

(2008) 08 AP CK 0011

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5547 of 2006

Siriki Appalaswamy

APPELLANT

Vs

Sub-Registrar

RESPONDENT

Date of Decision : 01-08-2008

Acts Referred:

Andhra Pradesh Registration Rules, 1908 — Rule 161, 58
Registration Act, 1908 — Section 19, 20, 21, 22A, 34
Transfer of Property Act, 1882 — Section 5, 7

Citation : (2009) 1 ALD 321 : (2009) 1 ALT 101

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : E. Manohar and P. Kamalakar, for the Appellant; G.P. for Revenue, for the Respondent

Final Decision : Dismissed

Judgement

N.V. Ramana, J.—The petitioner claims that he had succeeded to the landed property to an extent of Ac.0.16 cents in Survey No. 43/21, Ac.0.14 cents in Survey No. 43/22, Ac.0.29 cents in Survey No. 43/23, Ac.0.18 cents in Survey No. 43/10 and Ac.0.02 cents in Survey No. 43/9 covered by T.D. No. 1406, situated in Rajayyapet village, Visakhapatnam, from his father, namely Siriki Sanyasi and maternal uncle, namely Rayavarapu Chinnayya, after their death. The petitioner states that his father and maternal uncle purchased the aforesaid property from their vendor, namely Sri Pilla Papayya Patrudu and two others under registered document No. 3861, dated 12-12-1968, registered in the office of the Joint Sub-Registrar, Visakhapatnam, and since then they were in possession and enjoyment of the same. The petitioner states that several of his relatives had also purchased lands in the said survey numbers during the period 18-4-1968 to 1-6-1970.

2. The petitioner states that taking advantage of the non-mutation of their names in the revenue records, the legal heirs of their original vendors, entered

into an Agreement of Sale-cum-General Power of Attorney, dated 19-2-2008 with one Chinta Srinivasa Reddy, resident of Pasalapudi village, Rayavaram Mandal, East Godavari District, to sell a total extent of Ac.2.23 cents of land in different survey numbers - Ac.0.30 cents in Survey No. 43/10, Ac.0.09 cents in Survey No. 44/6, Ac.0.52 cents in Survey No. 44/12, Ac.0.08 cents in Survey No. 44/17, Ac.0.05 cents in Survey No. 53/10, Ac.0.09 cents in Survey No. 53/16, Ac.0.11 cents in Survey No. 56/14, Ac.0.15 cents in Survey No. 56/17, Ac.0.20 cents in Survey No. 60/11 and Ac.0.38 cents in Survey No. 60/14, despite their publishing a notice dated 28-9-2007 through his Advocate in newspapers cautioning the general public not to enter into any transactions for purchase of said lands, as they belong to him.

3. The petitioner states that he submitted objection petition dated 20-2-2008 to the respondent, namely the Sub-Registrar, Pendurthi, Visakhapatnam District, through his advocate not to entertain any document for registration in respect of the lands in question owned by him. As directed by the Registrar, the petitioner states that he submitted a written objection, enclosing copies of decree and sale deeds and requesting the respondent not to receive and register any document to be presented by others because they are not genuine documents. However, the petitioner states that the respondent, vide proceedings dated 20-2-2008 passed orders stating that registration of document cannot be stopped on the ground mentioned in the petition and that he has to take recourse to Court of law, if so advised, and thereafter, the petitioner states that on 25-2-2008, the respondent entertained the document presented by the legal heirs of their original vendors executed in favour of Chintha Srinivasa Reddy alienating the land in question and registered the same as document No. 469 of 2008.

