

(2021) 09 J&K CK 0055

In the Jammu And Kashmir High Court

Case No : Civil Miscellaneous (M) No. 131, 6056 Of 2021

Muzaffar Rashid Wani

APPELLANT

Vs

District Registrar, ADC, Anantnag & Anr

RESPONDENT

Date of Decision : 30-09-2021

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Registration Act, 1908 — Section 72(1)
Code Of Civil Procedure, 1908 — Section 115

Citation : (2021) 09 J&K CK 0055

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : M. A. Qayoom, Mohammad Ashraf Bhat, Mian Muzaffar, B. A. Dar

Final Decision : Disposed Of

Judgement

Ali Mohammad Magrey, J

1. This Petition, filed under Article 227 of the Constitution of India, is directed against the Order dated 31st of August, 2021 passed by the Respondent No.2/ Sub-Registrar, SDM, Pahalgam, whereby the Respondent No.2 has refused to register the 'Sale Deed' dated 15th of June, 2021 titled 'Mohammad Shafi Gojer Chaohan' in favour of the Petitioner herein.

2. The case set up by the Petitioner, in this Petition, is that he purchased land measuring 03 Kanals falling under Khasra No. 101 Min; Khata No. 05; and Khewat No. 01, along with double storeyed house, situate at Khelan Gujran, Tehsil Sellar, District Anantnag from one Mohammad Shafi Gujjar Chowhan S/o Soba Gujjar Chowhan R/o Khelan, Gujran, Tehsil Saller, District Anantnag, by virtue of a 'Sale Deed' executed on 15th of June, 2021. It is stated that the said 'Sale Deed' was presented for registration before the Respondent No.2 through online mode on 28th of June, 2021, after completing all the requisite formalities and, accordingly, the date of Registration was given on 29th of June 2021 at 11.10 AM. It is further stated that at the time of execution of the 'Sale Deed', the

Vendor delivered the possession of the sale property to the Vendee/ Petitioner, whereafter the Petitioner took the possession of the purchased property at the time of execution of 'Sale Deed' after paying full sale consideration amount to the Vendor. Thereafter, the Petitioner, as stated, informed the Vendor to cause his appearance before the Respondent No. 2 for registration of the 'Sale Deed', along with the witnesses, but the Vendee stated that since he is not well as such next date may be fixed for registration for registration of 'Sale Deed'. The Petitioner, thereafter, claims to have waited for some time for convenience of the Vendor and, ultimately, on 20th of August, 2021, the Vendor, through his Counsel, caused his appearance before the office of Respondent No.2 and asked for some time, as such, the date of Registration was fixed on 27th of August, 2021, but on 24th of August, 2021, one Mohammad Iqbal Chopan filed an application before the Respondent No. 2 stating therein that the 'Sale Deed' may not be registered till further orders as he has filed a civil Suit against the Vendor, as a consequence thereof, notice was issued to the Vendor to cause his appearance before the Respondent No.2 on 27th of August, 2021. Ultimately, the Respondent No.2 is stated to have refused the registration of 'Sale Deed' vide Order dated 31st of August, 2021. It is this Order of refusal of registration of 'Sale Deed' that has been assailed by the Petitioner herein this Petition on the grounds detailed out in the Petition.

3. Objections stand filed on behalf of Respondent No.2, wherein it is stated that the registration of the 'Sale Deed' was refused on the ground that the Vendor remained absent on the appointed date, whereafter, on the request of the Petitioner, the Vendor was summoned who partly refused execution of the 'Sale Deed' by stating that even though he admits the signing of the document, but did not accede to its contents. It is pleaded that the contention of the Petitioner to the effect that the possession of the property has already been delivered to him pursuant to execution of the 'Sale Deed' was denied by the Vendor. The Respondent No.2 has also stated that one Iqbal Chowhan S/o Gulzar Ahmad Chowhan R/o Khelan Gojran (nephew of the Vendor), presented an Order passed by the learned Additional Special Mobile Magistrate, Pahalgam, whereby the Defendants, including the vendor, stand restrained from creating any third party interest in the said land subject matter of the 'Sale Deed', constraining the Respondent No.2 to refuse the registration of the 'Sale Deed'.

