

should be continued in the office indefinitely or for long periods awaiting the result of the criminal proceedings. It is in the interest of the administration and the employee both that the matter is finalized at the earliest to avoid any undue hardship or any undue benefit to either the administration or the employee.

(12) The present case is one where we are of the view that the interest of the petitioner would not be seriously prejudiced in case the departmental proceedings are not stayed during the pendency of the criminal proceedings.

(13) In the light of what has been held by the Hon³ble Supreme Court and in the facts and circumstances of the present case, we do not find any merit in this petition and dismiss the same.

R.N.R.

Before Hemant Gupta & Kanwaljit Singh Ahluwalia, JJ.

AVNASH RANI AND ANOTHER,—*Petitioners*

versus

**ADDL. DEPUTY COMMISSIONER-CUM-REGISTRAR,
FEROZEPUR & OTHERS,—*Respondents***

CWP No. 16539 of 2007

3rd October, 2008

Constitution of India, 1950—Art. 226—Registration Act, 1908—Ss. 23 & 36—Presentation of sale deed for registration after more than four months of its execution—S.23 of 1908 Act provides that no document other than a will shall be accepted for registration unless presented for that purpose to proper officer within four months from date of its execution—Even pendency of civil suit between parties invocation of jurisdiction of Registrar lacks bona fide—Order of Registrar passed without examining facts is not sustainable—Respondent also failing to prove transaction of sale—Order passed by Registrar set aside holding same as illegal and unjustified.

Held, that the finding recorded by the Registrar that the document has been presented for registration within four months, is factually incorrect. The order passed by the Registrar in view of the factual mistake itself is not sustainable. It shows that the Registrar has passed an order without examining the facts carefully. This fact alone is sufficient to set aside the order passed by the Registrar on 13th September, 2007.

(Para 13)

Further held, that once the matter is pending before the Civil Court at the instance of respondent No. 2 alone, wherein all the questions are required to be examined, the invocation of the jurisdiction of the Registrar under Section 73 of the Act is nothing but an abuse of process of law. As a matter of fact, if the Registrar refuses to register a document, an aggrieved party has a right to invoke the jurisdiction of the Civil Court under Section 77 of the Act. It necessarily implies that the order of Registrar is summary in nature and limited in operation. But once, the parties were before the Civil Court, the invocation of the jurisdiction of the Registrar *lacs bona fide*. The maner in which the Registrar has ordered registration even though the factum of pendency of the Civil suit raising disputed questions of fact was raised, speaks volumes of the conduct of officer in ordering registration of the document. To say least, we are of the opinion that the order registering of the document *lacs bona fide*.

(Para 14)

Sandeep Khunger, Advocate, for the petitioner.

Sandeep Moudgil, DAG, Punjab, for respondent Nos. 1 and 2.

C.M. Munjal, Advocate, *for respondent No. 3.*

HEMANT GUPTA, J.

(1) The challenge in the present writ petition is to the order dated 13th September, 2007 (Annexure P. 17) passed by the Registrar under the Registration Act, 1908 (for short 'the Act'), whereby the sale deed allegedly executed on behalf of petitioners in respect of the land measuring 9 kanals 10 marlas was ordered to be registered.

(2) The petitioners are owners of land measuring 9 kanals 10 marlas. Petitioner No. 2 has executed a General Power of Attorney in respect of the land owned by the said petitioner in favour of her mother, petitioner No. 1. As per the stand of the petitioners, they entered into an agreement to sell of the land measuring 9 kanals 10 marlas in favour of respondent No. 2 i.e. Rakesh Kumar for a sum of Rs. 6,15,000. An agreement of sale was executed on 11th March, 2006 and the petitioners allegedly received a sum of Rupees One lac as an earnest money. The date for execution of the sale deed was 17th March, 2006. As per the petitioner, a sum of Rupees One Thousand was spent by the petitioners, but the remaining amount of Rs. 99,000 was deposited by petitioner No. 1 in her Savings Bank Account No. 26804 with the Punjab National Bank, Jalalabad on 13th March, 2006.

