

(1993) 09 KAR CK 0027
In the Karnataka High Court
Case No : Writ Petition No. 26677 of 1993

Mme. Devikarani Roerich and Another	APPELLANT
Vs	
M/s. K.T. Plantations Private Limited, Bangalore and Another	RESPONDENT

Date of Decision : 23-09-1993

Acts Referred:

Registration Act, 1908 — Section 17

Citation : (1993) 4 KarLJ 742

Hon'ble Judges : K. Shivashankar Bhat, J

Judgement

1. In this writ petition a simple question seems to have been blown out of proportion, to be in proportion to the subject-matter of the sale deed. The petitioners seek to restrain the second respondent from proceeding with an appeal filed before him by the first respondent, apparently under Section 72 of the Registration Act, 1908 ("the Act" for short). The petitioners also seek the quashing of an order made by the second respondent on 25-5-1993 whereby the first respondent held that he had competence to entertain and consider the said appeal. Another order sought to be quashed is dated 22-7-1993 (Annexure-AC), though the order of the said date states that the second respondent has reserved his orders on I.As. 1, 2 and 3 filed before him to be pronounced on 28-7-93. The writ petition was presented on 26-7-93 and 28-7-93 after hearing the learned counsel for the petitioner and the first respondent, rule was issued and an interim order was made staying further proceedings before the second respondent. A direction was also issued to post the writ petition for disposal during the week commencing 30th August, 1993. The interim order states that the first respondent has already filed a suit O.S. 122 of 1992 wherein the main relief sought is for a direction that the sale deed dated 16-2-92 executed by the first petitioner herein in favour of the first respondent is valid and binding on her and that the suit seems to be not a simple suit for permanent injunction. A few more reasons are given for making the interim order. Now that the matter has been heard at length, the efficacy of the said interim order would not survive.

2. The first petitioner and her husband late Dr. Roerich owned a considerable

extent of an estate near Bangalore known as Thataguni Estate. A portion of the estate belonging to the husband of the first petitioner was sold to the first respondent on 27-3-91. However, there is some portion seems to have been left out of the said sale deed measuring about 92.17 acres with which the present dispute is not concerned. According to the first respondent there was an agreement entered into between the first petitioner and the first respondent wherein the first petitioner agreed to sell the portion of the estate belonging to her also to the first respondent for a sum of Rs. 93.12 lakhs. The first respondent asserts that the first petitioner obtained no objection certificate from the Income-tax Department and thereafter on 16-2-92 the sale deed was signed. On 7-3-92 it was presented by the Managing Director of the first respondent before the Sub-Registrar. The first petitioner however did not appear to complete the sale deed and there is some dispute as to what happened thereafter regarding the action taken to have the Sub-Registrar going to the first petitioner's residence in response to an alleged request made on behalf of the first petitioner. The fact remains that the Sub-Registrar did not make any order though he received the registration fee and put a seal on the alleged sale deed. Therefore, on 8-6-92 Writ Petition No. 17932 of 1992 was filed by the first respondent against the Sub-Registrar only seeking a writ of mandamus to the Sub-Registrar to register the document. In the meanwhile an application under Section 36 of the Act seems to have been filed on 11-6-92 before the Sub-Registrar to enforce the attendance of the first petitioner and according to the petitioners this application was not pursued by the first respondent. However, the fact remains that on 15-6-92 the first respondent filed a suit before the City Civil Court, Bangalore, seeking a simple injunction but this suit was withdrawn as the same was filed in a court which had no jurisdiction. Thereafter, another suit was filed on 19-6-92 in the court of Civil Judge, Bangalore District, Bangalore, as per O.S. No. 122 of 1992. This suit requires to be remembered throughout these proceedings and it has a bearing on the contentions raised before me. The present petitioners were impleaded as defendants 1 and 2 and subsequently one Devdas also came on record as a third defendant. The plaint refers to an agreement between the parties, the signing of the sale deed by the first petitioner, her refusal to attend the registration and asserts that the possession of the property in question has been handed over to the first respondent and that the entire consideration has been paid. The plaint says that the attitude and the way in which the first defendant has been used by the second defendant indicates that there is a danger to the rights of the first respondent herein and therefore it was necessary for the first respondent/plaintiff to seek for the declaration of title. In para 17 it is stated that the plaintiff sought for the relief of declaration which is not capable of valuation and the revenue assessment for the property was Rs. 1,584/-, therefore the suit was valued at Rs. 50,100/- and a court fee was paid accordingly. I may note here itself that in a suit for specific performance court fee shall have to be paid under Section 40 of the Karnataka Court Fees and Suits Valuation Act, 1958 and in the case of a contract of sale, court fee shall be payable by computing it on the amount of the consideration; therefore, in the

instant case, if the suit was to be for the specific performance court-fee should have been computed on the sale consideration of Rs. 89.50 lakhs, being the consideration referred in the alleged sale deed dated 16-2-92; if so the court fee payable on the plaint would have been a few lakhs of rupees. The plaint seeks the following reliefs:

"(a) declare that the Sale Deed dated 16-2-92 executed by the defendant MMe. Devikarani Roerich in favour of the plaintiff company is valid and binding on her;

(b) issue permanent injunction restraining the defendants from transferring the schedule property to any trust, society or any other person in any manner or create charge, lien, encumbrances, etc., on the schedule property;

(c) issue permanent injunction restraining the defendants, their men, agents, servants or any one claiming through or under them from interfering with the plaintiffs peaceful possession and enjoyment of the schedule property;

(d) direct the defendants to pay cost of the suit and grant such other further reliefs as are just under the circumstances of the case in the interests of justice."

3. On 30th July, 1992 the Sub-Registrar made an endorsement (Annexure-P) refusing to register the document and stated that:

"As the executing party has failed to appear within the prescribed time limit the registration of the Sale Deed dated 16-2-92 is refused under Rule 171(viii) of K.R. Rules, 1965 read with Section 35 of the Registration Act, 1908".

On 28-8-92 the first respondent herein filed an appeal before the District Registrar invoking Section 72 of the Act. In the Appeal Memo it is stated that sale deed was presented for registration but the executant did not turn up and thereafter a requisition letter was submitted by the first petitioner herein through her representative requesting Sub-Registrar to go to the residence of the first petitioner for completing the registration formalities. Since the first petitioner was residing outside the jurisdiction of the Sub-Registrar in question a commission was issued to the local Sub-Registrar and when the said Commissioner went to Hotel Ashok, where the first petitioner was ill and was not in a position to meet anybody and therefore the Commissioner returned. Thereafter a petition was filed under Section 36 of the Act on 11-6-92 before the Sub-Registrar requesting him to issue summons to the first petitioner herein to complete the registration. However, no summons was issued by the Sub-Registrar; instead the Sub-Registrar refused to register the document against which an appellate jurisdiction was invoked against the refusal to register the document (vide paras 4 and 5 of the Annexure-O, the Appeal Memo). The appeal memo states that the Sub-Registrar was bound to issue to the summons as sought for by the first respondent and the first respondent sought the following reliefs:

"Wherefore the appellant prays that this Hon"ble Authority may be pleased to call for the entire records in proceedings, Refusal 1/92-93, from the office of the

2nd respondent and set aside the order dated 30-7-92 passed by the 2nd respondent in proceedings, Refusal 1/92-93, and direct the 2nd respondent to register the Sale Deed dated 16-7-92 executed by the 1st respondent in favour of the appellant in the interest of justice and equity."

4. Before the second respondent three I.As. were filed by the first respondent. As per one I.A. the first respondent sought a direction to the first petitioners herein either to admit the execution of the sale deed in question or deny the signature of the document. This application is dated 2-4-93. Another I.A. sought the amendment of the appeal to include a reference to Section 73 of the Act so that the appeal could be treated as an appeal in view of the denial of the execution of the document by the first petitioner. Another I.A. sought a direction to the counsel appearing for the first petitioner either to admit or deny the execution of the sale deed within 48 hours. The first petitioner filed her objection to all the I.As.

5. First petitioner also raised a preliminary issue before the second respondent questioning the maintainability of the appeal in view of the pendency of the civil suit filed by the first respondent. This preliminary objection was overruled and the said order is under challenge in this writ petition. The second respondent held that the issue before the second respondent in the appeal was entirely different from the issues involved in the suit and that the second respondent can consider the appeal pending before him as an appeal both under Sections 72 and 73 of the Act. By another impugned order as already noted the second respondent had fixed a date for pronouncing his orders on I.As. pending before him.

