
(1997) 10 MAD CK 0032

In the Madras High Court

Case No : C.R.P. No. 750 of 1991 and CMA No. 259 of 1991

V.K. Thanikachalam

APPELLANT

Vs

Parameswari Ammal and Others

RESPONDENT

Date of Decision : 01-10-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11, 9
Registration Act, 1908 — Section 75, 76, 77

Citation : (1997) 2 CTC 746

Hon'ble Judges : Jagadeesan, J

Bench : Single Bench

Advocate : V. Balasubramanian, for the Appellant; S. Sadasivam and Sriram Panchu, for the Respondent

Final Decision : Allowed

Judgement

Jagadeesan, J.—The petitioner in the revision as well as the appellant in the appeal is one and the same. For the purpose of convenience, I

refer the parties as described in the revision. The petitioner filed O.P. No. 1 of 1984 for the grant of probate in respect of the will executed by one

Rajammal. His case is that the deceased testator executed the Will on 25.12.1978 by bequeathing the properties in his favour. Earlier, he wanted

to register the Will before the Joint Sub-Registrar No. 1, Vellore. The respondents opposed the same and after due enquiry, the Sub-Registrar

refused to register the Will, finding that the Will is not genuine. As against that he preferred an appeal before the District Registrar, Vellore who

also confirmed the order of sub- Registrar. Hence the O.P. has been filed.

2. The respondents contested the claim of the petitioner stating that the Will relied upon by the petitioner is a forged one. Further the deceased had

already executed a registered Will on 4.3.76. As the registering authorities have found that the Will produced by the petitioner is a forged one, the

O.P. itself is not maintainable. The respondents further filed an application I.A.991 of 1990 to dismiss the O.P. contending that the order passed

by the registering authorities has become final. The petitioner did not challenge the order of the registering authorities and hence the O.P. is to be

dismissed.

3. The lower court accepted the contention of the respondents and allowed the I.A.991 of 1990, against which the revision has been filed.

Consequently the O.P.1 of 1984 was also dismissed, as against which the appeal has been filed.

4. The learned counsel for the petitioner contended that so far as the Will is concerned, the registration is not compulsory. It is only a voluntary

action. The petitioner had produced the Will for registration and the Sub-Registrar held the enquiry with regard to the genuineness of the Will.

Ultimately after enquiry, he has found that the Will is a forged one and the order was confirmed by the appellate authority also. When the

registration is not compulsory, the decision rendered by the registering authorities cannot be a binding one among the parties. It is always open to

the party to seek for the probate of the Will before court so that the matter can be decided judicially. The lower court is not correct in dismissing

the O.P. accepting the contention of the respondents herein.

5. The counsel for the respondents contended that the parties, having invited a finding from the registering authorities, are bound by the same. The

petitioner has allowed the order of the registering authority to become final, without challenging the same further. When once the petitioner has

allowed the order of the registering authorities to become final, it is not open to the petitioner to seek for probate on the basis of the forged Will.

6. I have carefully considered the contention of both the counsel. I have also perused the order of the lower court. The lower court has merely

stated that since the petitioner had submitted to the jurisdiction of the registering authority and had invited the order adverse to him, he is bound by

the same. In short, only on this basis, the lower court has allowed the application filed by the respondents to dismiss the O.P. and also

consequently dismissed the O.P. The lower court has not considered with regard

to the binding nature of the order of the registering authorities.

The registering authorities are normally holding an enquiry in a summary manner. Further Section 77 of the Registration Act provides that the

aggrieved party is entitled to file the suit seeking for compulsory registration. That may be necessary only in case where the document has to be

compulsorily registered. The Will is not a document which compulsorily required registration. Hence it is not necessary for the petitioner to file any

suit. But, however, whether by non-filing of the suit the order of the registering authorities would become final and whether the same is binding on

the parties in order to prevent the aggrieved party to put forth any plea contrary to the findings given by the registering authorities.

