
(2013) 07 PAT CK 0115
In the Patna High Court
Case No : CWJC No. 12859 of 2005

Kanhaiya Yadav

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 31-07-2013

Acts Referred:

Citation : (2014) 2 PLJR 120

Hon'ble Judges : Ravi Ranjan, J

Bench : Single Bench

Judgement

Dr. Ravi Ranjan, J.—I have heard learned counsel for the petitioner, the State and the respondent No. 4. The petitioner seeks quashing of the order dated 12.11.2003 passed by the District Sub-Registrar, Siwan as contained in Annexure-2 as well as the order dated 23.3.2005 passed by the respondent No. 3, District Magistrate, Siwan, being Registrar, in Compulsory Registration Case No. 346/2003-04, as contained in Annexure-3.

2. Though a counter affidavit has not been filed on behalf of respondent No. 4, however, I.A. No. 3674/2012 describing it as a show cause on behalf of respondent No. 4 has been filed which appears to be actually a counter affidavit in nature. Counter affidavit has also been filed on behalf of the respondent Nos. 2 and 3 and reply to the counter affidavit has also been filed on behalf of the petitioner.

3. It is submitted on behalf of the petitioner that after payment of consideration amount of Rs. 47,500/- respondent No. 4 has executed the sale deed on 12.7.2003 in favour of the petitioner which was also presented for registration on 12.7.2003. However, thereafter, he slipped away and did not turn up for accepting execution despite several request. Eventually, the Sub-Registrar, Siwan refused to register the document vide the impugned order dated 12.11.2003 (Annexure-2). Thereafter, the petitioner claims to have filed a petition u/s 73 of the Registration Act, 1908 (hereinafter referred to as "the Act") before the Collector-cum-Registrar, Siwan, which is also claimed to have been dismissed

without consideration of the points raised in the application.

4. It is submitted on behalf of the petitioner that District Registrar-cum-District Magistrate has passed a mechanical order without consideration of materials available on record under gross misconception that there was delay of about four months in presentation of the sale deed whereas in fact the same was presented on the date of execution itself.

5. In above view of the matter it is submitted that the order is liable to be quashed and set aside.

6. Respondent No. 4, in his interlocutory application has denied receiving any consideration amount and it has been stated that for that reason he did not turn up for accepting the execution of the concerned deed.

7. However, from the appellate order it appears that the same has been passed on the pretext that the document concerned appears to have been rejected on the ground that the same was presented after four months of statutory period though from the order passed by the Sub-Registrar it appears that the same has been refused to be registered u/s 34(1) of the Act read with Rule 43(i) of the Bihar Registration Rules. It appears that the case before the Registrar was registered as Compulsory Registration Case No. 346/2003-04. From perusal of Section 34 of the Act it appears that in case the persons executing the concerned document does not appear before the registering officer within the time allowed for presentation u/s 23, he would not be bound to register the document. However, it is contended that it does not necessarily mean that the registering officer shall refuse to register the document by recording an order refusing to register as soon as the time period prescribed for registration has passed. Another question raised by the petitioner is as to whether the non-appearance of the party to admit execution would amount to denial of execution or the impugned order would have to be treated to be refusal by the registering officer to make registration of the document on the grounds other than denial of execution.

8. It has also been submitted that if the executant was not turning up for admitting the execution then summons ought to have been issued u/s 36(2) of the Act and final order ought not have been passed without waiting for his appearance pursuant to that.

9. Thus, in view of the fact that the District Registrar-cum-District Magistrate has passed unspeaking order without disclosing as to whether he has considered the concerned appeal u/s 72 or Section 73 of the Act, i.e., whether he has considered the appeal having been preferred against respondent to register the documents on the ground of denial of execution or on other grounds and since it also does not appear to have been considered as to whether the Sub-Registrar was required to issue summons upon the executant before registering registration, in my considered opinion, the order passed by the Registrar cannot be sustained in law. He has committed error of jurisdiction in passing the final

order without assigning reasons and recording finding on the issues involved. Accordingly, this writ application succeeds. The appellate order as contained in Annexure-3 is quashed and set aside. However, the matter is remitted back to the Collector-cum-Registrar (respondent No. 3) to consider it afresh and dispose it of in accordance with law by passing a reasoned and speaking order.