

(1954) 08 MP CK 0001

In the Madhya Pradesh High Court

Case No : C. Miscellaneous Case No. 17 of 1952

Nyadar Singh

APPELLANT

Vs

Chen Singh

RESPONDENT

Date of Decision : 05-08-1954

Acts Referred:

Constitution of India, 1950 — Article 226
Registration Act, 1908 — Section 23, 25, 28, 31, 52

Citation : AIR 1955 MP 205

Hon'ble Judges : Dixit, O.C.J.; Chaturvedi, J

Bench : Division Bench

Advocate : Chitale, for the Appellant; Gokhale, for the Respondent

Judgement

Dixit, Offg., C.J.—By this petition under Art. 226 of the Constitution of India the applicant Nyadarsmgh seeks a writ in the nature of "certiorari" for quashing an order of the Registrar, District Nimar, cancelling the registration of a sale deed executed by the opponent Chensingh in favour of the petitioner.

2. The facts out of which this petition arises are as follows:

On 17-3-1951 Chensingh sold to the petitioner a house belonging to him for a sum of Rs. 200/- and executed a document of sale. On the same day he presented the document in the office of the Sub-Registrar, Khargone, for registration. As the Sub-Registrar was out, the document was received by a clerk in the office and no endorsement required by S. 52, Registration Act could be made on the document.

Nothing happened after the presentation of the document till 30-12-1951 when Nyadarsingh made an application to the Registering Officer complaining that Chensingh was avoiding appearing before the Sub-Registrar for the registration of the sale deed and that he be compelled to appear before the Sub-Registrar. On this application a notice was issued to Chensingh to show cause why the sale deed should not be registered.

In response to this notice Chensingh appeared before the Sub-Registrar, and while not denying the execution of the sale deed raised various objections to the registration of the deed. The Sub-Registrar overruled Chensingh's objections and passed an order on 3-3-1952 directing the registration of the sale deed. Chensingh then preferred an appeal before the Registrar.

In appeal the Registrar took the view that as at the time of presentation of the document on 17-3-1951, the Sub-Registrar was absent and the document was received by a clerk in his office, there was no valid presentation of the document under S. 23, Registration Act; that the sale deed would be deemed to have been presented on 3-2-1952 when the clerk who received the document placed it for the first time before the Sub-Registrar, and that as on 3-2-1952, the eight months' time within which the document could have been presented from the date of its execution after con-donation of the delay under S. 25 of the Act, had already exceeded, the document could not be registered under S. 31 of the Act. He, therefore, passed an order cancelling the registration of the deed.

3. On 17-3-1951, When Chensingh presented the document in the office of the Rub-Registrar, the Madhya Bharat Registration Act (Act No. 48 of 1919) was in force. The provisions of this Act were in no way different from those of the Indian Registration. Act; in order to avoid constant reference to the provisions of corresponding sections of both the Acts, I will only refer for the sake of convenience to the material section of the Indian Registration Act.

4. There is no dispute as to the facts. The argument of Mr. Chitale, learned counsel for the petitioner, is that under Ss. 23 and 23 a document is duly presented if it is presented in the office of the Sub-Registrar within whose sub-district the whole or some portion of the property to which the document relates is situated and that it is not necessary that the document should be banded over to the Sub-Registrar personally; that the presentation on 17-3-1951 by Chensingh of the sale deed in the office of the Sub-Registrar was, therefore, a valid presentation; that registering officer having thus got jurisdiction by the proper presentation of the document, the failure to follow the procedure laid down by S. 52 of the Act, and the appearance of the executants more than 4 months after the execution of the document without the delay being condoned by the Registrar could not vitiate the registration proceedings, and that in any case the Registrar had no power under the Registration Act to cancel the registration of a document by the Sub-Registrar.

5. In my opinion all these contentions advanced on behalf of the petitioner are well founded and must be accepted. Under S. 23 a document other than a will must be presented for purposes of registration to the proper officer within 4 months from the date of its execution. Section 28 says that every document mentioned in the sections referred to therein shall be presented for registration in the office of the Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate.

On reading these sections together it is plain that the proper officer to whom a document must be presented is the Sub-Registrar within whose sub-district the whole or some portion of the property to which the document relates is located, and that the document must be presented in the office of the Sub-Registrar. There is nothing in these provisions to indicate that the physical act of receiving a document in the office must be done by the Sub-Registrar himself.

