

(2008) 09 AP CK 0087

In the Andhra Pradesh High Court

Case No : Writ Petition No. 18357 of 2005

P. Manikyam and Another

APPELLANT

Vs

The Sub-Registrar and Others

RESPONDENT

Date of Decision : 24-09-2008

Acts Referred:

Andhra Pradesh Stamp (Prevention of Under Valuation of Instruments) Rules, 1975 —
Rule 3(1), 3(2), 3(3), 3(4)
Limitation Act, 1963 — Article 59
Registration Act, 1908 — Section 19, 20, 21, 23, 24
Specific Relief Act, 1963 — Section 34
Stamp Act, 1899 — Section 2(12), 47A

Citation : (2008) 6 ALD 268 : (2008) 4 APLJ 57 : (2009) 3 CivCC 133 : (2009) 106 RD 53

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : K. Subrahmanya Reddy for T. Venkat Reddy, for the Appellant; G.P. for Revenue for R.1 to R.3 and Ravi Cheemalapati, for R.4, for the Respondent

Final Decision : Dismissed

Judgement

C.V. Nagarjuna Reddy, J.—This Writ Petition is filed for a Writ of Certiorari to quash order dated 26-7-2005 in A.P. No. 1 of 2002 passed by District Registrar, Vizianagaram, respondent No. 2.

2. Under document dated 2-8-2002 an extent of Ac.1.08 cents of dry land in old Survey No. 197/1 (New Survey Nos. 197/2CP and 197/2E.2P) of Kothavalasa village and Mandal, Vizianagarm District, was purported to be sold in favour of respondent No. 4 by the petitioners for a sale consideration of Rs. 1.00 lakh. The said document described the names of as many as 15 persons, including the two petitioners herein, as the vendors. However, it was signed by the petitioners alone. The said document was presented for registration by respondent No. 4 before respondent No. 1. On receipt of the said document, respondent No. 1 issued summons to the petitioners. On 24-10-2002 the petitioners were present

before respondent No. 1. On 28-10-2002 respondent No. 1 passed order, whereby he refused to register the document on the ground that as the petitioners did not speak anything about the execution of the sale deed, their silence was treated as willful denial of execution of the document. Thereupon, respondent No. 4 filed an application before respondent No. 2 u/s 73 of the Indian Registration Act, 1908 (for short "the Registration Act"). Respondent No. 2 issued summons to both the parties and recorded their oral testimony. Respondent No. 4, apart from examining himself as PW.1, examined PWs.2 and 3 (the attestors) and PW.4 (the scribe). On behalf of the petitioners, petitioner No. 1 was examined as RW.1. Respondent No. 2 also admitted Exs.A.1 to A.3 - the pattadar passbook, title deed and the document in question respectively. After considering the oral and documentary evidence, respondent No. 2 held that he was satisfied that the petitioners duly executed the document and that the provisions of Sections 19, 20, 21, 23 and 32 of the Registration Act have been duly complied with. Accordingly, respondent No. 2 directed respondent No. 1 to register the suit document.

3. In the counter-affidavit filed by respondent No. 4 it is averred that respondent No. 1 registered the document on 30-7-2005, even before an interim order was passed by this Court on 20-8-2005 in this Writ Petition.

4. At the hearing, Sri K. Subrahmanya Reddy, learned Senior Counsel for the petitioners, submitted that the order of respondent No. 2 directing registration of the document suffers from manifest errors and resulted in registration of a document in violation of the mandatory statutory provisions. He further submitted that while the suit document was prepared in the names of as many as 15 persons, only two persons have signed at the time of registration, and that, therefore, the same is not liable for registration. Section 32A of the Registration Act, contends the learned Senior Counsel, makes it mandatory that every person presenting any document at the proper registration office u/s 32 shall affix his passport size photograph and fingerprints to the document and that where such document relates to the transfer of ownership of immovable property, the passport size photograph and fingerprints of each buyer and seller of such property mentioned in the document shall also be affixed to the document. The learned Counsel contended that no such procedure is followed. He also contended that the petitioners were made to sign the document by respondent No. 4 by misrepresenting that the same was only a lease deed; that the petitioners bonafide signed the document and later realized that the document prepared was one for an outright sale and that, therefore, they did not agree for registration. He further submitted that under Sub-rule (2) of Rule 3 of the A.P. Stamp (Prevention of Under Valuation of Instruments) Rules, 1975 (for short "1975 Rules"), the registering officer shall, before registering an instrument, satisfy himself that the party has enclosed to the instrument a statement, giving the market value in respect of each of the properties separately, as required by Sub-rule (1); and that without due compliance of the said rule, the property was registered at an unduly low value of Rs. 1.00 lakh

against the market value of Rs. 19,36,000/-.