(3) As per the petitioner, though the date for execution and registration of the sale deed was 17th March, 2006, but respondent No. 2 told petitioner on 16th March, 2006 for execution and registration of the sale deed. Petitioner No. 1 was brought in the Chamber of Rajesh Bajaj, Deed Writer in the New Tehsil Complex, Jalalabad where the sale deed in question was scribed. However, the sale consideration recited as paid to the petitioners was Rs. 2,68,000 but no mention was made in respect of agreement dated 11th March, 2006. Respondent No. 2 told petitioner No. 1 that such sale consideration has been recited to save the stamp duty and the amount has been shown in the sale deed is according to the minimum rate fixed by the State Government for registration of the sale deed. Respondent No. 2 told petitioner No. 1 that the balance sale consideration of Rs. 5,15,000 would be paid to petitioner No. 1 on completion of work. Petitioner No. 1 signed the documents on the basis of such representation under blind faith, but when petitioner No. 1 demanded the balance sale consideration from respondent No. 2, the matter was put off and the petitioners were told that the sale deed would be registered after paying the amount to her. But the amount was not paid by respondent No. 2, nor he approached the Sub Registrar for registration of the sale deed. The petitioner appeared before the Sub Registrar on 17th March, 2006 and her presence was endorsed by the Sub Registrar. The deed writer also communicated to the Tehsildar in respect of fraud in execution of the

sale deed and snatching of the sale deed. The petitioners had made a complaint to SSP, Ferozepur on 2nd April, 2006, but no inquiry was made.

(4) It is also pointed out during the course of arguments that respondent No. 2 filed a suit for specific performance on the basis of sale deed allegedly executed on 16th March, 2006 on the same date i.e. 16th March, 2006. In the said suit, the petitioners filed a detailed reply. The application moved by respondent No. 2 for ad-interim injunction was declined by the learned trial Court on 25th May, 2006, but with a rider that if the plaintiffs i.e. the present petitioners want to sell the land, the petitioners shall take prior permission of the Court before alienating the suit land. In pursuance of the said condition, the petitioners sought permission from the trial Court to sell the land on 5th September, 2006. The petitioner attached an affidavit dated 13th September, 2006 of the prospective vendee along with the said application. At this stage, respondent No. 2 moved an application before the Sub Registrar for registration of the sale deed dated 16th March, 2006. On the said application, the Sub Registrar passed an order refusing to register the sale deed. The said order reads as under :—

“29th September, 2006

Sale deed dated 16th March, 2006 from Ritu Bala daughter of Sohan Lal son of Dunna Mal and Abinash Rani, wife of Sohan Lal, son of Dunna Mal, resident of Jalalabad in favour of Rakesh Kumar, son of Amrit son of Jiwan Ram resident of Jalalabad dated 13th September, 2005 was presented by Rakesh Kumar purchaser under Section 86 of the Registration Act for registration. Notice was sent to the executants and proclamation was also done but the executants did not turn up to register the sale deed. In this situation, it is presumed that the executants are not admitting the execution Therefore, I hereby refuse the registration of the sale deed and sale deed be given back to the purchaser.”

(5) Aggrieved against the said order, respondent No. 2 filed an application under Section 73 of the Act of registration of the sale deed dated 16th March, 2006. Though the present petitioner submitted

a detailed reply controverting the averments made by respondent No. 2 and also pointed out that respondent No. 2 has already filed a suit for specific performance, but the Registrar, Ferozepur passed an order on 13th September, 2007 for registration of the sale deed on the basis of evidence recorded. The Registrar found that the said sale deed was read over by the deed writer to petitioner No. 1 and she has signed in token of its correctness. Since she had admitted her signatures on the sale deed dated 16th March, 2006, she has executed the document. It was further found that delay in not presenting the sale deed does not exceed four months, therefore, on payment of fine not exceeding 10 times of the amount of proper registration fee, the sale deed was ordered to be accepted for registration. In pursuance of the said order, the sale deed has been registered on 17th September, 2007 by modification of description of the land by inserting a note in the said sale deed. On the basis of the said facts, the petitioner has invoked the jurisdiction of the Court for setting aside and quashing of the order passed by the Registrar.

