

a right on a party to a document to present the same before the Registering Officer and it is the statutory duty of the Registering Officer to accept

the same for registration. If the execution of the document is admitted or

established by evidence the Registrar or Sub Registrar cannot refuse to register it. He has also relied upon Rule 40 of the Rules framed under the Registration Act. Reference is also made to a Division Bench authority of

Mysore High Court reported in AIR 1969 Mysore 360 wherein this principal has been discussed and accepted.

(6) Mr. K. N. Raina counsel for the respondents 3 to 6 has, on the other hand, submitted that the court will be reluctant to exercise its

extraordinary power of writ jurisdiction in a case where the impugned order has the effect of doing substantial justice between the parties. As in the

present case the direction made by the Registrar to the Sub Registrar to admit the document for registration on payment of outstanding money has

been made in the ends of justice for protecting the interests of respondents 3 to 6 and further as the petitioners vendees have not come with clean

hands, they are therefore disentitled to claim a writ from the court. The impugned direction cannot be called in question by them. Reliance is placed

on A. I. R. 1957 SC 350 and A. I. R. 1950 All. 246. The learned counsel for the petitioners has not, however, joined issue with the petitioners on

the question that it is the statutory duty of the Registrar or of the Sub Registrar to } register a document when the same is presented to him and the

execution thereof is admitted.

(7) The scheme of the various provisions of Registration Act indicates that the material question which the subRegistrar or the Registrar has to

consider while admitting a document to registration is the execution of the document by its executants. If the execution of the document is admitted

then a statutory duty is cast upon the registering officer to register the instrument. Nonpayment of consideration is not a ground on which the

Registering Officer can refuse to admit a document to registration. The same principle applies to the Registrar seized of an appeal against the order

of refusal made by the sub Registrar. Under Sec. 72 of the Registration Act the Registrar has got no power to impose a condition that the

document will be registered on payment of consideration money. Subclause (2) of Section 50 expressly provides that if any person admitting the

execution of a document refuses to endorse the same, the registering officer shall never theless register it, but shall at the same time endorse a note

of such refusal. Under Section 75 the Registrar shall order the document to be

registered if he finds that the document has been executed and the other requirements of law have been complied with. This shows that the Registrar has not to go into the question whether consideration has been paid or not. This is a matter that is wholly extraneous and falls outside the purview of his functions. The relevant provisions of law under the Registration Act also make it obligatory on the appellate authority (the Registrar) to pass the order in a particular manner prescribed by law. It therefore follows that in the instant case the impugned direction is ultra vires of the powers of Registrar and without jurisdiction.

(8) The argument that the court cannot issue a writ in favour of the petitioners in the case because the impugned direction has the effect of doing

substantial justice between the parties does not commend to me. This proposition which is sought to be deduced from the observations made by

their Lordships of the Supreme Court in the author its relied upon is inapplicable to a case where the authority which passes the impugned order

has no jurisdiction to pass such an order. If the authority passes an order in excess of its jurisdiction or in violation of the direction given by the

statute then it cannot be construed as one as having the effect of doing substantial justice between the parties on the other hand, it will be assumed

that implied injustice will be the result if the order is left in tact. To support my view that the order made by the Registrar is beyond his powers and

the same is without jurisdiction I may refer to the observations made in A. I. R. 1969 Mysore 360 :

The District Registrar while disposing of an appeal under S. 72 of the Registration Act has no power or jurisdiction to direct payment of any sum

of money as a condition precedent for getting the document registered.

Under the provisions of Section 58, 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, the appellate authority has no wider powers than the original authority

in the matter of examining and deciding facts or questions of fact. The appellate

authority can himself register the document or direct registration by the original authority.

(9) For the foregoing reasons, I am, therefore, of the view that the impugned direction of the Registrar is in contravention of the express provision of the law relating to Registration. I, therefore, allow the writ petition and quash the impugned direction. The document will now be presented before the SubRegistrar for registration within 30 days from today.