5. Opposing the contentions of the learned Senior Counsel for the petitioners, Sri Ravi Cheemalapati, learned Counsel for respondent No. 4, submitted that the scope of enquiry into an application made u/s 73 is confined only to two aspects, viz., whether the document has been executed and whether the requirements of law for the time being in force have been complied with on the part of the applicant or the person presenting the document for registration, as the case may be, so as to entitle the document for registration. He contends that after holding a detailed enquiry by recording the oral evidence of the parties, respondent No. 2 has come to a conclusion that the petitioners executed the document and respondent No. 4 complied with the requirements of law for its registration. The learned Counsel submitted that if the petitioners have any grievance against respondent No. 4, on account of the alleged misrepresentation as to the nature of the transaction, they can avail the remedy of civil suit u/s 34 of the Specific relief Act, 1963 read with Article 59 of the Limitation Act, 1963.

6. The learned Government Pleader for Revenue supported the contentions of the learned Counsel for respondent No. 4.

7. In order to decide whether the order of respondent No. 2, impugned in this Writ Petition, suffers from any legal or jurisdictional error warranting this Court's interference, it is necessary to examine the legal position concerning registration of a document.

8. Section 32 of the Registration Act envisages presentation of documents for registration except in cases mentioned therein by some person executing or claiming under the document, by the representative or assign of such person or by the agent of such person, representative or assign, duly authorized by power-of- attorney etc.

9. Sub-Section (1) of Section 34 imposed a bar on registration of the documents subject to the provisions of Sections 41, 43, 45, 69, 75, 77, 88 and 89; unless the person executing such document, or their representatives, assigns or agents authorized, appear before the registering officer within the time allowed for presentation under Sections 23, 24, 25 and 26. Sub-Section (3) mandates that the registering authority shall enquire whether or not such document was executed by the persons by whom it purports to have been executed; satisfy himself so as to the identity of the persons appearing before him and alleging that they have executed the document; and, in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

10. u/s 35(1)(a), if all the persons executing the document appear personally before the registering officer and the Registrar is satisfied about their identity; if all those persons appearing on their behalf admit about the execution of the document; or if the person executing the document is dead, and his representative or assign appears before the registering officer and admits the

execution, the registering officer shall register the document as directed in Sections 58 - 61. Sub-Section 3(a) provides that if any person by whom the document purports to be executed denies its execution, or if any such person appears to the registering officer to be a minor, an idiot or a lunatic, or if any such person by whom the document purports to be executed is dead, and his representative or assign denies its execution, the registering officer shall refuse to register the document as to the person so denying, appearing or dead.

11. u/s 71, every Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub-district, shall make an order of refusal and record his reasons for such order in his Book No. 2 and endorse the words "registration refused" on the document; and, on application made by any person executing or claiming under the document, he shall give a copy of the reasons so recorded, without payment.

12. Section 72 provides for an appeal to the Registrar from the orders of Sub-Registrar refusing registration on ground other than denial of execution.

13. u/s 73 an application, in writing, shall lie to the Registrar against the order of refusal to register a document passed by a Sub-Registrar.

14. Section 74 postulates that where such an application is filed, the Registrar shall enquire: (a) whether the document has been executed; and (b) whether the requirements of the law for the time being in force have been complied with on the part of the applicant or person presenting the document for registration, as the case may be, so as to entitle the document for registration.

15. u/s 75(1), if the Registrar finds that the document has been executed and that the said requirements have been complied with, he shall order the document to be registered. Under Sub-section (2), if the document is duly presented for registration within thirty days after the making of such order, the Registering officer shall obey the same and thereupon shall, as far as may be practicable, follow the procedure prescribed in Sections 58, 59 and 60.

16. u/s 77, where the Registrar refuses to order the document to be registered u/s 72 or 76, the aggrieved person is entitled to institute a civil suit for a decree to direct the document to be registered.