4. The petitioner states that since the ownership of the lands in question was already transferred in their favour under registered sale deed, and they having become absolute owners of the said lands, and they being in possession thereof since the date of purchase, there cannot be any subsequent transaction in respect of the selfsame land either by their original vendors or their legal heirs, as they had lost title to it. The petitioner further states that since he had brought to the notice of the respondent by way of objection petition about the fraudulent transfer being made by the legal heirs of their original vendors in respect of the land in question, the respondent was but bound to consider the objections raised by him and pass a reasoned order, but the action of the respondent in not considering his objection and passing the impugned order directing him to take recourse to Court of law is illegal and arbitrary. He states that the respondent was duty bound to reject registration of document presented by the legal heirs of their original vendors in respect of the land in question for registration, for the land in question was already transferred in their favour, else the respondent would be liable for punishment u/s 81 of the Registration Act, 1908 (hereinafter referred to as "the Registration Act").

5. This Court, initially was not inclined to entertain the writ petition, but since the

learned Senior Counsel Sri E. Manohar, appearing on behalf of the petitioner, sought to project public interest and contended that if the issue raised by him in the writ petition is decided, it would help in curbing multi-registrations in respect of the very same property, by the original owners or their legal heirs, has this Court decided to hear the writ petition. Accordingly, the learned senior Counsel advanced his arguments. He submitted that the original vendors had already sold the property in question to the petitioner's father and maternal uncle under registered document No. 3861, dated 12-12-1968, and after their death the petitioner succeeded to the said property. Since the property in question was already alienated in their favour by the original vendors, the learned Senior Counsel submits that the legal heirs of the original vendors have no right whatsoever to deal with the property in question, much less alienate or sell the same to third parties. He submitted that since the legal heirs of the original vendors, taking advantage of the fact that their names were not mutated in the revenue records, were trying to enter into an agreement of sale in respect of the property in question in favour of third parties, and having regard to the fact that the land in question was already alienated in their favour, the petitioner got issued paper notice cautioning the general public not to enter into any transaction in respect of the land in question. He submitted that since the property in question was purchased by the petitioner's father and maternal uncle, and he having succeeded to the said property after their death, filed an objection petition before the respondent requesting him not to entertain any document to be produced by the legal heirs of the original owners in respect of the land in question for registration, but the respondent without considering the said objection raised by him, has passed orders dated 20-2-2008 stating that registration cannot be stopped on the ground mentioned in the petition and that he may take recourse to Court of law, if so advised, which the learned senior Counsel contends, is illegal and arbitrary.

6. He submitted that though there is no provision in the Registration Act, which enables the registering authority to refuse registration of a document presented for registration, but u/s 71 of the Registration Act, the registering authority is duty bound to consider the objections raised by the party opposing the registration and pass appropriate orders by recording his reasons which is appealable u/s 72 of the Registration Act. The consideration of objections by the registering authority with respect to receiving and registration of a document presented for registration shall be made with reference to the entries made in (A) Book-1 - Register maintained u/s 51(1) of the Registration Act, and if upon reference, the Registering Authority finds that the property covered by the document presented for registration was already registered, he is duty bound to refuse to receive and register the same by informing the person who presented the document for registration that if he entertains and registers such a document, he would be liable for penalty u/s 81 of the Registration Act. He submitted that had the Registering Authority undertaken this exercise, he would have detected the fraud played by the legal heirs of the original vendors on the

petitioner, but the Registering Authority, namely the respondent herein, without considering the objections raised by the petitioner, has passed the impugned order, stating that the registration of document cannot be stopped on the ground mentioned in the petition and that the petitioner may take recourse to court of law, and by doing so, the registering authority has abdicated the duty vested in him u/s 71 of the Registration Act.

7. He submitted that the power vested in the Registering Authority u/s 71 of the Registration Act, cannot be made subservient to the subordinate legislation, especially Rule 58 of the A.P. Rules, and that the Registering Authority is vested with inherent power to recall a document, which was got registered by a party fraudulently. He submitted that since by the action of the respondent in receiving and registering the document presented by the legal heirs of the original vendors in favour of third parties, injury is caused to the petitioner, the respondent is liable for imposition of penalty u/s 81 of the Registration Act. In support of his arguments, he placed reliance on the judgment of the apex Court in *Dharmadeo Rai Vs. Ramnagina Rai*, , of the Division Bench of this Court in *Mandadi Nirmala* and another Vs. District Collector, Hyd. and others, , and of the Full Bench of this Court in *Yanala Malleshwari and Others Vs. Ananthula Sayamma and Others*, .

