

1970 KHC 316
Kerala High Court
V. R. Krishna Iyer, J.
Mathai Ouseph v. Joseph and another
C. R. P. No. 1514 of 1968
21 August, 1969

Registration Act, 1908, S.73, S.74, S.75, S.76, S.77 - Document submitted for registration - Defendant's denial of execution and subsequent refusal of registration by Registrar -- Plaintiff filing suit without resorting statutory remedy -- 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 -- Special Statutory remedy cannot ordinarily exclude, by implication, the general right of suit under S.9 Civil Procedure Code . (Para 8)

3 Allahabad 398 ILR 24 All. 402; AIR 1926 Mad. 530 16 Mad. 341; 25 TLJ 119; Referred to

AIR 1932 All. 96; Referred to

1957 Mad. 78; 1958 MP 310; AIR 1959 AP 626; 1960 Mad. 244; Referred to

M. P. Thomas; M. P. Varghese; For Revision Petitioner
C. K. Sivasankara Panicker; D. N. Potti; P. G. Panicker; T. A. Narayanan Nair; For Respondents

ORDER

1 At the end of this Order, what I say at the beginning, induced by the number of rulings cited at the bar, will be better understood. The revision relates to the soundness of the lower court's finding on a preliminary issue. But before going into it let me quote a passage from Paton (Jurisprudence):

"The community must be ruled by law and not by men, for then all are equally treated. But should we carry our natural love of equality as an attribute of justice so far as to treat twenty plaintiffs unjustly because one binding case laid down an unjust rule? Is it better to be ultimately right or consistently and persistently wrong?"

Issacs J. in Aust. Agric. Co. v. Federated Engineer Drivers Assocn. (1913) 17 CLR 261 at 278:

"It is not in my opinion better that the court should be persistently wrong than that it should be ultimately right"

Reverence for precedents in a country of many courts, as in India or America, may often defeat the very object of certainty of the Law by plunging it into a maze of conflicting rulings and subtle distinctions, pushing it away from ordinary people who are expected to know the law and obey it. The present case is an illustration in point.

2 The defendant, the revision petitioner, executed a sale of the plaintiff property to the first plaintiff, pursuant to an earlier agreement. But when the deed was presented for registration, denied execution, whereupon the Sub Registrar refused to register it under S.35(3) of the Registration Act. Instead of applying under S.73 to the Registrar to establish his right to have the document registered, the plaintiff sued for a decree directing the defendant to get the deed registered and to deliver possession of the property to him together with profits. The defendant denied the very agreement to sell and the execution of the document. He also contended that since the plaintiff did not file any application to the District Registrar against the refusal of the Sub Registrar to register the document the plaintiffs have not exhausted the remedies provided for in the Registration Act and so the suit filed before that for compulsory registration is not maintainable and should be dismissed. On this last contention, issue 6 was framed, tried preliminary and found for the plaintiff. This finding is strenuously canvassed before me, based on a long line of decisions, matched, of course, by another long line taking the contrary view. In the absence of a Kerala decision or a declaration of the Law by the Supreme Court I shall align myself with those Judges whose reasoning appears to me as more logical and equitable.

3 When a document is presented for registration but the person by whom the document purports to be executed denies its execution, the registering officer shall refuse to register the document as to the person so denying (S.35.3). Part 12 of the Registration Act provides for the procedure for refusal of registration and follow up action by the aggrieved party. Where refusal is the result of denial of execution "any person claiming under such document , may, within 30 days after the making of the order of refusal, apply to the Registrar in order to establish his right to have the document registered." (S.73.1). S.74 lays down the procedure to be followed by the Registrar in his enquiry as to whether the document has been executed.

"If the Registrar finds that the document has been executed. he shall order the document to be registered." (S. 75.1)

"If the document is duly presented for registration within 30 days after the making of such order, the Registering Officer shall obey the same." (S.75.2)

If the Registrar refuses to direct the registration of a document, as a result of his finding under S.75, he shall make an order of refusal and record the reasons for such an order in his Book No. 2, and, on application made by any person executing or claiming under the document, shall without unnecessary delay give him the copy of the reasons so recorded." (S.76.1)

Although no appeal lies from such an order, S.77 provides for a suit

"For a decree directing the document to be registered if it be duly presented for registration within 30 days after the passing of such decree."

In this context, we must remember an important provision in S.71(2) of the Act. Once a Sub Registrar refused to register a document and makes an order in that behalf, as required by S.71(1), he shall not "accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered."