6. According to me the above are the relevant facts, to consider the questions raised before me. However, the parties have referred to several other facts such as the alleged fraud played upon by the first petitioner by one Devdas in having a joint bank account opened in the names of the first petitioner and the said Devdas and a suit filed by the said Devdas in the name of the first petitioner seeking to restrain the bank from disclosing the accounts. There is also a reference by the parties to Writ Petition No. 205 of 1992 filed in the nature of habeas corpus writ petition in which this court deputed the Registrar General of this court to interview the first petitioner and her husband and submit a report as to whether the first petitioner was under any restraint in the hotel. This was at the time when the husband of the first petitioner was alive. Being satisfied that there was no restraint imposed on the first respondent the writ petition was dismissed on 29-7-92. The first respondent has been asserting that the first petitioner is under the control of the 2nd petitioner and seems to be trying to make unlawful gain. The fact remains that the first petitioner denied having executed any sale deed in favour of the first respondent. Her case seems to be that her signatures were obtained on blank papers and those signatures were used to prepare the documents. There are a few more explanations, but, again it is unnecessary for me to refer to them.

7. It was contended on behalf of respondents that the suit filed by the first respondent (O.S. 122 of 1992) is not a comprehensive suit and therefore the registrability of the document in question cannot be considered in the said suit. The refusal to register the document by the Sub-Registrar has to be nullified only by the second respondent in the appeal before him and therefore the second respondent is competent to proceed with the appeal pending before him. It was further contended that the second respondent need not wait for the disposal of the suit and that he can consider the appeal pending before him both as an appeal under Sections 72 and 73 of the Act. The learned counsel for the petitioners, however, contended that the suit was a comprehensive suit in which the court shall have to decide as to whether the first petitioner had executed the sale deed in question. Further the first respondent having opted to file the suit, the subsequent filing of the appeal before the second respondent was not maintainable and the first respondent was bound by the election exercised by it choosing a particular forum which is the civil court. These two rival contentions were sought to be projected from different angles before me.

8. Therefore, two questions that require to be considered are: (1) Whether the appeal pending before the second respondent is a properly filed appeal and if so what is the scope of the said appeal? (2) Whether the second respondent should drop the proceedings or should stay the proceedings before him in view of the pendency of the suit O.S. 122 of 1992?

9. Section 32 of the Act provides for the persons to present documents for registration. The document shall have to be presented either by the person executing the same or by a duly constituted power of attorney, etc. Section 34 requires the personal attendance of the person executing the document or someone who is duly authorised to be present to admit the execution of the document. It also contemplates an enquiry by the Registering Officer. Section 35 provides for the procedure of admission of the document or a denial of the execution. In the instant case there is no occasion to apply these provisions because the first petitioner did not attend before the Registering Officer. Section 36 provides for the enforcement of the attendance of an executant at the instance of any persons presenting a document for registration. It gives a discretion to the Registering Officer to issue the summons as stated therein. The summons shall have to be issued upon receipt of the peons fee as stated in Section 37. In the instant case, the petitioners contend that the first respondent has not taken any steps for pursuing the application filed under Section 36, whereas the first respondent contends that the Sub-Registrar failed to issue the summons before making an order refusing to register the document. This disputed question necessarily shall have to be investigated by the second respondent in case the appeal is maintainable or to be proceeded with.

Section 72 provides for an appeal against an order of the Sub-Registrar refusing to admit a document to registration, except where the refusal is made on the ground of denial of execution. The appeal shall have to be filed within 30 days

from the date of the order. The Registrar may reverse or alter the order of the Sub-Registrar. Section 73 provides for an appeal to the Registrar when the refusal to register the document is on the ground that there was denial of execution of the document. The appeal shall have to be filed within 30 days. The appeal is to establish the right of the appellant to have the document registered. Unlike Section 72, Section 73 requires the application to be in writing and to be verified in the manner required by law for the verification of complaints. It is necessary to note that as per Section 71, the Sub-Registrar shall have to make an order of refusal and record his reasons and thereafter endorse the words "registration refused" on the document. The order of refusal and reasons to be recorded are to be in Book No. 2. If the Registrar refuses to direct the registration of a document under Section 72 he shall make an order of refusal and record the reasons, as per Section 76. Section 77 provides for the filing of a suit where the Registrar refuses to order the document to be registered under Section 72 or Section 76. The appeal under Section 73, therefore, is an appeal when the refusal of the registration is on the ground of denial of execution by the executant. The denial of execution may be a specific denial before the Sub-Registrar or a deemed denial. This deemed denial arises only when summons is taken for the presence of the executant to admit the execution before the Sub-Registrar but the executant does not respond to the summons. No specific provision is found in the Registration Act deeming the denial of execution, but from the conduct of the executant in refusing to attend before the Sub-Registrar in response to a summons is always considered as resulting in the denial of the execution. In such a situation even though the appeal is filed under Section 72, the appeal could be considered also as an appeal under Section 73; these are procedural matters and cannot be applied too technically, is the contention of the first respondent. It was also submitted on behalf of the first respondent that in the instant case the denial of execution by the executant is too patent and is admitted and there is no reason to restrict the scope of the appeal filed before the District Registrar because an order of remand by the Registrar to the Sub-Registrar to issue summons to the executant will not serve any purpose; there is bound to be a non-response by the alleged executant or a specific denial.

