

ORDER

The petitioners in this writ petition are assailing the order dated 27.09.2013 passed by respondent No.1 in Case No.RA 4/2003-04 by which, the appeal filed by respondent No.3 was allowed, directing respondent No.2 to register the Sale Deed dated 06.05.2002 stated to have been executed by the petitioners in favour of respondent No.3 in respect of Sy. No.118/4 to the extent of 2 acres 23 guntas situated at Bannimangala Village, Kundana Hobli, Devanahalli Taluk, Bangalore Rural District.

2. Heard the learned counsel appearing for the petitioners and learned counsel appearing for respondent No.3.

3. It is stated that the petitioners are the absolute owners of 2 acres 23 guntas of the petition property situated at Bannimangala Village, Kundana Hobli, Devanahalli Taluk, Bangalore Rural District. It is stated in the petition that, respondent No.3 has alleged that the petitioners have executed an agreement of sale dated

09.11.1998 in favour of respondent No.3 agreeing to sell the suit property for a valuable consideration of Rs.1,30,000/- and as an earnest money, a sum of Rs.1,15,000/- was received by the petitioners herein. It is further stated that, respondent No.3 in pursuance of the agreement, a sale deed dated 06.05.2002 was also prepared on adequate stamp papers and at his request, petitioner Nos.1 to 6 affixed their signatures on the sale deed. Since petitioner No.7 was a minor as on the date of the sale deed, petitioner No.1 has signed the sale deed as father and natural guardian of petitioner No.7. It is further stated that respondent No.3 presented the sale deed before respondent No.2 on 21.08.2002 for registration and the petitioners did not appear on the said date before respondent No.2. The matter stood thus, respondent No.2 passed the order on 06.03.2004 under Section 34 of the Registration Act, 1908 refusing to register the sale deed in question in the absence of the petitioners being present before respondent No.2.

4. Aggrieved by the order passed by respondent No.2, an appeal was preferred by respondent No.3 in R.A. No.04/2003-04 under Section 72 of the Registration Act, 1908 (hereinafter referred to as 'the Registration Act' for short) before respondent No.1. It appears that during pendency of the said appeal, respondent No.3 filed a suit in O.S. No.2153/2006 before the Civil Judge (Sr. Dn.), Devanahalli seeking for a decree of specific performance of contract in respect of agreement of sale dated 09.11.1998 and after a full-fledged trial, the said suit came to be dismissed by judgment dated 23.09.2010. In spite of dismissal of the civil suit, respondent No.1 has proceeded with the appeal filed by respondent No.3 under Section 72 of the Registration Act by holding an enquiry and passed the impugned order directing respondent No.2 to register the sale deed in question. Aggrieved by the impugned order passed by respondent No.1, the present writ petition is preferred.

5. Statement of objections have been filed by the legal representatives of respondent No.3 *inter alia* contending that the dismissal of the civil suit in O.S. No.2153/2006 has no bearing upon the disposal of the appeal by respondent No.1 for the reason that the appeal was filed only after the petitioner had received the entire sale consideration and thereby, the order passed by respondent No.1 is in accordance with law and it is further stated that the petitioners have received the entire sale consideration amount, as such, they did not venture to take action against respondent No.3 and would contend that the writ petition needs to be dismissed with exemplary costs.

6. Respondent Nos.1 and 2-the State has filed statement of objections stating that the writ petition is not maintainable either in law or on facts and would justify the impugned order passed by respondent No.1. It is further stated that the petitioners have admitted the execution of the deed during the course of enquiry and the suit in

O.S.No.2153/2006 is no way concerned with the enquiry and sought to dismiss the writ petition.

7. Learned counsel for the petitioners would vehemently contend that respondent No.1 has failed to appreciate in the appeal filed under Section 72 of the Registration Act that the Registrar has no power to hold the enquiry and the entire proceedings adopted by respondent No.1 is contrary to law and liable to be set-aside. Learned counsel would further contend that respondent No.1 has failed to appreciate that respondent No.3 has not taken any steps to summon the petitioners before respondent No.2 for admitting the execution of the sale deed in question and under the enunciating circumstances, respondent No.2 was justified in refusing to register the document. Learned counsel would further contend that the reasons assigned by respondent No.1 to entertain the appeal of respondent No.3 muchless and allow the appeal without taking into consideration the judgment and decree of the Civil Court passed in O.S.