(6) Learned counsel for the petitioner has vehemently argued that the order passed by the Registrar so as to register the sale deed when the suit for specific performance on the basis of un-registered sale deed is pending before the Civil Court, is not only unwarranted but not permissible. It is contended that the remedy under the Act is a summary in nature, whereas respondent No. 2 has invoked the jurisdiction of the Civil Court in respect of the execution of the document and the consequential relief flowing therefrom. The order of Registrar to register the document in exercise of the summary power is wholly illegal. It is further contended that the petitioner has raised elaborate pleadings before the Civil Court as well as before the Registrar. Such disputed questions in respect of the execution of documents could not have been considered by the Registrar in exercise of the jurisdiction under Section 73 of the Act, more so when the Sub-Registrar has refused to register the document initially. It is further contended that the document was presented for registration after four months from the date of its execution, therefore, in terms of Section 23 of the Act, the document could not be ordered to be registered.

(7) Learned counsel for the petitioner has relied upon **Banasettappa Laljichikkanna *versus* District Registrar and another (1)**, and **Chandeshwar Yadav *versus* Smt. Radha Devi and others (2)**.

(8) Respondent No. 2 has filed a written statement before this Court denying execution of the agreement of sale dated 11th March, 2006, but asserting that the sale deed was executed on 16th March, 2006 and the entire sale consideration of Rs. 2.68,000 was paid to the petitioners at her residence. In additional affidavit dated 24th September, 2008 filed, it has been pointed out that respondent No. 2 has arranged the funds of Rs. 2.68 lacs in the following manner :—

“An amount of Rs. 24,000 was withdrawn from CC account in the State Bank of Patiala Jalalabad on 13th March, 2006.

An amount of Rs. 1.65 lacs was withdrawn on 14th March, 2006 from the said account, which is running in the name of M/s Jonty Poultry Farms.

An amount of Rs. 47,700 was received by respondent No. 2 on 14th March, 2006 on account of sale of full wagon of the chickens and the remaining amount of Rs. 32,000 was cash in hand with respondent No. 2 on account of his business transaction.”

(9) On the basis of the said affidavit, it is contended by the learned counsel for the respondents that the sale deed was executed by the petitioner on receipt of the sale consideration and the Registrar has passed an order in exercise of the jurisdiction vested in him for registration of the sale deed after recording satisfaction of the execution of the document by petitioner No. 1 and thus, such order cannot be interfered with in the writ petition.

(10) During the course of arguments on 17th September, 2008, learned counsel for respondent No. 1 has stated that an application for withdrawal of the suit for specific performance of the contract dated 16th March, 2006, has been filed before the Civil Court. He sought sometime to file an affidavit to this effect. However, in the affidavit

(1) AIR 1966 Mysore 310

(2) 2001 (2) Apex Court Journal 96

filed, it has been pleaded that the application for withdrawal was filed on 19th September, 2008. The learned trial Court has adjourned the proceedings in the suit *sine die*,—*vide* order dated 23rd November, 2007 in view of the pendency of the present writ petition.

(11) The matter in issue requires to be examined from two different angles. Firstly, in respect of legality of the order passed by the Registrar under the Act in view of the pendency of the civil suit and secondly whether the transaction of sale is *prima-facie* proved.

(12) As per the case of respondent No. 2, the plaintiff has signed the sale deed on 16th March, 2006. The same has been presented for registration,—*vide* application dated 13th September, 2006 (Annexure P.11), by moving an application under Section 36 of the Act. The said application is moved after more than four months of the execution of the document, therefore, in terms of Section 23 of the Act, such document could not have been registered under Section 23 of the Act, Section 23 of the Act reads as under :—

“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 acceptable, within four months from the day on which it becomes final.”