10. I need not express my opinion at this stage as to whether the appeal before the second respondent should be confined to the provisions of Section 72 because there is no specific order by the second respondent on the application filed for amendment before him to amend the appeal memo to add Section 73. There can be no doubt that the appeal filed before the second respondent is a properly constituted appeal under Section 72; to what extent it should be considered as an appeal under Section 73 is a matter that is still pending. The learned counsel for the petitioners contended that the second respondent has already expressed definitely that it is open to him to treat the said appeal as an appeal under Section 73 also. This is only a legal proposition advanced by the second respondent. He has to apply the legal proposition to the facts of the case while disposing of the amendment application pending before him. Before parting

with this aspect of the case it is necessary to refer to a few provisions in the Mysore Registration Rules, 1965, relied upon by Mr. V.H. Ron. The learned counsel referred to Rule 182, which reads thus:

"Procedure when refusal is based on non-appearance of executant.-Where a refusal order is based on the ground that the executant is purposely keeping out of the way in order to evade registration or has gone to a distant place and is not likely to return to admit execution and the non-appearance is treated as tantamount to denial of execution, the application may be accepted by a Registrar under Section 73, and the fact of execution enquired into as if execution has been specifically denied."

The learned counsel also referred to Rule 187, which reads thus:

"Order refusing to register for non-appearance of executant.-In cases where the refusal order of a Sub-Registrar is based on the ground that the executant did not appear even after the expiry of the full time allowed:

(i) if the presentant had taken no steps to enforce the appearance of the executant, the latter cannot constructively be held to deny execution and the refusal order falls under sub-section (1) of Section 34 and the appeal under Section 72;

(ii) if, however, such steps have been taken and processes issued, although abortively, the non-appearance is tantamount to denial of execution, the refusal order falls under sub-section (3) of Section 35 and no appeal lies under Section 72 although an application may be made under Section 73." It was contended that the requisite procedure was not followed and therefore first petitioner cannot constructively be held having denied execution and if so the appeal under Section 72 cannot be considered as one under Section 73.

11. This is an aspect that shall have to be considered by the second respondent while disposing of the amendment application pending before him. The writ proceedings are not proceedings to enlighten the administrative authorities academically and only when any particular action affecting the rights of the parties are before the court, the court is required to express on the question involved.

12. Several decisions were cited to contend that a comprehensive suit is maintainable in which the execution of a document could be examined even though the said document is not registered, though required to be compulsorily registered. It was contended that Section 49 of the Act is not a bar for referring to the document in such a suit. According to Mr. Ron the suit O.S. 122 of 1992 is such a suit filed by the first respondent and if so, the appeal before the first respondent is either not maintainable or he should refrain himself from proceeding with the said appeal.

13. When a compulsorily registerable document is not registered, it cannot convey any right, title or interest, in view of the provisions of Section 17 of the

Act read with Section 49. Section 49 reads thus:

"No document required by Section 17 or by any provision of the Transfer of Property Act, 1882, to be registered shall- (a) affect any immoveable property comprised therein, or (b) confer any power to adopt, or (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting immoveable property and required by this Act or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as evidence of part performance of a contract for the purposes of Section 53-A of the Transfer of Property Act, 1882, or as evidence of any collateral transaction not required to be effected by registered instrument."

Undoubtedly the document involved in the instant case is a sale deed. It requires to be registered both under Section 17 and Section 54 of the Transfer of Property Act. If a sale deed is not registered in the case of a tangible immoveable property value of which is Rs. 100/- and upwards, it is not recognised as a completed sale deed and does not convey any title. Equitable considerations are entirely foreign to the concept of conveyance of title, in view of the statutory provisions. Application of equity is confined to a limited class of cases such as Section 53-A of the Transfer of Property Act ("the TP Act" for short). Therefore, non-registered sale deed is not permitted to be looked into for the purpose of finding out whether the title has passed to the buyer and whether such a document affects any immoveable property comprised therein. It is in these circumstances the Privy Council held that the remedy of filing a suit to enforce a right or claim a title in an unregistered document is not available vide *James R.R. Skinner v Robert Hercules Skinner and Others*, AIR 1929 PC 269. At page 271 the Privy Council observed that:

"If an instrument which comes within Section 17 as purporting to create by transfer an interest in immovable property is not registered, it cannot be used in any legal proceedings to bring about indirectly the effect which it would have had if registered. It is not to "affect" the property and it is not to be received as evidence of any transaction "affecting" the property.

