

(2009) 08 PAT CK 0016
In the Patna High Court
Case No : C.R. No. 2200 of 2006

Umesh Kumar @ Umesh Kunwar and Others

APPELLANT

Vs

Shushila Devi and Others

RESPONDENT

Date of Decision : 24-08-2009

Acts Referred:

Registration Act, 1908 — Section 36, 75, 76, 77

Citation : (2009) 4 PLJR 676

Hon'ble Judges : Ravi Ranjan, J

Bench : Single Bench

Advocate : Kumar Dharendra Pratap Singh, for the Appellant;

Judgement

Dr. Ravi Ranjan, J.—Heard learned counsel for the petitioners. The defendants 1 to 3/petitioners are aggrieved by the order dated 13.10.2006, passed in Title Suit No. 42/ 2000 by the 3rd Addl. Munsif, Darbhanga, whereby the court concerned had dismissed their prayer to declare the suit concerned as not maintainable upon framing a preliminary issue with respect to that.

2. Aforesaid Title Suit No. 42/2000 was filed by the plaintiffs-opposite parties u/s 77 of the Registration Act, 1908 (hereinafter referred to as "the Act") against refusal of the Registrar from registering the deed of gift executed by one Bashishtha Narain Singh (since deceased) in favour of the ancestors of the plaintiffs-opposite parties No. 1 to 7. The document was presented for registration before the Sub-Registrar, Darbhanga. However, since the executors of the deed of gift did not appear before the Sub-Registrar, Darbhanga, the registration of the document was refused by him. Thereafter, Compulsory Registration Case No. 1/1990-91 was filed before the District Registrar, Darbhanga. The petitioners-defendants 1 to 3 appeared therein and filed objection. Subsequently, by the order dated 22.5.2000, as contained in Annexure-4, the District Registrar dismissed the case for want of prosecution. The plaintiffs-opposite parties thereafter filed Title Suit No. 42/2000 u/s 77 of the Act for grant of a decree directing the document concerned to be registered by

the authority concerned. The petitioners made a prayer to decide as preliminary issue as to whether the suit was maintainable. According to them, since the order by the Sub-Registrar could not amount to refusal from registering a document, rather the case was dismissed for want of prosecution, thus, the title suit would not be maintainable u/s 77 of the Act.

3. The court below had dismissed the petition filed on behalf of the petitioners and had held that the dismissal of the registration case on account of default on the part of the applicant since would amount to refusal to register the document, thus, the suit was maintainable.

4. Learned counsel for the petitioners submitted that the registration case concerned was not decided on merit as there was no refusal on merit by the Registrar concerned, thus, the same would not amount to be a decision u/s 76 of the Act. In that view of the matter, the contention was that the court below ought to have decided the preliminary issue and held the suit as not maintainable.

5. In support of the aforesaid submission, learned counsel for the petitioners has placed reliance upon a decision of the Calcutta High Court in *Sheikh Sajed vs. Sarada Prosad Chowdhuri & Anr.* [1913 Vol. XVIII CLJ 45]. However, this decision would be of no help to the petitioners as in that case, the defendants executed a sale deed and on refusal to register the same, he applied to the Registrar, Burdwan on 9th May, 1908 to get it registered. On 27th August, 1908, the case was struck off by the Registrar as he declined to grant further adjournment, but subsequently the Registrar reviewed the order and after taking evidence passed the order refusing to register the sale deed. In the suit filed u/s 75 of the Act, the question of the suit being time barred arose and it was held that limitation would run from the date when the final order of refusal was passed on merit.

7. Learned counsel for the petitioners had next relied upon a decision rendered in *Ram Singh Sant Ram vs. Jasmer Singh Hardit Singh & Anr.*, [AIR 1963 Pun 100 (V 50 C 26)]. However, the aforesaid decision would also not help the petitioners as in that case the Sub-Registrar concerned did not refuse the registration rather he had directed that the application u/s 36 of the Act be represented alongwith sale deed sought to be registered. Thus, the court concerned held that the aforesaid order not being refusal to register, the order passed in appeal preferred thereof would also not amount to refusal of registration. Since there was no refusal of the registration of the document, the suit u/s 77 of the Act would not be maintainable. However, in the present case, the Sub-Registrar concerned had refused to register the document vide Annexure-1 on account of the fact that the executor of the document did not appear before him and the case for compulsory registration was also dismissed for want of prosecution.

6. Learned counsel next placed reliance upon a decision in *Siddalingamma vs. Puttamadappa*, [AIR (38) 1951 Mysore 31 (CN 17)]. However, this decision is also on different issue altogether as in that case the case for registration of

document was dismissed for default, but later on it was restored and subsequently dismissed on merit. The question arose as to from which date the period of limitation would be computable. The Mysore High Court had held that the limitation would be counted from the date on which the registration was refused on merit as the first order of dismissal for want of prosecution was recalled and the case was restored.

8. I do not find any force in the submissions raised on behalf of the petitioners. In fact, in a decision rendered by the Calcutta High Court in *Abirjan Bibi & Anr. vs. Gole Mahamed & Ors.*, (AIR 1920 Cal 206) this issue has been directly dealt with and it has been held therein that the dismissal of an application for registration owing to failure of the applicants to appear before the Sub-Registrar is, under the Registration Act, in the practice of the Court, equivalent to a refusal to register, and such dismissal does not take away the right of suit under S. 77 to enforce registration.

9. In *Ramautar Sah vs. The State of Bihar & Ors.*, (1978 PLJR 151), a Division Bench of this Court has also held that refusal to register the document by the Registrar on the ground of such application being time barred or on any preliminary ground would amount to refusal for the purposes of institution of the suit u/s 77 of the Act.

10. In view of the aforesaid this Court also does not find any reason to depart from *cursus curie* in this matter and it is held that the striking off of the case on the ground of non-prosecution by the Registrar concerned would also amount to refusal of registration of the document and, thus, the suit u/s 77 of the Act for enforcing such registration would be maintainable.

11. Learned counsel for the petitioners lastly submitted that the order of dismissal for want of prosecution being a revivable order, the plaintiffs-opposite parties were free to file a case for restoration of the aforesaid case in place of filing the suit concerned. This argument on behalf of the petitioners is noted only to be rejected inasmuch as in this case the petitioner had instituted a suit which had already been held to be maintainable, as aforesaid. Thus, this point would not be available to the petitioners.

12. In view of the aforesaid discussions, I do not find any jurisdictional error in the impugned order passed by the court below. As a result, this Civil Revision is dismissed.