

NAREN CHANDRA NASKAR

v.

ARUN BHATTACHARYA & ORS.

(Civil Appeal No. 5820 of 2008)

SEPTEMBER 24, 2008

[ALTAMAS KABIR AND MARKANDEY KATJU, JJ.]

Deeds and Documents: Genuineness of Sale Deed – Registration of two Sale Deeds in respect of different properties – Both the Vendees claiming to be in peaceful possession of their respective properties – Registration details of both Deeds identical – Initiation of criminal case against one of the vendees (appellant) at the instance of District Registrar – Another vendee (respondent) filing writ petition alleging forgery – Division Bench of High Court directing to hold enquiry as to genuineness of both the Sale Deeds – The District Registrar holding enquiry only in respect of Deed of the respondent and holding it genuine – On appeal, held: Direction by High court in exercise of jurisdiction under Article 226 of the Constitution to hold enquiry cannot be questioned – However, enquiry by the officer at whose instance criminal proceedings were initiated is not correct – Examination of genuineness of the document of appellant as well as respondent was required – Finding as to genuineness of document of respondent is confirmed – Direction to Inspector General of Registration to conduct a separate enquiry as to ascertain genuineness of appellant's document – If found genuine, mistake in numbering the documents be rectified – Otherwise action to be taken accordingly – Constitution of India, 1950 – Article 226 – Code of Civil Procedure, 1908 – O. 23 r. 1 – Registration Act, 1908 – Enquiry into genuineness of Sale Deed – Administrative Law – Bias.

Two Sale Deeds in respect of two different plots of land were registered respectively by appellant as well as

- A respondent No. 1. However, both the Sale Deeds were having identical registration details. Both appellant as well as respondent No. 1 stated to be in undisturbed possession of their respective lands. A criminal case u/s 471/420 IPC against the appellant was initiated at the instance of District Registrar in view of the above and because the sale Deed of respondent No. 1 was not traceable in the records of the office.

- Respondent No. 1 also filed a writ petition alleging that the Deed of the appellant was forged. He sought direction to the authorities concerned to remove the Deed of the appellant from the records and restore its Deed in its place and to proceed against the culprits in accordance with law. Single Judge of High Court disposed of the same holding that since investigation in the case was on, no further order was required. In intra-court appeal, Division Bench of High Court directed the District Registrar to conduct an enquiry as to genuineness of the respective documents of the appellant and respondent No. 1. Consequently, on holding of enquiry, document of respondent No. 1 was found genuine.

- In appeal to this Court, the appellant contended that in absence of power under Registration Act to the Officer concerned, he could not have conducted the enquiry; that since the suit filed on behalf of daughter of appellant's vendor against him claiming title of the property in question was dismissed, no further direction could have been given by the writ court to conduct enquiry into the genuineness of appellant's Deed; that the District Registrar was required to consider genuineness of the documents of both the appellant as well as respondent No. 1; and that inquiry by the officer, who made a complaint against the appellant was prejudiced.

Partly allowing the appeal, the Court

- H HELD: 1. The enquiry conducted by the District Reg-

istrar under the directions of the High Court in exercise of its jurisdiction under Article 226 of the Constitution cannot be called into question on the ground that the Registration Act did not provide for such enquiry to be conducted by the officer concerned. Therefore, the finding of the District Registrar that the Sale Deed executed in favour of the respondent No.1 had been correctly numbered as Deed No. 3203 of 1989 and correctly entered in Book No.1, Volume No.75 and that in terms of the order passed by the High Court, a copy of the same is required to be kept in the said Book-Volume, cannot be interfered with. To that extent, there is no reason to interfere with the directions and order passed by the High Court. [Para 23] [979,F-H; 980,A]

2. It is also not correct to contend that since the suit filed on behalf of the daughter of the appellant's vendor had been dismissed for default, no further direction could have been given by the writ court to conduct an enquiry into the genuineness of the appellant's Deed in view of the provisions of Order 23 Rule 1 CPC. Though, it may be said that the rights of the parties in the suit with regard to the land forming the subject matter of the appellant's Sale Deed cannot be gone into any further, the question relating to the genuineness of the Sale Deed executed and registered in the appellant's favour remains to be decided as the same had not been decided either in the suit or before any other forum. [Para 24] [980,B-D]

3.1 During the enquiry, on account of the failure of the appellant to produce his original document before the District Registrar, the status of his document was not decided, although, there was a direction by the High Court to consider both the documents. A finding should, therefore, have been arrived at either by the District Registrar or the High Court, regarding the genuineness of the appellant's document. The genuineness of the appellant's Deed should also have been examined. [Para 25] [980,F-G]