In the present case the document under consideration, in addition to creating an interest in the immovable property concerned, provides as one of the terms, and therefore as an integral part of the transfer, that the vendor should, if the vendee so requires, execute a registered sale deed, and it is contended for the respondent 1 that, notwithstanding the non-registration, he can sue upon this agreement, putting the document in evidence as proof of it. Their Lordships are clearly of opinion that this is within the prohibition of the section. They think that an agreement for the sale of immovable property is a transaction "affecting" the property within the meaning of the section, inasmuch as, if carried out, it will

bring about a change of ownership. The intention of the Act is shown by the provisions of Section 17(2)(v), which exempts from registration and therefore frees from the restriction of Section 49, a document which does not itself create an interest in immovable property, but merely creates a right to obtain another document which will do so. In the face of this provision, to allow a document which does itself create such an interest to be used as the foundation of a suit for specific performance appears to Their Lordships to be little more than an evasion of the Act."

The consequences of this decision was that even a suit for specific performance of an agreement affecting immoveable property was not maintainable. The legislature stepped in and amended Section 49 by inserting the proviso to Section 49. By virtue of the said proviso an exception is carved out of the main Section 49 in the following cases where an unregistered document may be received: (1) As evidence of a contract in a suit for specific performance; (2) As evidence of part performance of a contract for the purposes of Section 53-A of the Transfer of Property Act; and (3) As evidence of any collateral transactions not required to be affected by the registered instrument. In other words a compulsorily registrable document, if not registered, cannot be looked into at all in any suit, except for the purpose stated in the proviso to Section 49.

14. The question before me is whether the suit O.S. 122 of 1992 is a suit falling within the proviso to Section 49 of the Act. I have referred to the plaint already; it is not a suit for specific performance of the contract. However, the prayer for injunction sought in the plaint seems to be a prayer consequential to the main prayer of declaration of title. The first respondent is a plaintiff in the suit and therefore he seeks an injunction against the defendants 1 and 2 from transferring the schedule property to any trust or person, etc. There is also a prayer for permanent injunction restraining the defendants from interfering with the plaintiffs peaceful possession. According to Mr. Ron these two reliefs are covered by the proviso to Section 49.

15. Section 53-A of the T.P. Act as such cannot be invoked because the transferor or any person claiming under the transferor is not enforcing against the transferee any right in respect of the property of which the transferee has taken possession. In other words the first petitioner herein is not enforcing any right in respect of the property against the first respondent herein. The suit is on the other hand to enforce the right of the transferee against the transferor. Mr. Ron contends that the law has undergone a change and Section 53-A of the T.P. Act can be a basis for filing of suit and the part performance could be used as a sword also and not as a mere shield and that law has undergone a change in India. Though Mr. Ron asserted the proposition, I was not assisted by placing any relevant decision on this aspect supporting the proposition. It is true that if the suit is to be only for an injunction against the transferor to restrain the transferor from interfering with the transferee's alleged possession, the deed in question may probably be looked into, provided it is only for the purpose of proving the

possession of the transferee and nothing else. In the guise of advancing a collateral purpose it will not be open to the transferee to prove and establish other rights under the deed, which cannot be conveyed by the unregistered document. What cannot be done directly cannot be achieved indirectly.

16. A few more decisions require to be referred. In all these cases I find that the suits were for specific performance of the contract involved in the unregistered document. Such a suit was held to be comprehensive suit maintainable de hors the provisions of Section 77 of the Act. It was held that Section 77 can be ignored which means even Section 73 also need not be resorted to if such a comprehensive suit is filed. I have not come across any case where a suit for declaration of title based on an unregistered sale deed was held to be maintainable without resorting to the provisions of the Registration Act including the appellate provisions of the said Act. In all the cases where the suits were entertained, the suits were either specifically and clearly suits for specific performance of the contract or the suits were, by necessary implication and in substance suits for specific performance. For example in *Sita Dei v Daitary Mohanty and Others*, AIR 1964 Orissa 224, the court found at page 225 thus:

"The next contention that the suit is not for specific performance of contract but one under Section 77 of the Registration Act is also not correct. On a perusal of the plaint, it is clear that the plaintiffs have also asked for reliefs of confirmation of possession, or, in the alternative, for recovery of possession. The relief of possession does not come within the scope of a suit under Section 77 of the Registration Act which is limited to a decree for directing the document to be registered in the Sub-Registrar's office if it is duly presented for registration within 30 days after the passing of such a decree. There is, therefore, no substance in the contention that the frame of the suit is not one for specific performance of contract. In fact, ad valorem court fees have been paid which are not necessary in a suit under Section 77 of the Registration Act."