(13) The finding recorded by the Registrar that the document has been presented for registration within four months, is factually incorrect. The order passed by the Registrar in view of the factual mistake itself is not sustainable. It shows that the Registrar has passed an order without examining the facts carefully. This fact alone is sufficient to set aside the order passed by the Registrar on 13th September, 2007.

(14) Apart from the said fact, respondent No. 2 has invoked the jurisdiction of Civil Court for specific performance of the agreement

dated 16th March, 2006. The petitioners have filed reply to the said suit. An ad-interim application has been disposed of giving liberty to the petitioner to sell the property after obtaining the permission of the Court. The jurisdiction of the Civil Court is plenary in nature and, therefore, all questions in respect of execution of the the documents and the receipt of the sale consideration or the execution of agreement are the issues, which are required to be examined in the Civil Suit. Though the statement was made before this Court that the application has been filed for withdrawal of the suit for specific performance but factually the said application has been filed only after the orders were passed by this Court on 17th September, 2008. Once, the matter is pending before the Civil Court at the instance of respondent No. 2 alone, wherein all the questions are required to be examined, the invocation of the jurisdiction of the Registrar under Section 73 of the Act is nothing but an abuse of process of law. As a matter of fact, if the Registrar refuses to register a document, an aggrieved party has a right to invoke the jurisdiction of the Civil Court under Section 77 of the Act. It necessarily implies that the order of Registrar is summary in nature and limited in operation. But once, the parties were before the Civil Court, the invocation of the jurisdiction of the Registrar lacks *bona-fide*. The manner in which the Registrar has ordered registration even though the factum of pendency of the Civil Suit raising disputed questions of fact was raised, speaks volumes of the conduct of officer in ordering registration of the document. To say least, we are of the opinion that the order registering of the document lacks *bona fide*.

(15) In **Banasettappa Laljichikkanna's case (supra)**, the Court has found that execution of the document does not mean merely signing, but signing by way of assent to the terms of contract of alienation embodied in the document. In the present case, the stand of the petitioners is categorical that they have not received sale consideration but that petitioner No. 1 has signed the document. The finding recorded by the Registrar is only based upon signing of document and not on the basis that the sale consideration was received by petitioner No. 1. Still further, the Hon'ble Supreme Court in **Chandeshwar Yadav's case (supra)**, has held that Section 77 of the Act, gives an option to the vendee either to file a suit under Section 77 of the Act or to bring a

suit for specific performance of the agreement to sell. In the present case, respondent No. 2 having chosen to file suit for specific performance, the remedy provided under the Act, were not available to the said respondent.

(16) In respect of the 2nd question, the petitioner has relied upon an agreement of sale dated 11th March, 2006, the said agreement bears the signature of respondent No. 2. Petitioner No. 1, further pointed out that a sum of Rs. 99,000/- was deposited in her Savings Bank Account on 13th March, 2006. She has appeared before the Sub Registrar on 17th March, 2006. Said appearance has been endorsed by the office of Sub Registrar, it, thus, appears that the stand of the petitioners that there was an agreement of sale on 11th march, 2006 and, she appeared before the Sub Registrar is sufficient to return a finding that the stand of respondent No. 2 that there was no agreement, is not correct. Still further, the affidavit dated 24th September, 2008, shows that the said respondent has withdrawn certain amount from the Bank Account from 13th March, 2006, meaning thereby that the contract of sale was not executed at the spur of the moment on 16th March, 2006. It is not explained as to how and why, the sale consideration has not been paid through cheque or draft nor any payment was recited to be payable before the Sub-Registrar. The entire payment of Rs. 2.68 lacs is purportedly made in cash and at the residence of the petitioners. Such conduct leaves a strong suspicion on the entire nature of the transaction propounded by respondent No. 2.

(17) Therefore, we are of the opinion that the order passed by the Registrar (Annexure P.17) is wholly illegal, unjustified and consequently, the same is set aside.

(18) The petitioners have also made a complaint to the Senior Superintendent of Police on 2nd April, 2006 and as per the petitioner, no action has been taken thereon. Therefore, we direct the Senior Superintendent of Police, Ferozepur to take appropriate action on such complaint expeditiously.