7. It is necessary to consider the various provisions of the Registration Act. When a document is presented for registration the person by whom the

document purports to be executed denies its execution, the registering officer shall refuse the registration of the document. (Section 35(3) of the

Registration Act). In case of a dead person Section 35(1)(c) of the said Act authorises the registering officer to register the document, in case of a

person executing the document is dead and his representative or assignee appears before the registering authority and admits the execution. Sub-

section (2) of Section 35 empowers the registering authority in order to satisfy himself about the identity of the person appear before him or their

representative he may examine them in his office. After the enquiry if it is found that the document is not genuine, the registering authority can refuse

registration. On such refusal, any person claiming under such document may within 30 days after making the order of refusal, apply to the registrar

in order to establish the right to have the document registered in accordance with Section 73(1) of the said Act. Section 74 of the said Act lays

down the procedure to be followed by the Registrar. If the Registrar accepts with the registering authority and refuses to direct the registration of

the document as a result of his finding u/s 75, he has to make an order of refusal, recording the reasons for such an order in accordance with

Section 76(1) of the said Act. If the person aggrieved makes any application for the copy of the order, the same should be furnished. Against the

order of the Registrar no appeal has been provided. But, however, Section 77 of the said Act provides for a suit, seeking for a decree directing

that the document to be registered.

8. Hence from this it is very clear that if the petitioner wants to pursue further action, having aggrieved by the order of the registering authorities, he

ought to have filed the suit u/s 77 of the Registration Act. The relief sought for is only for registering the document and nothing more. Of course in a

suit before the civil Court, it may be open to the court to go into the genuineness of the document. The petitioner has not chosen to invite a decision

from the civil court. Instead he has filed the petition for probate.

9. The principle of res judicata can be applied only for the proceedings in courts. Moreover, the proceedings before the registering authority is only

summary in nature. If the petitioner had filed the suit for compulsory registration of the document and invited a finding with regard to the

genuineness of the document, then the principles of res judicata can be said to be applicable.

10. It may be worth to refer some of the judgments. At the outset, I may take up the judgment relied upon by the lower court reported in D.

Narain Roy v. Joges Chandra De 1924 Cal. 600. In that case, the registering authorities had refused to register the document. The aggrieved

person filed a suit u/s 77 for registration of the document and invited the decision of the civil court. Hence it has been held that the parties cannot

be permitted to reargue the same plea in the following words:-

We must further remember that, as was observed by the Judicial Committee in Soorjomonee Dayee v. Suddanund Moha 1973 (12) BLR 304

(P.C.), if both parties invoked the opinion of the court upon the question, if it was raised by the pleadings and argued, the conclusion cannot be

supported that the judgment upon it was ultra vires merely because an issue was not framed which, strictly construed, embraced the whole of it;

any other view would be scarcely consistent with the case of Mitna v. Fuzl Rub, 1870 (12) MIA 573 (P.C.). or Rampal Singh v. Ram Prosad

Singh 1904 (27) A11.37 (P.C.). We cannot finally overlook that, as ruled in Peary Mohun v. Ambica Churn 1897 (24) Cal.900, and Rambehari

v. Surendra 1913 17 CLJ 34 where a defendant is entitled to set up in the same answer as many defences as he has, if a judgment is entered in his

favour, which contains no provision that it shall be without prejudice or any like limitation or restriction, the estoppel raised by it will extend to

every matter or fact in issue actually found by the court in favour of the defendant.

The principles laid down therein cannot be made applicable to the facts of the present case, as in this case the petitioner had not filed any suit as required u/s 77 of the Registration Act.