17. The scope of Sections 35 and 77 of the Registration Act fell for consideration of the Madras High Court in *Alluru Bapanayya v. Chintalapati Bangarraju* AIR 1949 Mad 775. In that case, against an order of the Registrar refusing to register the sale deed, the aggrieved party filed a civil suit. The said suit was dismissed by the lower appellate Court against which a Second Appeal was filed in the Madras High Court. The ground on which the suit was dismissed was that the defendant did not execute the deed understanding it to be a sale deed and that his finger impression was taken by representing that he has to attest a document i.e., sale deed executed by his brother in favour of plaintiff. While dealing with the said case, Viswanatha Sastri, J. held:

In a suit u/s 77, Registration Act, the civil Court has got to do only what the registering officer should and could have done under the powers conferred on him by the Registration Act. The Court should be guided by the same considerations which guide the Registrar in registering or refusing to register a document presented to him. u/s 35, Registration Act, a Registrar is bound to register a document if the ostensible executant admits his signature to the document. This is the admission of execution referred to in Section 35, Registration Act. If a person admitting his signature or thumb impression proves that he signed it under a misapprehension believing it to be a different kind of document from what it was or that he was induced to sign the document as a result of a deception practised upon him and that he was, therefore, unaware of the real nature of the document, it is a ground for setting aside the document or having it adjudged void and inoperative in an ordinary suit in a civil Court. But neither the Registrar nor the Court in a suit u/s 77, Registration Act, has jurisdiction to enter into these questions. In a suit u/s 77, the Court is concerned with two questions, (a) whether the document has been executed, that is to say, whether the document bears the genuine signature of the executant or his thumb impression if he is unable to sign his name; and (b) whether the requirements of the law for registering documents have been complied with. If these points are decided in favour of the plaintiff, then registration ought to be directed. The Court cannot, in such a suit, go into such defences as whether the document was obtained by fraud or misrepresentation or even a defence that the mind of the executant did not accompany his signature.

In my considered view, this judgment of the Madras High Court applies in all fours to this case. The petitioners in this case, while admitting that they have signed the document, however, disputed execution of the document on the ground that respondent No. 4 misrepresented to them about the nature of the document and they were induced into signing the document as a result of deception. While deciding the application filed u/s 73, the Registrar is required to enquire into whether the document has been executed and whether the requirements of the law have been complied with. The word "execution" is not defined in the Registration Act. But, Section 2(12) of the Indian Stamp Act, 1899 defined the words "executed" and "execution" with reference to the instruments as to mean "signed" and "signature". Therefore, in the absence of a separate definition of "execution" available in the Registration Act, it is reasonable to understand the word "execution" in the light of its definition under the Indian Stamp Act. It, therefore, follows that when once the executant admits his signature on the document, it constitutes admission of execution. The only other condition to be specified for directing registration of a document by the Registrar is whether the requirements of law for the time being in force have been complied with or not. As held in *Bapanayya* (1 supra), if the executant seeks to impeach the validity of the very document, which is sought to be registered, he is entitled to invoke the jurisdiction of the competent civil Court for an appropriate relief.

Sri K. Subrahmanya Reddy, learned Senior Counsel, however, placed heavy reliance on the judgment of the Madras High Court in Sekar Mudaliar and etc Vs. Shajathi Bi and Another, and argued that if the presentation of deed for registration was ab initio defective, such initial defect in presentation for registration affects the very registration of the document.

I have gone through the said judgment. In that case, a settlement deed executed by the settler was presented by his power of Attorney for registration on 16-3-1948 while the settler himself died on 6-3-1948. Both the trial Court and the lower appellate Court held that with the death of the settler, the Power of Attorney itself seized to be valid and that, therefore, the very presentation was defective ab initio and its registration was without jurisdiction. The Madras High Court, in the Second Appeal, affirmed the judgment of the Court below. I do not find that this judgment would be of any help to the petitioners. Though the learned Counsel for the petitioners strenuously contended that the requirements of Section 32A of the Registration Act have not been complied with and, hence, the presentation of the document itself for registration is invalid, I have not felt convinced to accept this contention.

Section 32A, which was introduced by way of an amendment by Act 48 of 2001, envisages that where a document relates to the transfer of ownership of immovable property, the passport size photograph and fingerprints of each buyer and seller of such property mentioned in the document shall also be affixed to the document. This provision was evidently introduced to prevent impersonation of all the parties to the transaction and fraud. In my considered view, this provision cannot be pressed into service when one or all the executants refuse to co-operate in the registration. Such a situation is covered by the provisions of Section 75(2), which reads as under:

75(2). If the document is duly presented for registration within thirty days after the making of such order, the Registering officer shall obey the same and thereupon shall, so far as may be practicable, follow the procedure prescribed in Sections 58, 59 and 60.

