
(2012) 03 AHC CK 0120
In the Allahabad High Court
Case No : Writ Petition No. 7180 (M/S) of 2009

Madhav Ram Mishra

APPELLANT

Vs

District Registrar/Additional Collector, Kheri and Others

RESPONDENT

Date of Decision : 27-03-2012

Acts Referred:

Registration Act, 1908 — Section 23, 25, 72

Citation : (2012) 03 AHC CK 0120

Hon'ble Judges : Sibghat Ullah Khan, J

Final Decision : Allowed

Judgement

Sibghat Ullah Khan, J.

Heard learned counsel for the petitioner and learned standing counsel for the respondents No.1 and 2. No one has appeared on behalf of respondent No.3.

Petitioner on 02.06.2006 filed an application for registration of sale deed dated 01.02.2006 alleged to have been executed by respondent No.3 Nand Kishore in favour of the petitioner. The application was filed before SubRegistrar, Dhaurahara, District Kheri. The sale deed was annexed along with the application. On the margin of the application, the SubRegistrar on the same date made an endorsement to the effect that "Being barred by time, returned in original". In the application it was mentioned that the executant Nand Kishore just slipped away from the compound of the office of SubRegistrar on 01.02.2006 when the sale deed had been written on stamp papers and signed by him and when all the parties were going to the office of the SubRegistrar for registration. Both petitioner and respondent No.3 are real brothers. It was further mentioned in the application that thereafter petitioner repeatedly requested respondent No.3 to execute the sale deed but he continued to make excuses and it had become clear to the petitioner that respondent No.3 was not interested in presenting himself before SubRegistrar for execution of the sale deed hence it was being filed by petitioner for execution.

Against the four or five words" order dated 02.06.2006 passed by SubRegistrar, the petitioner filed appeal before the Registrar/Additional Collector, Kheri under Section 72 of Registration Act. The appeal (Appeal No.4 of 200506) was allowed on 24.08.2009 and SubRegistrar was directed to proceed in accordance with law for the registration of the sale deed holding that respondent No.3 had executed the sale deed after receiving the sale consideration and had signed the same.

Thereafter, the SubRegistrar made a reference to the Registrar on 10.09.2009 to the effect that appeal had been filed under Section 72 of the Registration Act while against orders passed under Section 23 of the Registration Act, appeal could be filed under Section 25 of the Act and appeal under Section 72 could be filed only against orders passed under Section 36 of the Registration Act, and that before passing orders under Section 36, procedure prescribed under Section 52 of the Act is to be followed which includes deposit of registration fees etc. Reference to Section 72(2) and Sections 58, 59 and 60 was also made. In the end it was mentioned that difficulty was being felt in compliance of order of Registrar dated 24.08.2009 for the reason that before SubRegistrar compliance of Section 36 had not been made before filing of the appeal. Thereafter, it was requested that the Registrar should reconsider the matter and pass suitable orders.

The court wonders how a subordinate officer/court can direct a particular thing to be done by a higher officer/court. The more wonderful thing is that the District Registrar completely accepted the direction/suggestion of the SubRegistrar and recalled its earlier order dated 24.08.2009 through order dated 18.11.2009. This writ petition is directed against order dated 18.11.2009.

Under Section 23 of the Act a deed may be presented for registration within four months before the SubRegistrar. The delay was only of one day. In such situation the SubRegistrar under Section 25(2) of the Act should have forwarded the same forthwith to the Registrar. The other course open for the petitioner was to directly approach the Registrar under Section 25(1) of the Act read with Section 76. Section 25 is quoted below:

"25. Provision where delay in presentation is unavoidable. (1) If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration fee, such document shall be accepted for registration.

(2) Any application for such direction may be lodged with a SubRegistrar, who shall forthwith forward it to the Registrar to whom he is subordinate."

In Gangadara Mudali Vs. Sambasiva Mudali, AIR 1917 Mad. 277, Krishnaswami Naicker Vs. Nalla Gounder, AIR (32) 1945 Madras 309 (both Division Benches) and Kisan Laxman Zodage and others Vs. Dalsukh Manchand, AIR 1939 Bombay

254, it has been held that there is no difference in expressions "refusal to register", "refusal to accept" and "refusal to admit for registration". Accordingly, the third course open to the petitioner was to file appeal under Section 72 of the Act, which he adopted.

The requirements to be followed before SubRegistrar could not be followed by the petitioner as SubRegistrar on the same date returned the document along with application to the petitioner on the ground that it was presented beyond time. In any case whatever formalities were to be followed petitioner could be asked to complete the same. Even if it is assumed that appeal was not maintainable, the same could be treated to be an application under Section 25(1) read with Section 76 of the Act.

Accordingly, all the orders passed by Registrar and the recommendation/reference of the SubRegistrar dated 24.08.2009 are set aside and the appeal is remanded to the District Registrar/Additional Collector, Kheri to decide the same afresh in the light of the observations made above. Whatever fees and penalty is required to be deposited by the petitioner may be directed to be deposited by him by the Registrar within the time fixed by it.

As no one has appeared on behalf of respondent No.3 hence Registrar shall issue fresh notice to respondent No.3. Before SubRegistrar, stage of Section 36 of the Act had not arrived as he had returned the document on the same date. The said procedure may very well be followed by the appellate authority/Registrar. Registrar shall decide the matter finally within three months from service of notice upon respondent No.3.

Accordingly, writ petition is allowed.