
(2010) 05 AHC CK 0344
In the Allahabad High Court
Case No : W.C. No. 24121 of 2010

Vipin Kumar Goel and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-05-2010

Acts Referred:

Registration Act, 1908 — Section 17, 18, 23, 24, 25

Citation : AIR 2010 All 151 : (2011) 112 RD 175

Hon'ble Judges : Virendra Singh, J; Ashok Bhushan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. By this writ petition the Petitioner has prayed for a mandamus directing the Respondent No. 2 to register the decree dated 22.1.2006 passed in Original Suit No. 441 of 2006.

2. Counter and rejoinder affidavits have been exchanged between the parties.

3. Brief facts which emerge from the pleadings of the parties are that Petitioner No. 1 filed a Suit No. 441 of 2006 for declaration before the Civil Judge (Senior Division), Bijnor against Petitioner Nos. 2 to 6. A compromise application was filed by the Plaintiff and Defendants in original suit on 27.10.2006. On 27.10.2006 the compromise was verified and by an order dated 8.11.2006 the compromise decree was passed by the civil court. A compromise decree was prepared on 22.11.2006. A representation dated 28.1.2010 was submitted by Petitioners annexing a photo copy of the compromise decree before the Sub-Registrar stating that they want to get the compromise decree registered. The representation of the Petitioners was neither accepted nor any steps were taken by the Sub-Registrar for registration of the decree, hence, the Petitioners filed the present writ petition.

4. Learned Counsel for the Petitioner submits that Sub-Registrar has not taken steps for registration of the decree on the ground that time for getting the

compromise decree registered has expired and in view of the same the registration is not permissible.

5. A counter affidavit has been filed on behalf of the Respondent No. 2. In the counter affidavit stand has been taken that since the Petitioners did not present the decree in the time prescribed, the said decree cannot be accepted for registration.

6. Learned Counsel for the Petitioner in support of the writ petition contended that registration of compromise decree is optional u/s 18 of the Registration Act, 1908 (hereinafter referred to as the Act). Hence, the provision for time for presenting documents for registration as contained in Section 23 is not applicable. He submitted that registration being optional, writ Petitioner has right to present the decree at any time.

7. We have considered the submission of the learned Counsel for the Petitioner, and have perused the record.

8. Section 17 of the Act provides for documents of which registration is compulsory. Section 18 provides for the documents of which registration is optional. Section 18 of the Act reads as follows:

18. Documents of which registration is optional.- Any of the following documents may be registered under this Act, namely:

(a) instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immovable property;

(b) instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest;

(c) leases of immovable property for any term not exceeding one year, and leases exempted u/s 17;

[(cc) instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immovable property;]

(d) instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in movable property;

(e) wills; and

(f) all other documents not required by Section 17 to be registered.

9. Section 23 of the Act provides for the time for presenting documents. Section

25 of the Act provides for a provision where delay for presentation is unavoidable. Sections 23 and 25 of the Act are quoted as below.

23. Time for presenting documents.- Subject to the provisions contained in Sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution:

Provided that a copy of a decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final.

25. Provision where delay in presentation is unavoidable.- (1) If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in [India] is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration fee, such document shall be accepted for registration.

(2) Any application for such direction may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

10. The submission of the Petitioner, which is to be considered, is as to whether the documents of which registration is optional are also required to be presented within time as prescribed in Section 23 or whether for such documents there is no time limit for presentation. Section 23 provides that subject to provision contained in Sections 23, 24, 25 and 26 of the Act no document other than will shall be accepted for registration unless presented for that purpose within four months from the date of execution. Section 23 itself provides exceptions which are documents referred to in Sections 24, 25 and 26 of the Act. Section 25 provides a circumstance when Registrar in cases where delay in presentation does not exceed four months may direct on payment of fine for registration of the documents. Section 26 deals with the documents which are executed out of India. A plain reading of Section 23 clearly indicates that except for circumstances as mentioned in Sections 24, 25 and 26 all other documents are required to be presented within four months from the date of execution. Had the Legislature intended that documents registration of which is optional need not be presented within four months from the date of execution, mention of Section 18 ought to have been made in Section 23. Non-mention of Section 18 in Section 23. Clearly leads to the inference that documents registration of which is optional are also required to be presented within time as prescribed in Section 23. Even in Section 25 the maximum period for which Registrar can accept delay in presentation is four months.

11. In the present case decree was passed on 8.11.2006 and only an effort for its registration for the first time was made on 28.1.2010 as has been stated in paragraph 21 of the writ petition. It is although stated in the counter affidavit

that the compromise decree was never presented in original before the Sub-Registrar, however, since period for presentation have run out, the stand taken by the Sub Registrar in the counter affidavit that decree cannot be registered is fully justified. The submission of the learned Counsel for the Petitioner that registration of the compromise decree being optional, hence, the time limit as prescribed in Section 23 of the Act, is not acceptable. The Petitioner is not entitled for the relief as claimed in the writ petition.

12. Writ petition is dismissed accordingly.