
(2014) 08 P&H CK 0205

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 4494 of 2012 (O&M)

Maya Kaur

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 14-08-2014

Acts Referred:

Specific Relief Act, 1963 — Section 17, 31, 33, 34, 34(3)

Citation : (2015) 177 PLR 38

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Mani Ram Verma, Advocate for the Appellant; Roopak Bansal, Additional Advocate General and Sanjiv Gupta, Advocate for the Respondent

Final Decision : Allowed

Judgement

K. Kannan, J.—The petition is at the instance of persons who have sales in their favour and had to confront a situation of sales being cancelled by the action of the Registrar, who acted on a complaint lodged by one Vinod Bagla, who was cited as respondent No. 4. On an objection taken on behalf of the Thakurdwara claiming that the property had been at all times entered in the revenue records as belonging to the objector and it had been fraudulently dealt with through sales by a person named Thakurdass claiming to be the owner after having manipulation to change the entry from Thakurduwara to Thakurdass. In an independent objection given to the Deputy Commissioner as regards the alleged manipulations, the Deputy Commissioner had sought for an opinion on the objections taken and after taking an opinion from the District Attorney found the entries to have been wrongly made. This was, in turn, taken to be the basis by the Joint Sub-Registrar, cited as 3rd respondent to cancel the sale deeds.

2. In the writ petition filed, it is contended that the Registering Officer had no power to cancel the registration and the exercise of such power was illegal. The petitioner would have also a case to contend that the issue of title cannot be decided by the Registering Officer and he could not have entertained a plea that

the property belonged to Thakurdass and the sale made by the vendors was not valid or was in any way an instrument of fraud to effect cancellation.

3. The learned counsel for the respondent-Thakurduwara supports the order passed placing reliance on a judgment of the Andhra Pradesh in *Fazalullah Khan Versus State of A.P. And others*-AIR 2007 Andhra Pradesh 57 that held that fraud vitiates proceedings and a sale which was effected by practicing fraud could be cancelled. The counsel would refer to me certain other decisions of this court and other courts which have characterized fraudulent acts as going to the root of validity of any transactions and the courts shall not give any approval to a transaction brought about by fraud. The counsel would also refer me the judgment in *Jodh Singh and Others Vs. The Registrar, (Deputy Commissioner) and Others*, where the question was whether a lunatic was competent to sell the land and if he was not, the cancellation of sale deed made will not be interfered with in a writ jurisdiction. The instances where the courts have made interventions are in situations where the Registrar's power itself was not so much of point for consideration but the parties had a scope of bringing out the manner of how the transaction was brought about as so completely vitiated that a Registrar who registers the document had literally failed to note the incompetency of persons who brought about the transaction.

4. There shall be a duty for a court to examine the bare provisions of law and if there is an area of ambiguity, the scales of judicial reasoning brought through judgments would be appropriate guides. The learned counsel for the respondent is fair to concede that there is no provision in the entire body of the Registration Act that grants to a Registering Officer a power to cancel an instrument. The cancellation deed which Section 17 contemplates as requiring registration is a cancellation that could be done under the circumstances which would vitiate a contract and brought by a party to the transaction or which a person could do, by resort to a court procedure by invoking Section 31 of the Specific Relief Act. There were rules under the State of Andhra Pradesh Act under Rule 26(k)(i) to seek for cancellation in certain circumstances. There is no State rule allowing for a cancellation by a Registering Officer himself by holding an enquiry post registration to assess whether the vendor had attempted to usurp right in the property of another person and effect a sale. Such a situation would be truly treading beyond the jurisdictional ambit. Even an enquiry on whether the vendor had brought about some fraudulent entries would literally mean adjudging whether the vendor had right to the property to create a valid transfer of interest. That is precisely an area which is clear through judicial pronouncements to hold that the Registrar has no competency under the scheme of the Registration Act to characterize a particular transaction as not constituting a valid transfer of title.

