

(2000) 03 KAR CK 0065
In the Karnataka High Court
Case No : Writ Petition No. 17988 of 1995

Smt. Sulochanamma

APPELLANT

Vs

H. Nanjundaswamy and others

RESPONDENT

Date of Decision : 29-03-2000

Acts Referred:

Registration Act, 1908 — Section 34, 35, 60

Citation : (2001) 1 KarLJ 215 : (2001) 4 KCCR 389 SN

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : Sri. G. Gangi Reddy and Sri M. Shivappa, for the Appellant; Sri. V.K. Narayanaswamy, High Court Govt. Pleader, for the Respondent

Judgement

The petitioner purchased certain lands from the first respondent for a sum of Rs. 48,000/- under a sale deed dated 21-5-1987. When the sale deed was presented for registration on the same day after fulfilling all the requirements, an endorsement also had been made by the Sub-Registrar to that effect. Receipt for having paid the requisite charge is produced as Annexure-A. Instead of registering the document, the 2nd respondent-Sub-Registrar made a refusal endorsement on the deed itself to the following effect.--

"The RTC, RR and IL of the properties were referred to the Tahsildar, Kanakapura in this Office Letter No. 309/97-98, dated 25-6-1983 as per the powers conferred under Government Notification No. RD 132 ERG 76, dated 14-3-1979 and RD 44 EST 81, dated 30-3-1981 for the purpose of ascertaining whether the registration of the document is opposed to public policy or not. The Tahsildar in his Letter No. DM 13/87-88, has intimated that the copies of RTC, RR and IL are bogus and false and does not tally with the records maintained in the Taluk Office. Registration of the document is therefore refused".

The petitioner filed an appeal against the refusal to register the document before the 3rd respondent-District Registrar. In the said appeal the first respondent filed a memo to allow the appeal and to direct the Sub-Registrar to register the

document. However, by the impugned order at Annexure-D, dated 30-11-1987 the 3rd respondent rejected the appeal holding that the sale amounts to fragment. Thereafter, the petitioner presented an application as per Annexure-E before the District Magistrate praying to set aside the endorsement made by the Sub-Registrar on the sale deed and to direct the Sub-Registrar to register the document. Since the same was not at all considered, the petitioner has filed this writ petition seeking a direction to the 3rd respondent to consider the said application and to pass appropriate orders, to quash the order passed by him vide Annexure-D and also to direct respondents 2 and 3 to register the sale deed in favour of the petitioner.

2. Mr. Gangi Reddy, learned Counsel for the petitioner has rightly submitted that on the date of presentation of the deed the first respondent-vendor was present before the Sub-Registrar; that the requisite fee was paid; that the execution of the document was admitted; that one H.M. Nagaraj was also present for identification; that the Sub-Registrar endorsed for having presented the document for registration and issued the receipt as per Annexure-A. He further submits that in spite of fulfilling all the formalities and complying all the requirements the Sub-Registrar refused to register the document.

3. The averments made in the writ petition and the contentions raised are not disputed by the respondents. No counter is filed denying the petition averments, probably on account of the fact that they were unable to defend the action questioned in this writ petition. Be that as it may.

4. When the document was presented for registration fulfilling all the requirements the Sub-Registrar had no option but to register the document unless the document is not in conformity with the provisions of the Indian Registration Act of 1908 and the relevant rules. The document presented in the instant case by the petitioner before the second respondent had no defects under the provisions of the Act and rules for its registration by him. Hence the refusal to register the document by the second respondent on the basis of the report furnished by the Tahsildar is contrary to Section 60 of the Act.