That is to say, once the document is refused registration by the Sub Registrar he cannot accept it a second time unless there is a direction by the Registrar under S.75 or by a court under S.77. The problem posed before me is whether, to establish his right to have the document registered, the executee is bound to bring a suit under S.77, which he cannot do without resort to the various steps indicated in S.73 to 76 within the time prescribed by the various sections, the suit

itself being limited by the time stipulated in S.77(1) or whether he is entitled, without taking any of these steps, to institute a suit for a decree directing the document to be registered independently of the provisions of part 12 of the Act. Mulla in his Book on the Indian Registration Act sums up the legal position and the conflict of rulings in the following words: The lesser remedy provided by this section does not take away the larger remedy under the specific Relief Act. It has been held by the High Courts of Bombay, Madras and Rangoon that a suit to compel registration, that is, a suit "for a decree directing the document to be registered", is maintainable only under this section, and that independently of this section no such suit will lie. A different view has been taken by the High Court of Allahabad. According to that Court, every agreement for a transfer implies a contract not only to execute the deed of transfer, but to appear before the registering officer and to admit execution in cases where registration is compulsory. Where a person, therefore, executes a deed of transfer, but fails to appear before the registering officer and to admit execution, a suit will lie for specific performance of the implied contract to register, unless steps have been taken under the Registration Act for the registration of the deed, and the Sub Registrar has refused to register the deed. In the latter case, it has been held, that no such suit will lie because of the express provisions of S.71(2) by which it is enacted that "no registering officer shall accept for registration a document so endorsed (that is endorsed 'registration refused') unless and until, under the provisions hereinafter contained, the document is directed to be registered. "The words, "under the provisions hereinafter contained," contemplate a reference to the Registrar under S.72 or S.73, as the case may be, an order of refusal by the Registrar under S.76, and a suit under S.77".

The learned Author continues;

"In Calcutta it has been held that no suit lies to enforce registration independently of this section. But it has also been held that if a party executing a document refused to admit execution, it is open to the other party to sue for specific performance of the contract to transfer implied in the document. The latter decision admits the unregistered conveyance as evidence of a contract, a procedure which was condemned by the Privy Council in *Skinner v. Skinner* but which is sanctioned by the proviso added to S.49 by Act 21 of 1929. The Madras High Court dissented from the decision for this reason before the proviso was enacted but the Madras High Court still takes the same view in spite of the proviso. The Madhya Pradesh High Court holds that in a suit under this section, the only relief that a plaintiff can get is one of a decree directing the registration of the document. The Punjab High Court has held that a suit under this section can only lie when the Registrar has refused registration under S.72."

The rival views so expressed have been considered in other rulings of Courts not referred to by Mulla and I shall deal with them also. This confrontation of judicial opinions has led to a new synthesis evolved in a few recent rulings. Such a reconciliation is perhaps the only sound solution for a simple problem complicated by judicial thinking.

4 Now to a discussion. Among the earliest decisions dealing with this point is 3 Allahabad 395. A Full Bench of the Allahabad High Court considered whether the plaintiffs' suit for a decree directing registration of a bond executed by the defendants in favour of the plaintiffs was barred by the provisions of the Registration Act of 1877. The plaintiffs had presented the instrument for registration to the Sub Registrar and when he refused to register it on the ground of denial of execution the plaintiffs, instead of taking further steps under the Registration Act and applying to the Registrar in accordance with the provisions of S.73, instituted a suit as stated above.

"The plaintiffs' suit is not for specific performance of a contract, but distinctly contemplates and asks for the relief that would be prayed in a suit regularly brought in accordance with the terms of S.77 of the Registration Act. But unfortunately for him he has failed to satisfy all the conditions precedent to the bringing such a suit, by omitting to make the application to the Registrar provided for by S.73. For be it observed that the suit mentioned in S.77 may be instituted "where the Registrar refuses to order the document to be registered, "and it is also an incident not unworthy of notice that special provision is made at the end of the section, permitting the unregistered document, the admission of which the evidence could otherwise not be allowed, admissible for the purposes of such suit. In having failed to fulfil all the necessary preliminaries the plaintiff has put it out of the power of the Civil Courts, to give him the relief he asks. To decree the prayer of his plaint in terms would be to direct a public officer to do that which he is specifically and plainly told not to do. For the last paragraph of S.71 says: "No registering officer shall accept for registration a document endorsed 'registration refused' unless and until, under the provisions hereinafter contained, the document is directed to be registered". The plaintiff has not complied with the "provisions hereinafter contained" in that he made no application to the Registrar under S.73, which, as has already been pointed out, was a condition precedent to the institution of a suit".