4. Mr M. A. Qayoom, the learned Counsel, appearing on behalf of the Petitioner, submitted that the impugned Order of refusal has been passed by the Respondent No. 2 in violation of the mandate of the scheme of law provided in the Registration Act, 1908 (hereinafter referred to as "the Act").

It is further submitted that the Respondent No.2 could not have refused to register the document merely on the ground that the civil Suit is pending with regard to the property subject matter of the said document. It is pleaded that once the vendor admitted the execution of the 'Sale Deed' as well as contents thereof, but avoided registration of the same on ulterior motive, then, in such

eventuality, the Respondent No.2 was legally bound to register the document by making an endorsement that the Vendor is not coming forth for signing the document before him. In this backdrop, Mr Qayoom argues that the Respondent No.2 has not exercised his jurisdiction as vested in him under the Act. In support of his contentions, the learned Counsel has referred to and relied upon the following judgments rendered by the Apex Court:

- i. Gafur Khan & Ors. v. State of Rajasthan & Ors.-(AIR 2003 Rajasthan 233);
- ii. Vaid Family Charitable Trust & Anr. v. State of Haryana & Ors.-(AIR 2012 Punjab and Haryana 1); and
- iii. Himalayan Co-operative Group Housing Society v. Balwan Singh & Ors.-(AIR 2015 Supreme Court 2867).

5. Mr B. A. Dar, the learned Senior Additional Advocate General, appearing for the Respondents, besides reiterating the contentions raised in the Objections so submitted, raised a preliminary objection with regard to the maintainability of the instant Petition before this Court by stating that the Petition is not maintainable in view of the availability of an alternate and efficacious remedy of appeal under Section 72 (1) of the Act to the Petitioner. The learned Senior Additional Advocate General contended that the Petitioner, instead of approaching this Court by filing the Petition in hand, had the alternate and efficacious remedy of filing an appeal before the Registrar to whom the Respondent No.2/ Sub-Registrar, SDM, Pahalgam, was subordinate in tune with the mandate of Section 72 (1) of the Act.

6. With regard to the aforesaid preliminary Objection raised by the learned Senior Additional Advocate General qua availability of alternate and efficacious remedy of appeal, Mr Qayoom, in rebuttal, submitted that the existence of an alternate remedy does not, by itself, bar this Court from exercising its jurisdiction in certain contingencies. It is pleaded that since the Respondent No.2 has not exercised its jurisdiction in accordance with the scheme of law, as such, the Petitioner, despite availability of alternate remedy, is well within his rights to approach this Court for seeking enforcement of his rights guaranteed under the Constitution. In this behalf, the learned Counsel has referred to and relied upon a latest judgment rendered by the Supreme Court in Civil Appeal No. 5728 of 2021 titled 'M/s Magadh Sugar and Energy Ltd. v. The State of Bihar' decided on 24th of September, 2021.

7. Having heard the learned Counsel for the parties, it has become necessary to deal with the first and foremost issue of maintainability of the present Petition before this Court in view of the availability of alternate remedy of appeal to the Petitioner in terms of Section 72 (1) of the Act.

8. Keeping the aforesaid issue in mind, what requires to be stated is that the Legislature, in order to consolidate the enactments relating to the Registration of Documents, has enacted an Act known as the Registration Act, 1908 so as to

guard against fraud by obtaining a contemporaneous publication and an unimpeachable record of each document. In this Act, there is a Section numbered as 72 running under the caption 'Appeal to Registrar from orders of Sub-Registrar refusing registration on ground other than denial of execution'. Sub-Section 1 to this Section provides as under:

"Except where the refusal is made on the ground of denial of execution, an appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-Registrar is subordinate, if presented to such Registrar within thirty days from the date of the order; and the Registrar may reverse or alter such order."