No.2153/2006 is unsustainable. To buttress his argument, learned counsel has relied upon the judgment of the Apex Court in the case of ***Avnash Rani & Anr. Vs. Additional Deputy Commissioner-cum-Registrar, Ferozepur & Ors.*** reported in ***AIR 2009 Punjab and Haryana 35 [Avnash Rani]*** at paragraph No.14 to contend that the power of Registrar is summary in nature and limited in operation and it cannot sit on the judgment of the Civil Court.

8. *Per contra*, learned counsel for respondent No.3 would justify the order passed by respondent No.1 and would contend that in the light of the entire sale consideration having been paid by respondent No.3, the District Registrar was justified in directing respondent No.2 to register the sale deed dated 06.05.2002 in the name of respondent No.3 herein. Learned counsel would further contend that the impugned order passed by respondent No.1-District Registrar does not call for any interference and the writ petition needs to be dismissed.

9. Having heard the learned counsel for the parties and having perused the material on record, the point that arises for consideration is:

"Whether the registration under Section 73 of the Registration Act was justified in overlooking the judgment in O.S.No.2153/2006?"

10. It is relevant to note the undisputed facts that, the petitioners are the absolute owners of the suit schedule property. It is also not in dispute that a suit in O.S. No.2153/2006 filed by respondent No.3 seeking for specific performance of contract on the basis of the agreement of sale dated 09.11.1998 and to execute the registered sale deed was contested by the petitioners herein and ultimately, the suit of the plaintiff/respondent No.3 came to be dismissed on 29.03.2010 and the said order has remained unchallenged. The said suit came to be dismissed during the pendency of the appeal before respondent No.1-the District Registrar when the order was passed on 27.09.2013. The District Registrar without

considering the order of the Civil Court, has held enquiry and directed respondent No.2 to register the sale deed in the name of respondent No.3.

11. It is relevant to consider the provisions that are applicable to be considered in the present petition is, Sections 32, 34, 35 and 72 of the Registration Act.

12. Section 32 of Part VI states about the Registration of the document under the Registration Act and the persons to present the document for registration and in terms of the said section, the document is to be presented by the person executing and who has a right for presentation. The said section also provides that any person, the executant or its duly authorized agent can present the instrument for registration. The exception provided in the section is as mentioned in Sections 31, 88 and 89.

13. The Sub-Registrar has to conduct enquiry under Section 34. Sub-Clause 3 of Section 34 envisages the

Registering Officer to enquire whether or not such document was executed by the persons or by whom it purports to have been executed and satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document and in case of any person appearing as a representative, assign or agent satisfy himself of the right of such person to appear.

14. Sub-Section 3(a) of Section 34 clearly envisages about the enquiry to be conducted by the Registering Officer.

15. Section 35 of the Registration Act, envisages the procedure on admission and denial of execution by the Registering Officer. Sub-Section 3(a) of Section 35 envisages that if a person by whom the document purports to be executed denies its execution. The Registering Officer shall refuse to register the document. Section 35 of the Registration Act, reads as under:

"35. Procedure on admission and denial of execution respectively.—

(1) (a) *If all the persons executing the document appear personally before the registering officer and are personally known to him, or if he be otherwise satisfied that they are the person they represent themselves to be, and if they all admit the execution of the document, or*

(b) if in the case of any person appearing by a representative, assign or agent, such representative, assign or agent admits the execution, or

(c) if the person executing the document is dead, and his representative or assign appears before the registering officer and admits the execution,

the registering officer shall register the document as directed in sections 58 to 61 inclusive.