8. Hence, he prayed that the impugned order passed by the respondent be set aside, and the respondent be directed to consider the objections raised by the petitioner in exercise of his power u/s 71 of the Registration Act, by examining the document presented by the legal heirs of the original vendors in favour of third parties for registration with reference to the entries made in (A) Book-1-Register maintained u/s 51(1) of the Registration Act, and pass appropriate speaking orders refusing to register the document if he finds that the property in question was already registered vide document No. 3861, dated 12-12-1968.

9. Sri A. Giridhar Rao, learned Government Pleader for Revenue appearing on behalf of the respondent submitted that the registering authority has no power under the Registration Act, to refuse to receive and refuse to register a document when presented for registration by considering the objections raised by third parties. He submitted that the registering authority cannot adjudicate title disputes. He submitted that the power to refuse to receive and register a document is vested in the Registering Authority in respect of the classes of documents mentioned in Section 22A of the Registration Act, which are prohibited from registration on the ground that their registration would be opposed to public policy. He, thus, submitted that the impugned order passed by the respondent stating that registration of document cannot be stopped on the ground mentioned in the petition and directing the petitioner to seek recourse to Court of law, if so advised, cannot be said to be illegal, warranting interference by this Court, and in support of his arguments, he relied on the unreported judgments of this Court in W.P. No. 21770 of 2000, dated 30-7-2001 and W.P. No. 21837 of 2002, dated 13-11-2002.

10. Having heard the learned Counsel for the petitioner and the learned

Government Pleader for Revenue for the respondent, and having regard to the contentions raised, the following questions do arise for consideration in this writ petition:

(1) Whether the registering authority u/s 71 of the Registration Act, is duty bound to consider the objections raised by a third party to the document presented for registration on the ground that the property covered by the document presented for registration was already registered in his/her favour?

(2) Whether the action of the registering authority in refusing to consider the objections raised by the petitioner, who opposed the registration of the document, in exercise of his power u/s 71 of the Registration Act, and registering the document presented for registration, which allegedly caused injury to the petitioner, invites imposition of penalty on the registering authority u/s 81 of the Registration Act?

11. Before proceeding to consider the above questions, it would be appropriate to note the purpose and object for which the Registration Act, 1908 was enacted. The Indian Registration Act, 1908 is one of the pre-Constitutional enactments. The provisions of the Registration Act, indicate that the purpose of registration of a document is to give notice to all the persons indicating that such document has been executed to prevent fraud or forgery and secure reliable data and also complete account of all the transactions affecting title to the property. However, mere registration of a document does not confer any title on the purchaser. The transfer of property is subject to the provisions of the Transfer of Property Act, 1882, while the title, capacity of the parties to transfer the property etc. are governed by different laws such as Law of Succession, Testamentary or otherwise, etc. The normal understanding of the general public is that once a document is registered under the provisions of the Registration Act, they get title to the property. But that is not so. The law is well settled that execution of or registration of a document by itself will not create any new title, and the execution of or registration of such document covering an immovable property is governed by the principle *Nemo Dat Quod Non Habet*, which means that no one can transfer better title than what he has. Therefore, unless and until the vendor has title to the property, by mere registration of a document transferring the property vested in him, does not confer any title on the vendee. The transfer of property has been defined u/s 5 of the Transfer of Property Act, to mean that an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, and one or more other living persons and, "to transfer property", is to perform such act. The persons competent to transfer the property is dealt with u/s 7 of the Transfer of Property Act. As per Section 7 of the Transfer of Property Act, unless a person is competent to contract or entitled to transfer the property, transfer, if any, made is not valid. A conjoint reading of the provisions of the Registration Act, with the provisions of the Transfer of Property Act, would make it crystal clear that transfer of title in a property by way of registration, is subject to any other law for the time being in

force. Therefore, mere registration of a document will not confer any new title, and in the case of any title disputes arising out of such registrations, they are subject to and to be decided under the provisions of various other laws, governing the transfer of immovable property. In fact, the Orissa High Court in *Jogi Das v. Fakir Panda* AIR 1970 Orissa 22 has highlighted the object and purpose of registration of a document under the Registration Act, in the following words:

The object and purpose of the Registration Act, amongst other things, is to provide a method of public registration of documents so as to give information to people regarding legal rights and obligations arising or affecting a particular property, and to perpetuate documents, which may afterwards be of legal importance and also prevent fraud.

12. Thus, from the above, it is clear that registration of a document, merely records the transaction and gives information to people regarding legal rights and obligations arising or affecting a particular property, which in future would be of legal importance and prevent playing of fraud.

In re Question Nos. 1 and 2:

13. Admittedly, the petitioner is a third party to the document that was presented for registration, which was registered by the registering authority. The petitioner, admittedly, objected to the registration of the document presented for registration on the ground that the property covered by the document presented for registration belonged to him, and that the legal heirs of their original vendors taking advantage of the non-mutation of the names in the revenue records, have executed the document, alienating the land covered thereunder, which was already sold to them, to third parties. Since the petitioner is a third party to the document, the registering authority, refused to consider the objections taken by the petitioner, and informed him that registration of document cannot be stopped on the ground taken in the objection petition.

14. The circumstances under which the Registering Authority can refuse registration of a document are spread in various provisions of the Registration Act and the A.P. Rules made thereunder. It would be appropriate, if a reference is made to the said provisions. The Registering Authority can refuse registration of a document under the various provisions of the Registration Act - u/s 19 of the Registration Act, if a document is presented for registration in a language not commonly used in the district, then the Registrar can refuse the registration unless such document is accompanied by true translation of the same into a language commonly used in the district; u/s 20 of the Registration Act, the Registrar can refuse to register the document in exercise of his discretion if the document presented for registration contains alterations, erasures etc., without any attestation; the registration can be refused under various provisions of the Registration Act as follows-under Section 21 of the Registration Act, unless the document contains description of the immovable property to identify the same; u/

s 22-A of the Registration Act, registration of document is opposed to public policy, document presented by a person who has no right to present; u/s 34 of the Registration Act, the Registering Officer is not satisfied with regard to identity of person who sought to execute the document and; u/s 35, if the person purported to have executed is dead, the person who seeks to execute the document is incapacitated and is not competent to execute document, the prescribed fee is not paid.

15. Chapter XII of the Registration Act deals with the circumstances under which registration can be denied. Rule 58 of A.P. Rules framed under the Registration Act, reads as under:

It forms no part of a registering officer's duty to enquire into the validity of a document brought to him for registration or to attend to any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document, but he is bound to consider objections raised on any of the grounds stated below:

(a) that the parties appearing or about to appear before him are not the persons they profess to be;

(b) that the document is forged;

(c) that the persons appearing as a representative, assign or agent, has no right to appear in that capacity

(d) that the executing party is not really dead as alleged by the party applying for registration; or

(e) that the executing party is a minor or an idiot or a lunatic.

On a plain reading of the provisions of the Registration Act and the A.P. Rules made thereunder, it would become clear that none of the provisions of the Registration Act authorize the Registering Officer to make a roving enquiry into the title and refuse the registration of a document on the objection raised by a person who is a third party to the document, on the ground that the party who executed the document and sought to register it, has no title to the property, however, he is bound to consider the objections raised on any of the grounds enumerated in Rule 58(a) to (e) of the A.P. Rules, Admittedly, the petitioner, by asking the Registering Authority not to register the document presented for registration on the ground that the property covered thereby was sold to them, in fact, was seeking to raise a title dispute, which under the provisions of the Registration Act and the A.P. Rules made thereunder, the Registering Authority, is not entitled to go into. In view of that, if any party intends to dispute the document presented or to be presented for registration and the contents thereof, then such person has to avail the common law remedy, but certainly such party can neither ask the Registering Authority nor the Registering Authority, does possess any right or power under the Registration Act, to determine disputes relating to title to the property, raised by the persons who are third parties to the

document. The Registering Authority is required to discharge his duties within the powers conferred on him under the statute and not otherwise.