11. In order to find out what is the nature of the proceeding before the Registrar, it is necessary to refer to some other judgments: In the case

reported in *Sheoparsan v. Ramnandan* AIR 1916 P.C.78 one R applied for the probate of the Will left by the deceased and caveat was entered

by the appellants, alleging themselves to be the reversioners entitled to oppose the grant of probate. The caveat was dismissed on the ground that

the caveators had failed to prove their interest and probate was granted to the applicant as executor by implication, which was confirmed by the

High Court on appeal. Thereafter the appellant instituted a suit in the Sub-Court against R and others for declaration that they were the nearest

reversioners to the estate in case of intestacy and as such entitled to obtain revocation of probate. In the above case since the probate arising from

the court proceedings, it has been held that the principle of *res judicata* is applicable, in the following words:-

The rule of *res judicata* while founded on ancient precedent is dictated by a wisdom which is for all time. The rule in CPC embodies a doctrine in

no way opposed to the spirit of the law as expounded by the Hindu Commentators. And so the application of the rule by the Courts in India

should be influenced by no technical considerations of form, but by matter of substance within the limits allowed by law.

12. Yet another case reported in *Bal Kishen Das and Others Vs. Bechan Pandey* where the sale agreement has been sought to be registered but

was refused by the registering authorities. The person claiming right under the document has not filed any suit u/s 77. The court has held that the

failure does not operate as a *res judicata* in a subsequent suit for specific performance in the following words:-

Section 77, Registration Act, permits a suit for a decree directing the document to be registered. That obviously refers to a relief for the

registration of that particular document which had been executed and the registration of which was refused. Under that section no other relief can

be claimed. This has been clearly held by this Court in *Kanhaya Lal v. Sardar Singh* 1907 (27) All. 284 and *Ram Ghulam v. Mr. Menda* AIR

1921 All. 52. It is therefore obvious that the mere failure of a suit u/s 77 or its infructuous termination cannot operate as *res judicata* in a suit

brought for the specific performance of the original contract and for recovery of possession of the immovable property. This suit is based on the

original cause of action which was independent and separate from the cause of action arising from the refusal of the purchaser to register it. It is

also quite clear that the remedy which the plaintiff claims in the present suit is for the specific performance of the contract by executing a new and

fresh document and for recovery of actual possession. Such reliefs could not have been claimed in the previous suit. We are unable to hold that

Section 77 provides the only exclusive relief to the plaintiff who has paid consideration and earnest money to the defendant who has promised the

transfer to him of the immovable property. There is absolutely no reason why he should not be able to enforce the contract specifically and obtain

actual possession.

13. The Kerala High Court in the case reported in *Mathai Ouseph Panackal Vs. Joseph and Another*, has held that where the relief of registration

alone is sought for, then the principle of *res judicata* may not be applicable with regard to the findings rendered by the registering authorities, though

not in strict form. But, if any other relief is sought for, the principle of *res judicata* cannot be attracted. To extract the same is as follows at page

265:

The winds of change began to blow powerfully after *Manicka Goundan Vs. Elumalai Goundan and Others*, and the Full Bench ruling reported in

Padala Satyanarayana Murthy Vs. Padala Gangamma and Others, , Chandra Reddy, C.J., plumped in favour of the view that a party's larger right

to sue for specific performance could not be nullified by the lesser remedy in part 12 of the Registration Act not having been availed of by him.

Simply because a party has already set in motion the machinery for enforcing registration of an instrument, he is not precluded from pursuing other

remedies through a more comprehensive suit, even if they include the prayer for registration of the document.

A Division Bench of the Andhra Pradesh High Court in *Anchuru Veerapa Naidu Vs.*

Gurijala Venkaiah Chowdari, repeated the reasoning of the

Full Bench with reference to a partition deed where no resort to the registering officer was had at all and a suit was brought straight for specific

performance. Their opinion was that

When there are two alternative remedies available to a party, it is open to him to exercise his right of election ... As a suit u/s 77 has to be

confined to the registration of a document alone, the question of validity and delivery of possession of property cannot but be conclusively

adjudicated upon in a suit for specific performance only. A provision which cannot afford him full and complete relief which he can claim in law

cannot possibly stand in his way in having resort to an effective remedy open to him. That must be so even though a party has not taken prior

proceedings under the Registration Act for sufficient grounds. The remedy for specific performance of course being an equitable remedy, the Court

may, if the party is guilty of laches or gross negligence, refuse to exercise the discretion in its favour.