The above-reproduced provision is not correspondingly amended by including Section 32A in it. Indeed, if registration is rejected on the ground of noncompliance with Section 32A, the very purpose of providing a remedy u/s 73 of the Act will be rendered nugatory because invariably the persons who suffered an order u/s 73 will not co-operate in affixing his passport size photographs and finger prints to the document.

18. As regards the contention of the learned Senior Counsel that while 15 persons are purported to have executed the suit document, only two persons have signed and, therefore, the document itself is invalid. I find this submission equally without merit. Though the names of 15 persons are mentioned, the petitioners alone signed the document. Mere mentioning of the names of 15 persons does not amount to execution of document by all of them, unless they

sign the document. It is worthwhile to refer to Section 35(3) of the Registration Act, 1908 in this connection. The said provision to the extent it is relevant reads as follows:

35 (3)(a): If any person by whom the document purports to be executed denies its execution, or

(b) If any such person appears to the registering officer to be a minor, an idiot or a lunatic, or

(c) if any such person by whom the document purports to be executed is dead, and his representative or assign denies its execution,

the registering officer shall refuse to register the document as to the person so denying, appearing or dead.

19. From this provision it is clear that even if one or more of the persons, who are present in response to the notice issued by the Registrar, deny execution of the document, the Registering Officer shall refuse to register the document qua such person/persons. Thus, mere denial of execution by some of the parties to the document does not render the document unworthy of registration. This being law, non-execution of document by the 13 persons is of no consequence at all. I am fortified in this view of mine by the judgment of the Madras High Court in *S. Rangaraju Vs. Sulochana Ammal*, . In the said case, the Madras High Court went into the historical background of Section 35 and the reason for introduction of Section 35(3) by way of a subsequent amendment. A similar contention, as above, was repelled by the Madras High Court and held that there is no question of character of the document changing simply because registration is directed in respect of one of the executants of the document leaving the others, who denied execution.

20. As regards the last contention of the learned Senior Counsel for the petitioners that the provisions of Rule 3(2) of the 1975 Rules were not complied with, it is no doubt true that the registering officer shall, before registering an instrument, satisfy himself that the party has enclosed to the instrument a statement, giving the market value in respect of each of the properties separately; under Sub-rule (3) he is entitled to make enquiries with reference to the market value; and under Sub-rule (4) if he is of the opinion that the market value of the property is not correctly furnished, he shall keep the document pending and without delay refer the matter to the Collector for determination of the market value. In fact, the substantive provision in this regard is contained in Section 47-A of the Indian Stamp Act, 1899. But, in the context of the present case, which mainly arose out of the order passed by respondent No. 2 directing registration, the issue whether valuation statement furnished by respondent No. 4 reflected true market value or not is not relevant and the same will not have any bearing on the decision taken by respondent No. 2 to direct registration of the document, because the direction given by respondent No. 2 shall not be understood by respondent No. 1 to register the document presented by

respondent No. 4 on the basis of the valuation given by him without an enquiry into the market value. However, it is relevant to mention that in the counter-affidavit filed by respondent No. 4 while asserting that the market value of the land was only Rs. 1 lakh per acre he conceded that he is prepared for reference of the document to the Collector u/s 47-A. Since a dispute regarding the valuation is raised, respondent No. 1 is directed to refer the same to the Collector u/s 47-A of the Indian Stamp Act for determination of the correct market value and payment of stamp duty thereon and subject to the decision of the Collector respondent No. 1 shall take consequential action of collecting additional stamp duty along with the penalties, if warranted under the orders of the Collector.

21. A perusal of the order passed by respondent No. 2 shows that he relied on the evidence of petitioner No. 1, who examined himself as RW.1 and admitted execution of document by him and petitioner No. 2, his son. The approach of respondent No. 2 in not considering the rest of his testimony, which pertained to the invalidity of the document on the ground of misrepresentation by respondent No. 4 about the true nature of the document, is in conformity with the settled principles of law, as discussed above. Apart from admission of petitioner No. 1, respondent No. 2 also relied on the oral evidence of PWs.1 to 4, of whom PWs.2 and 3 are the attestors and PW.4 is the scribe, in whose presence the petitioners executed the document. He also gave a finding that the document conforms to law by referring to the provisions of Sections 19, 20, 21, 23 and 32 of the Registration Act. Therefore, I do not find any legality in the order passed by respondent No. 2 in directing registration of the document in question.

22. For all the above-mentioned reasons, the Writ Petition is dismissed with liberty to the petitioners to avail the remedy of civil suit to question the validity of the document executed by them.