(2) *The registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act, examine any one present in his office.*

(3) (a) *If any person by whom the document purports to be executed denies its execution, or*

(b) if any such person appears to the registering officer to be a minor, an idiot or a lunatic, or

(c) if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution,

the registering officer shall refuse to register the document as to the person so denying, appearing or dead:

Provided that, where such officer is a Registrar, he shall follow the procedure prescribed in Part XII:

Provided further that the State Government may, by notification in the Official Gazette, declare that any Sub-Registrar named in the notification shall, in respect of documents the execution of which is denied, be deemed to be a Registrar for the purposes of this sub-section and of Part XII."

16. Section 71 provides the Sub-Registrar to record the reasons for refusal to register a document. Section 72 provides for an appeal against the order of the Sub-Registrar except where the refusal is made refusing registration. The said section reads as under:

"72. Appeal to Registrar from orders of Sub-Registrar refusing registration on ground other than denial of execution.—(1) Except where

the refusal is made on the ground of denial of execution, an appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-Registrar is subordinate, if presented to such Registrar within thirty days from the date of the order; and the Registrar may reverse or alter such order.

(2) If the order of the Registrar directs the document to be registered and the document is duly presented for registration within thirty days after the making of such order, the Sub-Registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60; and such registration shall take effect as if the document had been registered when it was first duly presented for registration."

17. Section 73 provides for an application to the Registrar where Sub-Registrar refuses to register the document on the ground of denial of execution. The said section reads as under:

"73. Application to Registrar where Sub-Registrar refuses to register on ground of denial of execution.—(1) When a Sub-Registrar has

refused to register a document on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution, any person claiming under such document, or his representative, assign or agent authorized as aforesaid, may, within thirty days after the making of the order of refusal, apply to the Registrar to whom such Sub-Registrar is subordinate in order to establish his right to have the document registered.

(2) Such application shall be in writing and shall be accompanied by a copy of the reasons recorded under section 71, and the statements in the application shall be verified by the applicant in manner required by law for the verification of plaints.”

18. Section 74 envisages the procedure of the Registrar on such application. On refusal to register on the ground of denial of execution application to be filed before the Registrar under Section 73. Respondent No.3 preferred an application to the Registrar under Section 73 since the Sub-Registrar refused to register the document on the ground that the petitioners by whom it is purported to be executed have declined for registration of the Sale Deed. The Sub-Registrar refused to register the document on the

objections filed by the petitioners when the deed was presented for registration. The Registrar-respondent No.1 on the said application has directed respondent No.2-the Sub-Registrar to register the document by holding enquiry. The powers of the Registrars while dealing with an application under Section 73, no doubt is wider than the power, which has entrusted to the Sub-Registrar under Section 35, making it evident that the Sub-Registrar under Section 35 (3) (a) can mandatorily refuse registration when the execution of a document is denied by the person purported to have executed the document, on the other hand, the Registrar is entrusted with the power to conduct an enquiry under Section 73 by following procedures as envisaged under Section 74.

19. The Apex Court in the case of ***Veena Singh (Dead) through legal representative Vs. District Registrar/Additional Collector (F/R) and Another*** reported in ***(2022) 7 SCC 1*** [*Veena Singh*] while

considering Sections 35, 72, 73 and 74 of the Act, at paragraph Nos.80, 81, 82, 83 and 84 has held as under:

"80. Section 73 of the Registration Act envisages that an application may be submitted to the Registrar by a person in order to establish their rights to have a document registered, in a situation where the Sub-Registrar has refused to register the document on the ground that the person by whom it purports to have been executed has denied its execution. Section 74 then lays down the procedure which is to be followed by the Registrar, which contemplates an enquiry by the Registrar into whether the document has been executed and whether requirements of law for the time being in force have been complied with on the part of the applicant or the person presenting the document for registration. When the twin requirements of clauses (a) and (b) of Section 74 are found by the Registrar to have been fulfilled, sub-Section (1) of Section 75 provides that the Registrar shall order the document be registered.