5. The registration of the deed was refused on the basis of the communication received from the Tahsildar that the revenue documents were all bogus and false. The Sub-Registrar was entrusted with the duty of registering the documents in accordance with the provisions of the Act and he was not authorised to go into the genuineness or otherwise of the documents presented before him. If the documents are bogus or false, the party affected by it will have the right to initiate both civil and criminal proceedings to prosecute the party who tries to have benefit from such document and also to safeguard his right, title and interest. It was not for either the Tahsildar or the Sub-Registrar to express opinion as to the genuineness or otherwise of the documents unless called upon by the Court of law or any other authorised investigating agency. There was no occasion for the Sub-Registrar to refer the document to the Tahsildar when presented for the purpose of registration. Thus, both the Tahsildar

and the Sub-Registrar have exceeded their jurisdiction in the matter in submitting his report regarding registration of the document and upon such report the second respondent should not have made an endorsement on the document and refused to register the document by him.

6. The Sub-Registrar has not conducted enquiry as contemplated u/s 34 of the Act and not followed the procedure prescribed u/s 35 of the Act.

7. While passing the impugned order at Annexure-D the 3rd respondent did not follow the procedure prescribed u/s 74 of the Act. The third respondent should have treated the appeal as a representation seeking his intervention for registration of the document by the second respondent and he should have given appropriate direction in that regard, but he has failed to exercise his power under the provisions of the Act, but he has passed an order on the appeal on irrelevant grounds which reasons are contrary to law, hence the impugned order Annexure-D is liable to be quashed.

8. After the rejection of the appeal, the petitioner applied for return of the document before the third respondent but the document was not returned to the petitioner. As a consequence of which, the petitioner was deprived the right to approach the Civil Court u/s 77 of the Act. On the other hand, the document was handed over to the Counsel for the first respondent, who did not handover the same to the petitioner. On the other hand, a false complaint was lodged by them against the petitioner's husband, who in turn had to approach the Bar Council. The Bar Council initiated proceedings against the said Counsel which ended in compromise and the unregistered sale deed was handed over to the petitioner. Thus, due to non-return of the deed to the petitioner and by wrongly handing over the same to the wrong person, the petitioner and her husband were made to run from pillar to post to secure back the document and they were prevented from approaching the Civil Court u/s 77 of the Act. All these happened because of failure to perform the statutory duty by the Sub-Registrar and the District Registrar. It amounts to dereliction of their duties. Hence, they are responsible for whatever hardship, agony and monetary loss caused to the petitioner and they have to pay damages or cost to the petitioner.

9. After obtaining the sale deed, the petitioner filed an application before the 3rd respondent requesting to cancel the endorsement made by the Sub-Registrar on the document and to direct the Sub-Registrar to register the document but the same was not considered by the 3rd respondent. In those circumstances the petitioner approached this Court. Since the refusal to register the document was on irrelevant and untenable grounds, the petitioner is entitled to the reliefs sought for in this writ petition.

10. Admittedly, the sale deed was presented for registration on 21-5-1987. In spite of fulfilling all the requirements and completing all the formalities, the same has not at all been registered so far. Thus, the petitioner is not only deprived of enjoying his property rights but she has been subjected to untold misery and

hardship. Taking judicial note of the inconvenience, hardship, mental agony and the misery suffered by the petitioner all these years and having regard to the money spent on various litigations on account of the mischief committed by the Sub- Registrar and the District Registrar, this Court, instead of awarding damages, impose cost on these two officers.

11. Learned Government Pleader fairly submitted that the present Sub-Registrar is ready to register the document and requested this Court not to award cost on the aforesaid two officers. Learned Government Pleader is not fair in pleading mercy on behalf of those two officers who have committed a great blunder in the discharge of their official duties, as a result of which the petitioner has suffered a lot. Normally this Court will not impose costs but in compelling and deserving cases costs or damages have to be imposed/awarded in order to prevent commission of such mischiefs by the officers of the State.

12. In the result, the writ petition is allowed and the endorsement made on the sale deed and the impugned order passed by the 3rd respondent in the appeal are quashed. The petitioner shall present the sale deed for registration within a week and the 2nd respondent is directed to register the same within a period of two weeks thereafter. Cost of Rs. 10,000/- is awarded on the State Government to be payable to the petitioner within a period of four weeks and the same shall be recoverable equally from the concerned Sub-Registrar and the District Registrar.