It can be seen that the frame of the suit was considered to be one for specific performance and the requisite court fee had also been paid.

In *Anchuru Veerappa Naidu v Gurijala Vankaiah Chowdari*, AIR 1961 A.P. 534, the suit was one for partition and possession or in the alternative for specific performance of an agreement to convey a particular property. Therefore the court held that suit under Section 77 of the Act need not be resorted to but a comprehensive suit straightaway could be filed.

17. Mr. Ron strongly relied on a judgment of Justice V.R. Krishna Iyer in *Mathai Ouseph Panackal v Joseph and Another*, AIR 1970 Kerala 261. In the said case, when the sale deed was presented for registration, executant denied execution, and the Sub-Registrar refused to register the document. Instead of filing an appeal under Section 73, a suit was filed for a decree directing the defendant to get the deed registered and to deliver possession of the property. The suit was nothing but a suit for specific performance as is clear from the facts of the case.

Therefore the court held that such a suit was maintainable. The learned Judge has discussed the developments that has taken place in this branch of law and ultimately concluded thus, at page 266:

"The provisions of Section 77 of Registration Act and Section 10 (Old Section 12) of the Specific Relief Act confers separate right, with special features, on a party to get reliefs which may, to some extent and in certain cases, overlap. We cannot confuse between the two or allow one to supercede the other. But where Section 75 stage is reached and no other relief except a direction for registration is really asked for, Section 77 is an exclusive remedy; otherwise it has no application.

Where registration has been refused under Section 71 (of the Registration Act) the statute gives him a quick remedy before a quasi judicial authority which he may avail himself of and, if discomfited, institute a specific type of statutory action, with a short period of limitation, provided for in Section 77 of the Act; but it is restricted in its scope to directing the document to be registered. Other reliefs are extraneous to the nature of such a suit. A suit for specific performance is wider in its amplitude and is primarily one for enforcement of a contract and other consequential or further reliefs. In every case where complete satisfaction cannot be given by a mere decree directing registration of the document, Section 77 is insufficient to provide relief and cannot operate as bar. For, if a party is in need of other reliefs along with registration of the deed, should the statute be used to compel him to file a suit under Section 77 and then another for the other reliefs?

The Registration Act is to decide settle the question of genuineness of deeds and eliminate such disputes regarding title as are traceable to the execution of document, by providing a special and speedy remedy. It is a facility, not a fetter. If he chooses to pursue the Registration Act procedure-nothing compels him-and courts an order under Section 76 he may go to court under Section 77, and must, if he seeks no remedy other than bare registration, unless he seeks extra relief such as for possession, mesne profits or execution of a fresh deed. Whether a party has already set in motion the machinery for enforcing registration or not is immaterial and cannot inhibit a suit de hors Section 77. But if a party has got an order under Section 77 and prays in the suit-that follows, only for a relief falling squarely within Section 77 then he is restricted to the conditions laid down in that Section, particularly the short period of limitation.

Moreover, in every agreement to sell, the contract cannot be taken as fully performed till there is a properly executed document which is also registered. The vendee is entitled to insist upon a proper registered instrument which alone can validly convey title. Every vendor is bound to do all that is necessary to perfect the title of the vendee and so he is obliged not merely to execute but also to see to the registration of a proper conveyance. The result is that so long as there is an obligation on the part of the vendor, as incidental to the contract of sale, to get the document of sale registered, the vendee is entitled to bring a suit for specific performance of that agreement implied in the contract of the sale.

One more aspect has to be answered. A special statutory remedy cannot ordinarily exclude, by implication, the general right of suit under Section 9, C.P.C. nor are there in Part 12 of the Indian Registration Act clear and unmistakable indications of such exclusion of the civil court's jurisdiction by necessary and inevitable implication; and the language of Section 77 is optional, not obligatory."