The argument apparently is that once under S.71, registration is refused the officer cannot accept the instrument for registration again, unless, under the provisions of part 12 of the Act, there is a direction to register. The Court cannot direct a public officer to do that which the statute interdicts. Again, another argument also appears to have found acceptance. If the suit asks for the same relief as would be granted in an action under S.77 he must satisfy the conditions precedent to the bringing of such a suit. Anyway the conduct of a defendant who executes a sale deed but denies execution before the Sub Registrar is, in the language of Their Lordships "disgraceful", and so the Judges observe, with reference to the defendants' objections, "we regret to find ourselves constrained by the plain language of the law to admit the validity of their objections". The same question arose in a slightly different form in another Full Bench case of the Allahabad High Court reported in ILR 24 Allahabad 402. The only difference in the facts was that the plaintiff did not make any application to the Registrar under S.73 of the Act but instituted a suit straightaway. All the earlier decisions of the various High Courts were reviewed, and the view taken that "to create a right of suit in the Civil Court there must have been a refusal to order registration following upon an enquiry held upon an application presented within time". What weighed with Their Lordships was that the Registration Act had as one of its ends the securing of title in persons who take transfers of immovable property by providing for compulsory registration of such documents and by enacting that an unregistered document shall not affect immovable property. "In order to render this as effective a safeguard as possible the legislature has taken the greatest pain to secure the decision of questions affecting registration in as short a time as possible. This will appear from an examination of part 12 of the Act," 1927 Rangoon 83 also took the same view relying on the same rulings. A Division Bench of the Madras High Court (AIR 1926 Mad. 530) also was impressed with the emphasis on the short time fixed for adjudication of questions relating to Registration in part 12 of the Registration Act, Coutts Trotter C. J. observed in this connexion: "I should have thought that looking at the statute alone, it is clear that the object of the legislature was to provide a remedy of a very short period of limitation for putting right a wrongful refusal to register, and that must be held to be the remedy and the only remedy given by Law". The object, according to the learned Chief Justice, was to ensure that matters of this kind should be gone into when the evidence is fresh in everybody's mind and in all human probability all of it available, whereas if left to an ordinary suit some people might be dead who could throw light on the matter and others might have let it fade from their recollection.

The Allahabad Judges seem to have thought that the delay attending on a decision in an ordinary litigation would unsettle rights acquired in between. Courts Trotter C. J. has also dealt with the maintainability of the suit for specific performance. For, a Calcutta decision cited before Their Lordship took the view that "although the vendors had executed the document, as they could not be deemed to have completely performed their part as the agreement in essence was not merely to execute a conveyance which until registered would be inoperative in law, but to transfer the full title from themselves to the plaintiff as purchaser. Such title could be transferred only by means of a registered instrument; consequently, the execution of the conveyance not followed by registration could not be regarded as fulfilment of contract". The learned Chief Justice observed on this aspect, "that although in this country the remedy of specific performance is a statutory remedy, it nevertheless is simply a crystallisation into statutory form of an equitable remedy to which the laches was, as it is to all equitable claims, an answer. How it can be said that a man who is given an express statutory remedy by an Act of Legislature under S.77 of the Registration Act and has failed to take advantage of it has not been guilty of laches and is entirely free from blame passes my comprehension. It appears to me that a man who has failed to adopt the remedy expressly provided by the statute cannot come to this court and ask for an exercise in his favour of a discretionary and equitable remedy". The Bench distinguished decisions to the contrary by stating that in those cases the plaintiff, by the conduct of the defendant, was unable to pursue the remedy in part 12 of the Act. Of course, in Madras, an earlier Bench (in 16 Madras 341) had taken more or less the same view. The Travancore High Court also fell in line with this legal stand in 25 TLJ 119 (Full Bench).

5 A powerful current of judicial thought has however blowed the other way also. Indeed, the preponderance of authority has swung in the last two decades towards the view that a suit for specific performance by way of registration of a document is maintainable notwithstanding the by passing of the alternative remedy prescribed in part 12 of the Registration Act. As early as 1919 Cal. 477 the opposite view had found judicial support. Chief Justice Sulaiman lent the weight of his authority to this view in AIR 1932 All. 96. Fazil Ali C. J. (as he then was) in 1946 Patna 62 considered this point and observed:

"In my opinion in a case like the present there are two alternative remedies available to the plaintiff. It is open to him either to bring a suit under S.77 Registration Act, merely for the Registration of the document and if he chooses to adopt that course, that suit must be brought within 30 days of the date when the Registrar refuses to register the document. It is equally open to him to have recourse to the fuller and more comprehensive remedy provided by a suit for specific performance of the contract of sale. If he brings the suit under S.77, his claim has to be confined only to the registration of the document, because as has been held in several cases, in a suit under S.77 the court is only concerned with the genuineness of the document sought to be registered that is, whether the document is executed by the person by whom it is alleged to be executed, and not its validity and the question of its validity must be determined in a suit properly framed for that purpose.

