

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR
(SB : VIVEK AGARWAL, J.)

Writ Petition No.1213/2015

The Gwalior Sugar Company Ltd. Dabra

Vs.

Rama Erection Pvt. Ltd. & Others.

Shri R.S. Bansal, learned counsel for petitioner.

Shri Prashant Sharma, learned counsel for respondent No.1.

Whether approved for reporting : **Yes.**

Law laid down : Section 23 of the Registration Act, 1908, prescribes time limit for presentation of an executed document for registration, but it does not prescribe any time limit for Registering Authority to register or refuse registration of such document.

Significant paragraph numbers : 6 & 7.

ORDER

(Passed on 3rd July, 2017)

1. Petitioner has filed this writ petition under Article 227 of the Constitution of India being aggrieved by order dated 09.02.2015 passed by the Court of First Additional District Judge, Dabra, Gwalior, whereby learned ADJ has held that petitioner seeking cancellation of sale deed is liable to pay *ad valorem* Court fee.
2. Petitioner, who is plaintiff before the trial Court, has putforth a grievance that the trial Court has wrongly allowed the application moved by respondent no.1/defendant no.1 under the provisions of Order 7 Rule 11 of the Code of Civil Procedure and illegally directed the petitioner for payment of *ad valorem* Court fees according to the valuation of the sale deed.
3. It is the case of the petitioner that two written documents

were presented before the Sub-Registrar on 14.11.2011 and those documents were illegally registered by respondent no.3/defendant no.3 in favour of respondent no.1/defendant no.1 vide endorsement dated 20.09.2013 bearing Numbers 2566 and 2577.

4. It is the case of the petitioner that the Sub-Registrar illegally registered the document in absence of the petitioner-plaintiff after expiry of 22 months. In this regard, he has drawn attention of this Court to the provisions contained in Section 23 of the Registration Act, 1908 (hereinafter for short referred to as "Registration Act") and submits that no document other than a Will could have been accepted for registration unless presented for that purpose to the Property Officer within four months from the date of its execution. Since the document has been registered after a lapse of four months, therefore, it is hit by the provisions contained in Section 23 of the Registration Act. It is submitted that the trial Court has failed to understand the nature of the suit. Since the document was accepted for registration and registration was carried after a lapse of 22 months, the petitioner became a non-executant of the sale deed and, therefore the sale deeds are not binding on the petitioner-plaintiff and thus the plaintiff was liable to pay the fixed Court fees and not *ad valorem* Court fees. According to the petitioner in terms of the law laid down by the Hon'ble Apex Court in the case of **Suhrid Singh alias Sardool Singh v. Randhir Singh & Ors. as reported in 2010 AIR SCW 3308**, it has been held that "where the plaintiff filed a suit for declaration of a sale deed executed by the plaintiff's father as null and void, the plaintiff being a non-executant of the sale deed and in possession of the suit land, has to merely pay a fixed Court fees. In the present case, since the

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sale has not been completed, therefore, the plaintiff is non-executant of the sale deed, hence, the impugned order is bad in law and is liable to be set aside.”

5. The sum total of issue, which has been putforth by the learned counsel for the petitioner, is that since the documents, namely, the sale deeds were not presented for registration within four months of the date of their execution, they could not have been registered by the Sub-Registrar. Since the executant of the sale deed, i.e., representative of the seller was not present on the date on which registration took place, such registration is null and void and not binding on the seller. A perusal of definition of word “presentation” in the context of the Registration Act means the production or making over of a document to the Registering Authority for acceptance of the same for registration. It means handing over to the Registering Authority by the person who desires the registration thereof. In the present case, a perusal of the suit as has been filed by the petitioner for declaration and injunction will reveal that in paragraph 3 of the plaint, it is clearly mentioned that from the side of the plaintiff-Company, two sale deeds were reduced in writing on 14.11.2011 and were presented in the office of the Sub-Registrar, i.e., defendant no.3, but defendant no.3 had not registered the said sale deeds on the ground of dispute in regard to title of the plaintiff and had kept them without registration. They were not returned to the plaintiff-Company. Later on, these documents have been registered without calling the seller on 20.09.2013. Thus, the documents are void vis-a-vis the plaintiff and accordingly a declaration has been sought that the sale deeds bearing No.2566 and 2577 be declared as null and void and it be further declared that no title will vest in defendant no.1 on the basis of such

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documents. Further relief of permanent injunction has been sought by the plaintiff that on the basis of such documents, defendant no.1 be stopped from interfering in the possession of the suit land in the hands of the plaintiff.