18. Mr. Ron relied on a decision of this court in *Smt. Narayanamma v District Registrar and Others*, W.P. Nos. 19919 and 19920 of 1989, DD: 7-12-1989. Petitioner had filed a suit for permanent injunction restraining respondents 2 to 5 from interfering with the possession of the petitioner, claiming a right under a sale deed, refused to be registered by the Sub-Registrar; against the refusal, petitioner had filed an appeal before the District Registrar also and sought the stay of the appellate proceedings. Since the District Registrar refused to stay the proceedings before him, writ petition was filed. While dismissing the writ petitions the learned Judge observed, ".....The suit is the one filed for permanent injunction. It is not a suit for a declaration that there was no transaction/sale between the petitioner and respondents 2 to 5 which was made the subject-matter of the sale deeds. That being so, merely because the petitioner has filed a suit for permanent injunction, the proceedings before the Sub-Registrar for registration of documents and the appeal preferred against the order refusing to register the documents cannot be stayed."

Mr. Ron contended that the suit being one for declaration of title, the above observation helps his contention for staying the proceedings before the 2nd respondent. This contention overlooks the fact that the court was not considering Section 49 of the Act in the above suit; further, the observation refers to a suit for declaration that there was no sale transaction between the parties, and not a suit for declaration of title as in the instant case. However, fact remains, the court had no occasion to discuss the several provisions of the Act referred to by me already.

19. The facts of the decision of this court in *A.G. Shivalingappa v A.G. Shankarappa*, 1990(3) Kar. L.J. 408, is in no way different. It was a suit for specific performance after the District Registrar had made an order in an appeal under Section 73 of the Act. It was held that a comprehensive suit was maintainable, The decision in *Kenchawwa v Amagonda*, 1988(1) Kar. L.J. 530, has no bearing on the issue before me.

I don't think I should multiply the decisions since no useful purpose will be served by burdening this judgment. However a Bench decision of Patna High Court requires to be noted, which also does not enunciate any different principle.

20. In *Jhaman Mahton v Amrit Mahton and Others*, AIR 1946 Patna 62, Fazl Ali, C.J., speaking for the Bench referred to the proviso to Section 49 of the Act and held that two alternative remedies are available to the transferee. It is open to him either to bring a suit under Section 77 of the Act, or it is also equally open to him to have recourse to the fuller and more comprehensive remedy of a suit for

specific performance of the contract for sale. At page 65, it was held as follows:

".....It is open to him either to bring a suit under Section 77, Registration Act, merely for the registration of the document and if he chooses to adopt that course, that suit must be brought within 30 days of the date when the Registrar refuses to register the document. It is equally open to him to have recourse to the fuller and more comprehensive remedy provided by a suit for specific performance of the contract of sale. If he brings the suit under Section 77, his claim has to be confined only to the registration of the document, because as has been held in several cases, in a suit under Section 77 the court is only concerned with the genuineness of the document sought to be registered that is, whether the document is executed by the person by whom it is alleged to be executed, and not its validity and the question of its validity must be determined in a suit properly framed for that purpose. In the present case, however, the plaintiffs were not only concerned with obtaining the registration of the document but also wanted the possession of the land which was subject of the unregistered sale deed. They further wanted a relief as against a third party who was brought on the scene on account of a subsequent sale deed having been executed in his favour by Budhan Mahto on 14th September, 1939. The scope of the present suit is obviously much wider than that of a suit under Section 77 and I do not find any law which precludes the plaintiffs from bringing a suit which will give them fuller relief than a suit under Section 77 for mere registration of the document. It has been consistently held in this court and several other High Courts that a suit for the specific performance of a contract is not barred merely because the aggrieved party does not choose to bring a suit under Section 77, Registration Act, within the prescribed time and I have no hesitation in adopting this view in the present case also.

The second question, that is to say, whether the unregistered sale deed in favour of the plaintiff can be legally admitted in evidence in this suit is clearly answered by the proviso to Section 49 to which I have already referred. The deed in question is a document affecting immovable property and the proviso clearly states that such a document even though unregistered may be received as evidence of the contract in a suit for its specific performance."

21. Mr. Ron certainly, would have been on a very strong ground if the suit of the first respondent had been a suit for specific performance where under the first respondent had sought a relief directing the first petitioner herein to complete the sale deed by getting it registered, etc. Here, that is not the nature of the subject-matter of the pending suit at all. Even the court fee paid is only for a declaratory relief as already noted.

Mr. Muralidhar, learned Government Pleader, pointed out that the endorsement made by the Sub-Registrar refusing to register the document cannot be ignored until appropriately set aside. The learned counsel pointed out that the Act itself provides a remedy against the statutory order made by the Sub-Registrar. There is no prayer in the suit to have the said order set aside and it is also doubtful

whether such a relief could be sought for without altering the frame of the suit to be more comprehensive. The order of the Sub-Registrar, therefore, has to be got set aside only by filing an appeal under the Act. I find considerable force in this submission and accept the same.