The same line of reasoning has found favour with the Orissa High Court also. In the light of this discussion and presentation of judicial opinion I will

now summarise my conclusions. The following propositions will govern the present and allied case situations, in my humble view.

The provisions of Section 77 of Registration Act and Section 10 (Old Section 12) of the Specific Relief Act confer separate rights, with special

features, on a party to get reliefs which may, to some extent and in certain cases, overlap. We cannot confuse between the two or allow one to

supersede the other. But where Section 75 stage is reached and no other relief except a direction for registration is really asked for, Section 77 is

an exclusive remedy; otherwise it has no application.

Where registration has been refused u/s 71 (of the Registration Act) the statute gives him a quick remedy before a quasijudicial authority which he

may avail himself of and, if discomfited, institute a specific type of statutory action, with a short period of limitation, provided for in Section 77 of

the Act; but it is restricted in its scope to directing the document to be registered. Other reliefs are extraneous to the nature of such a suit. A suit for

specific performance is wider in its amplitude and is primarily one for enforcement of a contract and other consequential or further reliefs. In every

case where complete satisfaction cannot be given by a mere decree directing registration of the document, Section 77 is insufficient to provide

relief and cannot operate as a bar. For, if a party is in need of other reliefs along with registration of the deed, should the statute be used to compel

him to file a suit u/s 77 and then another for the other reliefs?

The Registration Act is designed to settle questions of genuineness of deeds and eliminate such disputes regarding title as are traceable to the

execution of documents, by providing a special and speedy remedy. It is a facility, not a fetter. If he chooses to pursue the Registration Act

procedure nothing compels him and courts an order u/s 76 he may go to court u/s 77, and must, if he seeks no remedy other than bare registration,

unless he seeks extra reliefs such as for possession, mesne profits or execution of a fresh deed. Whether a party has already set in motion the

machinery for enforcing registration or not is immaterial and cannot inhibit a suit de hors Section 77. But if a party has got an order u/s 76 and

prays in the suit that follows, only for a relief falling squarely within Section 77 then he is restricted to the conditions laid down in that Section,

particularly the short period of limitation.

Moreover, in every agreement to sell, the contract cannot be taken as fully performed till there is a properly executed document, which is also

registered. The vendee is entitled to insist upon a proper registered instrument which alone can validly convey title. Every vendor is bound to do all

that is necessary to perfect the title of the vendee and so he is obliged not merely to execute but also to see to the registration of a proper

conveyance. The result is that so long as there is an obligation on the part of the vendor, as incidental to the contract of sale, to get the document of

sale registered, the vendee is entitled to bring a suit for specific performance of that agreement implied in the contract of sale. One more aspect has

to be answered. A special statutory remedy cannot ordinarily exclude, by implication, the general right of suit u/s 9, C.P.C., nor are there in part

12 of the Indian Registration Act clear and unmistakable indications of such exclusion of the civil court's jurisdiction by necessary and inevitable

implication; and the language of Section 77 is optional, not obligatory.

From the above well laid principles, it is clear that the filing of the suit u/s 77 is only an obligatory and not mandatory. Even assuming a suit has

been filed and the document has been directed to be registered without a finding with regard to the genuineness of the signature of the executant

then the court proceedings will not operate as a res judicata, because the registration alone will not clothe the document with the genuineness. By

virtue of the probate, now the court is entitled to go into all the questions including the question of execution and if a finding is given by the court

with regard to the genuineness, then the parties are bound by the same and entitled to act upon the same. Even if the Will is registered by filing a

suit, still to enforce the same, the beneficiaries have to take probate proceedings. Without which it may not be possible for the legatees to get the

benefit of the Will.

14. From the above discussion, it is very clear that the finding rendered by the registering authorities cannot form res judicata. Hence the order of

the court below is set aside, both in the I.A. as well as in the O.P. and the lower court is directed to restore the O.P. on file and proceed with the

same on merits and in accordance with law. The revision and the appeal are allowed. No cost.