81. Sub-Section (4) of Section 75 stipulates that for the purpose of the enquiry under Section 74, the Registrar may summon and enforce the attendance of witnesses and compel them to give evidence as if he is a civil court. The Registrar is also

empowered to impose the obligation of paying the costs of the enquiry on a party, and such costs are to be recovered as if they have been charged in a suit under the CPC. Thus, sub-Section (4) of Section 75 incorporates a deeming fiction from two perspectives – first, in empowering the Registrar to summon and enforce the attendance of witnesses and for compelling them to give evidence “as if he were a civil court”; and second, in awarding costs which become recoverable “as if they have been awarded in a suit” under the CPC.

82. The process which is conducted by the Registrar for the purpose of an enquiry under Section 74 cannot be equated to the powers of the civil court, though certain powers which are entrusted to a civil court are vested with the Registrar by the provisions of Section 75(4). A quasi-judicial function is entrusted to the Registrar for the purpose of conducting an enquiry under Section 74. Where the Registrar refuses to register a document under Sections 72 or 76, no appeal lies against such an order. Section 77, however, provides that when the Registrar refuses to order the document to be registered, any person claiming under such document or its representative, assign or agents may institute a suit before the civil court within the stipulated time for a decree directing that the

document shall be registered. It is thus clear that the Registrar, when he conducts an enquiry under Section 74, does not stand constituted as a civil court. The enquiry before the Registrar is summary in nature. The decision of the Registrar in ordering document to be registered, or for that matter in refusing to register a document, is not conclusive and is amenable to judicial review.

83. Therefore, in a situation where an individual admits their signature on a document but denies its execution, the Sub-Registrar is bound to refuse registration in accordance with Sections 35(3)(a) of the Registration Act. Subsequently, if an application is filed under Section 73, the Registrar is entrusted with the power of conducting an enquiry of a quasi-judicial nature under Section 74. If the Registrar passes an order refusing registration under Section 76, the party presenting the document for registration has the remedy of filing a civil suit under Section 77 of the Registration Act, where a competent civil court will be able to adjudicate upon the question of fact conclusively.

84. Finally, our attention has been drawn to Section 58(2) of the Registration Act, which stipulates as follows:

"58. Particulars to be endorsed on documents admitted to registration.—(1) * * *

(2) If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register if, but shall at the same time endorse a note of such refusal.”

20. In the present case, the Registrar while exercising the power conferred under Section 74 has arrived at a finding that the petitioners have appeared and admitted their signatures to the document in question and therefore, is liable to be registered without considering the settled proposition of law that mere signing of an instrument would not amount to an execution as held by the Apex Court in the case of **Veena Singh** (stated supra).

21. On perusal of the order of the Registrar would make it evident that the Registrar is sitting over the judgment of the Civil Court by going to an extent of enquiring into the dispute between the parties when the Civil Court dismissed the suit of the plaintiff for specific

performance of contract. The Apex Court in the case of ***Avnash Rani***, at paragraph No.14 has held as under:

"14. Apart from the said fact, respondent No.2 has invoked the jurisdiction of Civil Court for specific performance of the agreement dated 16-3-2006. 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 documents and the receipt of the sale consideration or the execution of the 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 17-9-2008. 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 the 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 the least, we are of the opinion that the order registering the document lacks bona fide."

22. In the present facts, the Sub-Registrar refused to register the document and aggrieved by which, the application was filed by respondent No.3 before the Registrar under Section 73 of the Registration Act. It is necessary to note that during the pendency of the application before the Registrar, the suit came to be dismissed and thus, the decision of the Registrar in directing the document to be registered is contrary to law and the invocation of the jurisdiction of the Registrar itself lacks bonafide in view of the decree of the Civil Court by

its judgment dated 23.09.2010 and the point framed for consideration is answered accordingly.

23. For the reasons stated supra, this Court is of the considered view that the impugned order at Annexure-A is unsustainable and liable to be set-aside. Accordingly, this Court pass the following:

ORDER

- i. The writ petition is ***allowed***.
- ii.*** The impugned order dated 27.09.2013 at Annexure-A passed by respondent No.1 in Case No.RA.04/2003-04 is hereby ***set-aside***.
No order as to costs.

**Sd/-
JUDGE**