22.N. Bikshapathi v The Joint Sub-Registrar, Hanamakonda and Another, AIR 1991 A.P. 80, was referred by the learned counsel for the petitioner to contend that the proceeding before the authorities under the Act can be stayed and such a stay was upheld in the aforesaid decision. The facts of the said case are quite different. The petitioner had obtained certain lands as an occupant. Requisite certificates had been issued to him by the District Collector. When the petitioner proceeded to sell those lands, proceedings were initiated to cancel the certificate. Petitioner filed a suit seeking an injunction against the District Collector. He also sought a declaration that the order of the District Collector is void. There was an injunction in favour of the petitioner and therefore petitioner proceeded to execute further sale deeds. However, the Registering Authority kept the registration pending. This order, keeping the registration pending, was challenged in the writ petition. The High Court held that, in the circumstances, the Sub-Registrar was justified in not proceeding with the registration. Neither the principle nor the analogy of the said decision of the Andhra Pradesh High Court are attached to the instant case before me.

23. It was then contended that the first respondent having elected to file the suit cannot now insist upon proceeding with his appeal before the second respondent. There are two reasons as to why this contention cannot be accepted. The suit was filed before the Sub-Registrar made his order refusing to register the document. The suit does not involve the consideration of the order made by the Sub-Registrar. Secondly, as already noted the scope of the suit is entirely different from the scope of the appeal before the second respondent. If the contention of the petitioners were to be accepted it will result in defeating the provisions of Section 49 of the Act and would enable any party to rely upon an unregistered document for a purpose not permitted by law. It was then contended that propriety requires the second respondent from proceeding with the appeal because the genuineness of the sale deed shall have to be considered by the civil court at least for the purpose of considering the prayer for injunction sought against the present petitioners. The contention again is an attempt to circumvent the bar imposed by Section 49 of the Act. The concept of a collateral purpose has to be strictly confined to the purposes which are not the essential terms of a document. For example in *Satish Chand Makhan and Others v Govardan Das Byas and Others*, AIR 1984 SC 143, it was pointed out that the terms of a lease are not a collateral purpose within the meaning of Section 49 of the Act and therefore the unregistered lease deed cannot be taken into consideration to find out whether the tenant had become a tenant at sufferance on the expiry of the term of the lease specified in the lease deed. Therefore, it was held that the tenant was a tenant holding over under Section 116 of the T.P. Act.

24. The fact whether the first respondent is in actual possession of the property in question may be a collateral purpose but that purpose cannot be sought to be achieved so as to advance other purposes prohibited under Section 49 of the Act. The limited purpose for which the deed could be produced is to prove the character of the possession at the most. That will not solve the question involved in the instant case.

25. It is true that the petitioners have raised a larger question such as non-payment of consideration for the deed and a complete ignorance of the terms of the alleged sale deed. They have attributed fraud in respect of the transaction. But these are the pleas raised by way of defence in the suit. Those questions would arise while considering the question whether the first petitioner executed the document or immediately thereafter.

26. As to whether second respondent should refrain himself from proceeding further is a matter for him to consider though the Act nowhere provides for stay of the proceedings before the second respondent. It will be for him to decide depending upon the facts and circumstances of the case. Of course, if the suit filed by the first respondent were to be a comprehensive suit, without hesitation I could have restrained the second respondent from proceeding further because the larger question and complicated facts could be resolved properly by the civil court rather than by a statutory authority.

27. There was some argument as to whether the civil suit itself was maintainable. It was contended that the remedy provided under the Act cannot be sought for by filing a civil suit and therefore the jurisdiction of the civil court is barred. This contention is advanced by the learned counsel for the first respondent though the first respondent is the plaintiff in the suit. It is absolutely unnecessary for me to examine this contention and in fact this is nothing but another shade of the question which I have already considered. Mr. Ron contended that the second respondent is biased against the petitioners and this is revealed by the order he made in which he has already made a reference to the application filed by the first respondent in civil suit invoking Order 23, Rule 1.

When a quasi-judicial authority is compelled to give his reasons while disposing of any matter before him it is inevitable for him to make some observations which could not be always held to be pre-determining the main issue. I don't find any substance in this allegation of bias attributed to the second respondent.

For the reasons stated above I am of the view that no relief can be granted to the petitioners.

Writ petition is accordingly dismissed. Rule discharged.