
(1998) 02 PAT CK 0020
In the Patna High Court
Case No : C.W.J.C. No. 4981 of 1986

Ramdeo Rai

APPELLANT

Vs

Collector and Others

RESPONDENT

Date of Decision : 05-02-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Registration Act, 1908 — Section 23
Stamp Act, 1899 — Section 29

Citation : (1998) 2 BLJR 1172 : (1998) 1 PLJR 666

Hon'ble Judges : Chaudhary S.N. Mishra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Chaudhary S.N. Mishra, J.—In this writ application under Articles 226 and 227 of the Constitution of India the petitioner has prayed for quashing the order dated 27.2.1986 passed by respondent District Sub-Registrar, Vaishali at Hajipur, by which he has allowed the appeal filed by the Private respondent Ram Chandra Rai and further directed compulsory registration of the sale-deed, as contained in Annexure-1 to this writ application, and also the notice dated 30th September, 1986 issued by the respondent Collector whereby the petitioner has been directed to pay the deficit Court fees as well as the penalty to the tune of Rs. 3,898.40 paise.

2. The fact of this case, in short, is that the petitioner has executed a sale deed with respect to the peace of land bearing R.S. Khata No. 11 and R.S. Plot No. 212 measuring an area of 7 decimals, situated in village Sistaul, P.S. Tisiautta, District Vaishali, in favour of private respondent No. 4 on 1st January, 1979. It is alleged that necessary stamp for registration of the sale deed was purchased on 30.12.78. It is further alleged that the deed was left with scribe and the parties agreed to produce the document for registration on payment of the consideration of the money by respondent No. 4. It is alleged that since the amount has not

been paid despite of several requests made to the respondent, the petitioner ultimately sold the said land through registered sale-deed dated 24.12.79. It has, however, been alleged that respondent No. 4 has presented the deed for registration before the Sub-Registrar, Mahua on 29.1.80 for compulsory registration, copy of the deed has been made Annexure-1 to this writ application. The respondent Sub-Registrar, Mahua, has refused the registration of the deed, in question, since the petitioner did not appear before him, copy of the order is made Annexure-2 to this writ application. The private respondent being aggrieved by the said order of the Sub Registrar has filed an appeal before the respondent District Sub-Registrar and pursuant to the notice issued by the appellate authority, the petitioner appeared and filed objection firstly on the ground that respondent No. 4 made an interpolation in the deed in question with regard to the date and changed the actual date of execution from 1.1.79 to 10.10.79 and the second objection was raised that no consideration money was paid by the respondent. The respondent District Sub-Registrar while upholding the first objection has allowed the appeal and sent the deed, in question, to the Sub-Registrar, Mahua, with a direction to register the document compulsorily since the adequate court-fees were not affixed on the sale-deed. The respondent District Sub Registrar has also referred the matter to the respondent Collector for realisation of the deficit court-fees. The respondent Collector on receipt of the requisition has issued a notice to the petitioner directing him to pay the deficit court-fees as well as the penalty to the tune of Rs. 3898.40 paise, as stated above. In this case no counter affidavit has been filed on behalf of the private respondent.

3. Learned Counsel for the petitioner has challenged the order of the District Sub-Registrar as well as the respondent Collector on the ground firstly that the objection raised by the petitioner with regard to the interpolation of the sale deed having been sustained by the appellate authority, the respondent District Sub-Registrar could not have directed the compulsory registration of the document, in question, being barred by limitation. As stated above, according to the petitioner the deed was executed on 1.1.79 and it was presented for registration on 29.1.80 when the said deed has become barred by limitation in view of Section 23 of the Indian Registration Act. It further stands admitted that the deed, in question, was presented by respondent No. 4 himself and the presumption would be that if any interpolation has been made that has been made by the person who has presented the said deed for registration. In this case, admittedly no enquiry has been held by the District Sub Registrar as to who has made the interpolation in the deed, in question, though he has held that there has been some interpolation in the date of execution of the sale deed. In that view of the matter, the petitioner could not be held responsible for making interpolation in the document, in question. If the document was executed on 1.1.79 and was presented only on 29.1.80 the same is clearly barred by limitation in terms of Section 23 of the Indian Registration Act. The second aspect of the matter is that Section 29 Clause (f) of the Indian Stamp Act

envisaged that the stamp has to be filed by the purchaser of the properties. Admittedly the petitioner has executed the land, in question, in favour of the private respondent who was required to purchase the stamps in view of the provisions of the Indian Stamp Act, as stated above. The respondent Collector without applying his mind to the provisions of the Stamps Act has issued a notice directing the petitioner to file the necessary deficit court-fee stamps and also directed to pay the penalty. I could have straightway quashed the order of the District Sub-Registrar directing compulsory registration of the document, in question, but having regard to the order dated 8.3.88 passed by a Division Bench of this Court whole admitting this writ application, the order reads as follows:

This application is admitted only to the extent of levy of additional stamp duty and 10% penalty on the petitioner and this application is dismissed as regards others.

In the mean time Annexure-4 shall remain stayed.

In that view of the matter, the notice directing the petitioner to pay deficit Court fees along with 10% penalty on the said amount is hereby quashed and this writ application is, accordingly, allowed to that extent but in the facts and circumstances, there shall be no order as to costs.

4. Before, I part with this case I may observe that a specific statement has been made in paragraph 3 to this writ application that since the respondent has failed to pay the consideration money, the petitioner has already sold the land, in question, through registered sale-deed dated 24th December, 1979, i.e. much before the order passed by a Division Bench of this Court, as quoted above, and also before the orders passed, as contained in Annexures 2 and 3. Accordingly, I am not inclined to express any opinion as to the effect of the order passed by this Court, as quoted above, and the law will take its own course.