5. Even the provisions which allow for refusal to register, namely, the power granted under Part XII do not allow for any enquiry regarding title or the competency of the executant to execute that document. The refusal to register

could be reasoned on the executant not appearing before the Registrar to admit execution. Section 71 sets out the procedure and 72 allows for a party who is unable to secure registration on account of refusal of the executant to prefer an appeal. If the Sub-Registrar also refuses to register on taking evidence that the executant did not actually execute, a party aggrieved will have only a right to come to civil court u/s 77 to compel a registration. The procedure for a Registrar to follow before he takes a decision refusing to register are set forth under Sections 74 and 75. While the above mentioned provisions deal with the circumstances when a Registrar can refuse to register, what the Registrar shall do at the time of registration is brought out in part VI relating to the presentation of the documents for registration. A person, who is competent to present a document for registration as set out under Sections 33 and Section 34 contemplates an enquiry before registration by the Registering Officer. The Registrar has only to satisfy on three aspects on what Section 34(3) delineates: one, he shall enquire whether the document was executed by the person by whom it purports to have been executed. This provision deals with identity of the executant whose name the document bears. This enquiry refers to the congruence of the person in whose name the document is made and the person who claims that he has made it. The second requirement shall be for the Registrar to satisfy himself as to the identity of the persons appearing before him averring that they executed the document. The requirement of securing the identification witness obtains relevance in this regard and even at this stage, the Registrar will not go beyond securing an information that the person who is present before him is indeed the person who has executed the document. The third requirement will be a situation where a person is appearing as a representative in which case he shall consider that such a person has lawful right to represent.

6. Either at the time of registration in which situation certain duties are cast on the Registrar or at the time when he refuses to register, the circumstances when he can refuse, the functions of Registrar are confined to acts of registration or refusal. If the cancellation of document by the Registrar himself when the vendor does not seek for a cancellation or when there is no decree by a court directing a cancellation to be done, then any such function exercised by him is beyond jurisdiction. This court itself had an occasion to consider the issue of whether the Registrar had such competency in the decision in *Vaid Family Charitable Trust and Another Vs. State of Haryana and Others*, The reasoning found there explained as to how a document cannot be cancelled by the Registrar and I will adopt the reasoning as already given to this judgment as well.

7. The respondent has some serious apprehensions about how the sale deeds could be misused against the interest proffered by the religious trust. It appears that there was already a civil suit at the instance of a devotee in relation to the property but when the Registrar had cancelled the document, the relief sought through the civil suit became otiose and therefore the suit was allowed to be withdrawn. There appears to be some other suits before the civil court in relation

to the property covered through these instruments. The apprehension of any person who claims title to the property, so long as he is not himself a party to the instrument either as a vendor or a vendee can simply ignore the transaction as not binding and seek for a declaration in relation to the property covered through the instrument. The basis of such action could be that under the colour of the sale deeds brought about by the purchasers if they attempt to usurp right of what the vendor did not have and what a third party did have, such a third party is not required under law to set aside the sale or cancel the instrument. He could simply standby without in any way being affected by false claims to title at the instance of the person who holds a fraudulent purchase. The apprehension expressed that a true owner could be in some way be affected by a claim made by the purchasers cannot be fully dealt with, for, I cannot decide that the sale deeds are not valid or the sale deeds do not convey any title. If the vendors had title, the vendee will have title through the sale deeds. If the vendee did not have title, then the third party who does not claim under the vendor, will not in any way be affected and with or without suit, could assert the right in the manner that he chooses to do. I would find no need to chart a path for a person, who is the owner to establish his right. The person, who claims to be an owner who, in this case, is the 4th respondent, would be at liberty to establish his own title unaffected by the transactions of sale. I cannot again anticipate an action in the manner which the counsel for the 4th respondent states before me, viz. of a prospect of purchasers or persons claiming under them from entering from the land and causing disturbance to the 4th respondent in relation to the property. The true owner ought to know how to protect himself and this again will be outside the scope of enquiry.

8. I state therefore what is essential in this writ petition that the cancellation effected by the Registrar was impermissible and it is quashed. The sale deed will give to the purchasers only such right that he professes to purchase from the vendor. The issue of whether the vendor has title or not is not an aspect which I have dealt with in this case.

9. If any suit is filed by a person claiming to an owner, the court will examine the issue of title or possession in the manner that the situation might require and take a view unaffected by the existence or otherwise of a sale deed set up by the petitioners. I make it clear that there is no requirement in law for a person who is not a party to the instrument to set it aside.

10. The writ petition is allowed with the above direction quashing the cancellation of sale deeds brought through Annexures P5 to P9.