16. Section 71 of the Registration Act deals with reasons for refusal to register to be recorded, as per which every Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within the sub-district, shall make an entry in Book No. 2, and endorse the words "registration refused", while Section 72 of the Registration Act, deals with an appeal to the District Registrar from the orders of Sub-Registrar refusing registration of a document. There is no doubt that u/s 71 of the Registration Act, the registering authority is duty bound to record reasons for refusal to register, but the fact remains, in the instant case, the registering authority did not refuse to register the document, but registered the document. The question of the registering authority exercising the power u/s 71 of the Registration Act, would arise only if the Registering Authority refuses to register the document. Since in the instant case, the Registering Authority had registered the document, there was no need for him to record any reasons. Reliance placed by the learned senior Counsel for the petitioner on the judgment of the Division Bench of this Court in *Mandadi Nirmala v. District Collector, Hyderabad* (2 supra) is of no assistance to the petitioner, for in the said case, this Court found fault with the action of the Sub Registrar in keeping the document present for registration pending on the ground that there is a communication from the Mandal Revenue Officer not to register any document in respect of the land covered thereby, and having found fault with the action of the Sub Registrar directed him to either pass a reasoned order according to the provisions of the Registration Act after referring to the objection raised by the Mandal Revenue Officer or register and release the sale deeds making endorsement thereon as to objection taken and overruling the same. But in the instant case, since the Registering Authority has registered the document and did not refuse to register the document, there was no reason for him to consider the objections raised by the petitioner, who is third party to the document.

17. It is the case of the petitioner that by registering the document presented by the legal heirs of their original vendors, the Registering Authority has committed an offence, and as such, he is liable for punishment u/s 81 of the Registration Act. Section 81 of the Registration Act, deals with penalties for incorrectly endorsing, copying, translating or registering documents with intent to injure. This Section creates substantive offences and provides punishments if the rights of private persons are affected by the registration. The main ingredient that is required, for bringing about an offence under this Section is mens rea. In the absence of mens rea, the person is not punishable. The intent to cause injury or likely to cause injury, is an essential ingredient to attract the provisions of Section 81 of the Registration Act. Section 82 of the Registration Act, deals with making false statement, delivering false copies or transactions etc. By incorporating these two sections, the intention of the Legislature, probably is to punish the persons who are liable for the acts contemplated under Clauses (a) to

(d) of Section 82 of the Registration Act. So as to attract the provisions of Section 82 of the Registration Act, fraudulent or dishonest intention is not necessary. May be the petitioner by seeking to invoke the provisions of Section 81 of the Registration Act, desires to curb fraudulent transactions, from being entertained by the registering authorities. The endeavour of the petitioner is praiseworthy, but unfortunately except in respect of the classes of documents mentioned in Section 22-A which are prohibited from registration and for the circumstances as mentioned in Section 35, the registering authority, under the Registration Act has no power whatsoever to refuse to register a document, and if refuses to register the document on the ground raised in the writ petition, then it would amount to his going into title disputes. Having regard to the limited power vested in the registering authority, the registering authority has no option, but to receive and register the document presented for registration. The question of invoking the provisions of Section 81 of the Registration Act, would arise only if the registering authority or any person, who is party to the document, had committed an offence, which caused injury to the party complainant, and the party invoking the provisions of Section 81 of the Registration Act, inviting imposing of punishment on the registering authority, has to prove mens rea of the registering authority in the registering of the document, which had caused injury to him.