It is true that the clerk who received the sale deed omitted to put it up before the Sub-Registrar until 3-2-1952, and that as the Sub-Registrar was not present in his office on 17-3-1951, the particulars required by S. 52 of the Act could not be endorsed upon it. But these are omissions and defects for which the person presenting the document was in no way responsible. The document having been validly presented to the registering officer having jurisdiction, the Registrar was not justified in cancelling the registration on the grounds that he did. The decisions of the Privy Council which have been noted in Chitale's Registration Act 1945 1st Edn. at p. 316, clearly lay down the principle that when once the registering officer gets jurisdiction by the proper presentation of the document a failure to follow the procedure prescribed by S. 52 is only a defect in procedure curable under S. 87 of the Act and that on account of this omission or for the reason that the executant did not appear before the Sub-Registrar within the time prescribed by the Act, the registration of the document if effected is not rendered invalid.

The order of the Registrar cancelling the registration effected by the Sub-Registrar cannot, therefore, be upheld.

6. In fact the Registrar had no jurisdiction to entertain an appeal from the decision of the Sub-Registrar registering the document. Under the Registration Act the decision of the Sub-Registrar has been made final subject to an appeal under S. 72 to the Registrar. Under tin's section an appeal lies only against an order refusing to admit a document to registration on grounds other than the denial of execution.

The Act does not provide for any appeal against an order of the Sub-Registrar admitting a document to registration. Learned counsel for the opponent said that the Registrar cancelled the registration of the sale deed in the exercise of his powers under S. 68 of the Act.

This section only provides that every Sub-Registrar shall perform the duties of his office under the superintendence and control of the Registrar and that every Registrar shall have authority to issue any order consistent with the Act, to any Sub-Registrar in respect of any act or omission on his part or in respect of rectification of any error regarding the book or the office in which any document has been registered. To me it appears that S. 68 only empowers the Registrar to issue directions to the Sub-Registrars in respect of their ministerial functions and duties.

That section does not confer on the Registrar the power of cancelling the

registration of a document, the execution of which is not denied and which has already been registered by a Sub-Registrar. I am fortified in this view by a decision of the Lahore High Court in -- AIR 1933 786 (Lahore) , where it has been pointed out that under the Registration Act, the Registrar has no power to cancel a registration already completed by the Sub-Registrar and that S. 68(2) does not confer any such power on the Registrar. In my opinion, the order of the Registrar dated 9-4-1952, cancelling the registration was absolutely unauthorised.

7. Mr. Gokhale learned counsel for the opponent Chensingh urged that the petitioner was not entitled to any relief under Art. 226 as he had remedy by way of a suit under S. 77, Registration Act. This contention must be rejected. Section 77 has no relevance whatsoever in the present case.

In order to maintain a suit under S. 77 there must be first refusal to register by the Sub-Registrar and an appeal within time to the Registrar.

In the present case there has been no refusal by the Sub-Registrar and no appeal against any order of the Sub-Registrar refusing to register the sale deed. Learned counsel did not indicate the nature of the suit which the petitioner could file independently of S. 77.

Even assuming that it is open to the petitioner to file a suit for setting aside the Registrar's decision or a suit for registration, or a suit for specific performance of the contract, or for possession of the property I do not think this doubtful remedy of a suit can be regarded as equally convenient and) efficacious remedy when the Registrar had clearly no power to cancel the registration of a document made by the Sub-Registrar, and the execution of the document validly presented had not been denied by the opponent.

The sheet anchor of the opponent's--contention is that he has not received any consideration for the sale. If the opponent has not received the full price or any part of the price his obvious remedy is to file a suit for its recovery claiming a charge against the property sold. So far as the due execution and registration of the document is concerned it is wholly immaterial whether the consideration for the sale was or was not paid. The payment of the consideration is a matter which the opponent has to contest only in a regular constituted suit.

8. For the above reasons I would set aside the order dated 9-4-1952 of the Registrar, District Nimar cancelling the registration of the sale deed executed by Chensingh on 15-3-1951 in favour of the petitioner. Having regard to the nature and peculiar circumstances of the case there will be no order as to costs of this petition.

Chaturvedi J.:

9. I agree.