In the present case, however, the plaintiffs were not only concerned with obtaining the registration of the document but also wanted the possession of the land which was subject of the unregistered sale deed. They further wanted a relief as against a third party who was brought on the scene on account of a subsequent sale deed having been executed in his favour by Budhan Mahto on 14th September 1939. The scope of the present suit is obviously much wider than that of a suit under S.77 and I do not find any law which precluded the plaintiff from

bringing a suit which will give them fuller relief than a suit under S.77 for mere registration of the document.

Rajamannar C. J. in 1957 Madras 78 stated the view of the Bench of that court thus;

Taking the case of an agreement to sell, it cannot be said that the contract has been fully performed till there is a properly executed document which is also registered. It cannot be said that the moment a document is executed the contract ceases to be in force. The purchaser is always entitled to insist upon his right to have a proper registered instrument. Every vendor is bound to do all that is necessary to perfect the title of the purchaser, which includes the execution and registration of a proper conveyance.

It is true that the purchaser can resort to proceedings under the registration Act and the special statutory remedy under S.77 of that Act to obtain registration of the executed document. But if for any reason it becomes impossible to obtain registration after resort to such proceedings or because of other circumstances which prevent any resort to such proceedings under the Act, then undoubtedly the vendee is entitled to bring a suit for specific performance of the agreement to sell in his favour. This does not however mean that every such suit should be decreed. Being an equitable remedy, a court is not bound to grant specific performance in every case in which an agreement has not been carried out in its entirety. Well established equitable considerations would justify a Court refusing to grant the relief of specific performance."

The Madhya Pradesh High Court in 1958 MP 310 struck the same note and the head note briefly reflects the reasoning.

"In a suit under S.77, the only relief that a plaintiff can get is one of a decree directing the registration of the particular document executed between the parties. No other relief can be granted to the plaintiff and no other claim can be enabled with the prayer to enforce registration. The remedy which the plaintiff claims in a suit for specific performance of a contract of sale is for the specific performance of the contract by executing a new and fresh document for recovery of actual possession. It cannot, therefore, be said that S.77 in terms or by necessary implication bars a suit for specific performance of a contract embodied in a deed for the registration of which a decree could be obtained in a suit under S.77. The jurisdiction to decree specific performance being discretionary the question whether a suit for specific performance is or is not maintainable in view of the provisions of S.77 would depend mainly on the nature of the pleadings in the suit for specific performance and the facts determined by the Court in that suit."

6 The winds of change began to blow powerfully after 1957 Madras 78 and the Full Bench ruling reported in AIR 1959 AP 626, 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 1961 Andhra Pradesh repeated the reasoning of the full Bench with reference to a partition deed where no resort to the registering officer was bad 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 under 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 his favour. The same line of reasoning has found favour with the Orissa High Court also.

7 There is no more need to multiply precedent except to state that in 1960 Madras 244 the case law, which encumbers this question, has been set out in full and a conclusion which leans towards the maintainability of a suit independently of S.77 has been reached.

8 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 S.77 of Registration Act and S.10 (old S.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 S.75 stage is reached and no other relief except a direction for registration is really asked for, S.77 is an exclusive remedy; otherwise it has no application.

Where registration has been refused under S.71 (of the Registration Act) the statute gives him a quick remedy before a quasi-judicial 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 S.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, S.77 is insufficient to provide relief and cannot operate as a bar. For, if a party needs other reliefs along with registration of the deed, should the statute be used to compel him to file a suit under 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 under S.76 he may go to Court under 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 S.77. But if a party has got an order under S.76 and prays, in the suit that follows, only for a relief falling squarely within S.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 under 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 S.77 is optional, not obligatory.

9 In the present case, a suit under S.77 will not be adequate to meet the deeds of the plaintiff because he is seeking not merely the registration of the sale deed but also recovery of possession and mesne profits, which are outside the purview of an action under S.77. Therefore, I hold that the suit is not barred either by the provisions of S.77 or for the reason that the party has not pursued his remedies under Part 12 of the Registration Act. Moreover, he is entitled, if really there is a contract of sale in his favour, this is a question of fact yet to be adjudicated upon to enforce the implicit agreement to get a proper conveyance executed and registered. A suit for specific performance of the agreement to register the document is maintainable. Moreover any suit for Specific performance being as equitable relief is subject to the discretion of the court, exercisable on well-established equitable grounds. This aspect will be considered by the Trial Court when granting or refusing the relief. The question of laches or other like considerations may bear upon this issue, although the mere failure to go before the Registrar under S.73, with an application, does not appear to me to be much by way of laches, particularly in the context of other reliefs having to be obtained by the executee to make the sale worthwhile.

I therefore dismiss this Civil Revision Petition, subject to the observations made at the end of this order. There will be no order as to costs, in the circumstances of the case.