6. Relying on the provisions contained in Section 23 of the Registration Act, it is submitted that since the document was not registered within the period prescribed under Section 23 of the Registration Act, they are void and, therefore only fixed Court fees is payable.

7. The only dispute, which is to be adjudicated in this case, is the difference between the provisions of Sections 23 and 17 of the Registration Act. Section 34 deals with the Enquiry before registration by Registering Authority. Section 23 deals with time for presenting the documents. In the present case, it is admitted that the plaintiff himself had presented the documents to the concerned Sub-Registrar within four months of the date of execution, i.e., 14.11.2011. This fact has been admitted in the plaint also. It is also an admitted position that the documents as are contained in Annexure P/4, contain signatures of the seller so also his thumb impression at an appropriate place which were taken on 14.11.2011 itself. Thus, the document was presented within a period of four months to the Sub-Registrar and, therefore, the provisions of Section 23 of the Registration Act will not be applicable, which provides for time limit of four months for presentation of a document for its registration from the date of its execution. Since the document in question was accepted on 14.11.2011 and it was presented on the same date with signatures and thumb impression, etc., now it is not open to the petitioner to say since the document was not registered within four months, therefore, the sale deed is null and void. The time

limit as has been prescribed under Section 23 of the Act is that for presentation and not for registration. Even Section 34 of the Registration Act provides for enquiry before the registration by the Registering Officer. It provides that no document shall be registered under this Act, unless the persons executing such document, or their representatives assigns or the agents authorized as aforesaid, appear before the Registering Officer within the time allowed for presentation under Sections 23, 24, 25 and 26. Thus, it is apparent that enquiry before registration was to be made at the time of presentation of the documents. Since the document was presented and it was verified that it was presented by the proper authority and their thumb impression and their signatures were duly obtained and identified by the Sub-Registrar, it cannot be said that any fresh enquiry was required at the time of registration specially when the plaintiff had not moved any application for withdrawal of such document from the Office of the Registry. Law in this regard is clear and provides for a bar against registration if a document is presented for registration after the prescribed period of four months or after eight months, as the case may be. There is no bar to the Registering Officer passing the order at any time. Moreover, the enquiry before the Registering Officer is summary in nature as has been held by this very High Court in the case of **Smt. Saraswatibai v. Md. Idrakuddin as reported in AIR 1963 MP 234**. It is also seen that there is no denial to the execution of the document. Now on the technical plea, this issue has been wrecked up by the petitioner. As has been mentioned above, the Registration Act prescribes a period for presenting a document for registration (Sections 23, 25). It also prescribes a period for appearance of persons executing the document (Section 34).

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However, there is no period prescribed within which a document, which has been admitted for registration, may be registered or within which the order of refusal by Registering Officer to register the document must be made. (See, Commentary on Section 35 in the Registration Act by Sir Dinshaw Fardunji Mulla, Thirteenth Edition by Justice K. Kannan, Former Judge, Punjab & Haryana High Court published by Lexis Nexis, Gurgaon, Haryana). In absence of any such time limit being prescribed for registration or for refusing to register, the document does not become void because of delay in registration. Therefore, the order of the Court below for payment of *ad valorem* Court fees as admittedly the plaintiff is the author of the executed sale deeds, is in conformity with the provisions of law and does not call for any interference. Thus, this petition fails and is hereby dismissed. Petitioner to bear costs of this petition, which is quantified at Rs.10,000/-.

(Vivek Agarwal)
Judge
03.07.2017

Mehfooz/-