Perusal of the aforesaid provision of law makes it clear beyond any shadow of doubt that the Order of refusal of registration by a concerned Sub-Registrar is appealable before the Registrar to whom such Sub-Registrar is subordinate. In the case in hand, the 'Sale Deed' executed by the Petitioner with the Vendor has been refused registration by Respondent No.2/ Sub-Registrar, SDM, Pahalgam, vide Order dated 31st of August, 2021 on the grounds detailed out in the Order itself, so the remedy available to the Petitioner was to file an appeal under Section 72(1) of the Act before the Registrar to whom the Sub-Registrar concerned was subordinate to. That being the position of law, the Petitioner, instead of filing this Petition before this Court against the Order of refusal of registration of the 'Sale Deed', ought to have filed an appeal before the Registrar in tune with the mandate of Section 72(1) of the Act. If such a course, as resorted to by the Petitioner, is accepted, then the scheme of the Act itself would become redundant as every litigant, aggrieved of the refusal of registration of document by a Sub-Registrar, may approach this Court by filing Petition instead of availing the statutory remedy of filing appeal before the appellate authority. Therefore, I find force in the preliminary objection so raised by the learned Senior Additional Advocate General with regard to maintainability of this Petition in view of availability of alternate remedy of appeal to the Petitioner in terms of the mandate of Section 72(1) of the Act.

9. True it is that the settled legal position envisages that the presence of an alternate remedy does not bar this Court from exercising its jurisdiction in certain contingencies, however, in this behalf, the Apex Court of the country, in its various judicial dictums, has framed certain principles on the basis of which the High Court can exercise jurisdiction in a case despite there being an alternate remedy available to the litigant. These principles provide exception to the rule of alternate remedy where:

- a. The Writ Petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution;
- b. There has been a violation of the principles of natural justice;
- c. The order or proceedings are wholly without jurisdiction; and

d. The vires of a legislation is challenged.

Applying the aforesaid principles to the facts and circumstances of the case in hand, what can be seen from the naked eye is that the case of the present Petitioner does not fall within any of the above enumerated principles so as to come within the exception to the rule of alternate remedy.

10. Apart from the above, since the instant Petition is filed by the Petitioner under Article 227 of the Constitution of India, it also needs must be said here that the Supreme Court, while dealing with the issue of the scope of the High Court in exercising jurisdiction under Article 227 of the Constitution, in a landmark judgment rendered in case titled 'Shalini Shyam Shetty v. Rajendra Shankar Patil' reported as '2010 (8) SCC 329', has formulated the following principles:

"(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh (supra) and the principles in Waryam Singh (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in Waryam Singh (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, 'within the bounds of their authority'.

(f) In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity

in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words, the jurisdiction has to be very sparingly exercised.

(i) High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of L. Chandra Kumar vs. Union of India & others, reported in (1997) 3 SCC 261 and therefore abridgement by a Constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality."

On an appreciation of the aforesaid principles laid down by the Apex Court of the

country with regard to exercise of jurisdiction by the High Court under Article 227 of the Constitution of India, what can be seen is that the present case does not fall in any of the aforesaid principles evolved by the Supreme Court.

11. The afore being the settled position of law, I of the considered opinion that the right and proper course in this case is to dispose of the instant Petition giving liberty to the Petitioner to avail the statutory alternate remedy of filing appeal before the authority as provided under Section 72 (1) of the Act against the impugned Order of refusal of registration of the document passed by the Respondent No.2. Ordered accordingly to the said extent. It is, however, made clear here that in case the appeal is filed by the Petitioner, as aforesaid, the period right from the date of filing of the Petition before this Court till the date of announcement of this Order shall be excluded for purpose of limitation prescribed under the Act in filing the said appeal. It goes without saying that this Court has not expressed any opinion with regard to the merits of the case qua the validity of the impugned Order dated 31st of August, 2021 and that the same shall be gone into and considered by the appellate authority as and when any such appeal is filed before it.

12. Disposed of as above, along with the connected CM(s).