18. In *Dharmadeo v. Ramnagina* (1 supra) the question that cropped up for consideration before the Supreme Court was whether a private person was competent to file a complaint without obtaining the necessary permission u/s 83 of the Registration Act? The apex Court having considered this question and considering the fact that a private person will be more seriously injured by the action of an offender who not only forges a document, but endeavours to give it a higher efficacy by registering it, came to the conclusion that there can be no reason why a private person should be denied the liberty to prosecute the offender, and likewise, it also came to the conclusion that there should be no reason why a registering officer guilty of an offence u/s 81 of the Act, should get immunity from prosecution by a private individual injured thereby, and negated the contention raised by the appellant on the strength of the judgment of the apex Court in *K.M. Kanavi Vs. The State of Mysore*, , that the provisions of Section 83 of the Registration Act, were prohibitory in character, because the language of the provision considered therein was totally different.

19. Rule 161 of the A.P. Rules made under the Registration Act, gives detailed list of the reasons for refusal to register a document. The purport of Section 81 of the Registration Act read with Rule 161 of the A.P. Rules made thereunder, came up for consideration before a learned single Judge of this Court in *P.V.G.K.S. Sastry v. State of Andhra Pradesh* 2005 (3) ALT (Crl.) 285 (A.P.) : 2005 (2) ALD (Crl.) 415. While dealing with the question whether the Sub-Registrar can be prosecuted for registering a deed of cancellation of sale of agreement presented by the vendor alone, this Court came to the conclusion that it cannot be said that the Sub-Registrar has acted illegally as the said deed of cancellation was strictly

in accordance with Schedule I-A of the Registration Act. This Court observed that it is well known that cancellation of an agreement, has to be made with the consent of both the parties to the agreement, and that if one of the parties unilaterally cancels the agreement of sale, and if the other party does not agree to that cancellation, then it amounts to breach of the agreement between the parties, and the party not agreeing for the cancellation of the agreement of sale, can seek remedies available to him under law. The Court further came to the conclusion that as per Section 81 of the Registration Act, the party who suffers or is affected by a document, has a right to proceed against the person who seeks its enforcement through registration, if he is not willing to abide by such registration, either u/s 81 of the Registration Act or by availing the remedies available to him under other laws.

20. If the legal heirs of the original vendors of the petitioner, by presenting the document for registration, which was registered by the registering authority, had, sold the property, which was sold to them under a registered sale deed earlier, once again to third parties, then such a transaction, at best would be a fraudulent transaction, and if the petitioner's right was adversely affected by such fraudulent transaction, then his remedy is to approach the competent civil Court by invoking the provisions of the Transfer of Property Act, 1882, particularly having regard to the fact that the registering authorities under the Registration Act, who are quasi-judicial authorities, have no power whatsoever to go into title disputes, since the power to decide such title disputes is vested in and are being exercised by the regular Civil Courts.

21. Considering the nature of powers vested in the Registering Authority under the Registration Act and the A.P. Rules made thereunder, as narrated above, I am of the considered view (that it cannot be said) (sic.) that the Registering Authority is not entitled to deny registration of document unless such document suffers from inherent defects as detailed under the various provisions, namely Sections 19, 20, 21, 22-A, 34 and 35 of the Registration Act and Rule 58 of the A.P. Rules made thereunder. If the Registering Officer is allowed to decide issues relating to title to the property based on objections raised by persons who are not parties to the document, then it would run contrary to the very purpose and object of the Registration Act. As stated above, it is open to such person to avail civil and criminal remedies under the provisions of the Registration Act and other laws in force.

22. In the above view of the matter, no exception can be taken to the impugned order passed by the respondent, informing the petitioner that the registration of document cannot be stopped on the grounds taken by him in the objection petition and directing him to take recourse to the remedy of civil Court for appropriate reliefs.

23. In the result, the writ petition is dismissed. No costs.