A 3.2 Since the complaint had been lodged by the Dis-
trict Registrar concerned, against the appellant, the said of-
ficer should not have been entrusted by the High Court with
the enquiry, as he had already dealt with the matter and had
arrived at the conclusion that a *prima facie* case had been
B made out against the appellant. [Para 25] [980,H; 981,A]

4. The findings of the District Registrar with regard
to the genuineness of the Sale Deed of respondent No.1
are not disturbed. The Inspector General of Registration,
is directed to conduct a separate enquiry into the matter,
C with reference to the genuineness of the appellant's docu-
ment. In the event the appellant does not appear before
the said Authority, the enquiry should be deemed to be
closed, but this will not prevent the appellant from seeking
his remedy, if any, before any other forum. If the authority
D concerned is satisfied that even the appellant's Sale Deed
is genuine and some mistake in numbering seems to have
occurred in the office of the District Registrar, he shall take
necessary steps to have the error corrected so that both
the Sale Deeds are placed in the Book/Volume maintained
E in the office of the District Registrar. If, however, he arrives
at a finding that the appellant's Sale Deed does not appear
to be genuine, he shall close the enquiry and direct the
District Registrar, to take such action as indicated in the
order of the High Court. [Para 26] [981,B-G]

F CIVILAPPELLATE JURISDICTION : Civil Appeal No. 5820
of 2008

From the final Judgment and Order dated 9/11/2006 of
the High Court of Calcutta at Calcutta in F.M.A. No. 816 of 2006
G with C.A.N. No. 5622 of 2006

Kr. Ghosh, Abhijeet Chatterjee, P. Mukherjee, Tarun Das
Sharma, Subodh Kr. Pathak and Dharmendra Kumar Sinha for
the Appellant.

H Dhruv Mehta, Sarla Chandra, Tara Chandra Sharma and

Neelam Sharma for the Respondents.

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. Leave granted.

2. Two Conveyances in respect of two different plots of land, both shown to have been registered before the District Registrar, South 24 Parganas, West Bengal, on 14.3.1989, being Deed No.3203 of 1989 and recorded in Book No.1, Volume No.75, at Pages 167-174, have given rise to Alipore Police Station Case No.110 of 2006. The said complaint was filed by Shri S.K. Debnath, the District Registrar, South 24 Parganas, in respect whereof a charge-sheet has been submitted against the appellant herein alleging the commission of offences under Sections 471/420 IPC. Both the purchasers claimed to be in undisturbed possession of the lands forming the subject matter of their respective Conveyances.

3. The controversy relating to the complaint filed by the District Registrar, South 24 Parganas, is with regard to the identical registration details and the fact that the sale deed of the respondent No.1 was not traceable in the records of the office of the complainant. Claiming the deed of the appellant herein to have been forged and wrongfully placed in Volume 75 of 1989 in Index I, maintained in the District Registrar's office, Alipore, the respondent No.1 filed a writ petition before the High Court, inter alia, alleging that his Deed, which was the genuine deed, had been removed from the records and replaced with the forged deed of the appellant herein. He therefore, prayed for a direction upon the concerned respondents, and, in particular, the respondent No.2, to remove the appellant's deed from the records and to restore his deed in its place. The other relief sought for by the respondent No.1 herein was for a direction upon the respondent No.4, the Officer in-Charge, Alipore Police Station, South 24 Parganas, to cause a thorough inquiry on the basis of the First Information Report lodged by the District Registrar, South 24 Parganas, and to proceed against the culprits in accordance with the law.

A 4. The learned Single Judge who heard the writ petition
took note of the fact that action had been taken on the basis of
the complaint made by the District Registrar, South 24 Parganas
and that Alipore Police Station Case No.110 dated 27.5.2006
had been instituted under Sections 467/468/471/420 and 120-
B IPC. It was also noted that further investigation into the com-
plaint was being conducted.

5. In that view of the matter, the learned Single Judge held
that since the investigation was on, no further order was required
to be passed on the writ petition and disposed of the same.

C 6. Aggrieved by the order of the learned Single Judge, the
respondent herein filed a Mandamus Appeal (F.M.A. No.816 of
2006), which was heard and disposed of on 9.11.2006. Taking
note of the case of the respondent No.1 that he had come to
learn from the proposed buyer that his sale deed was not trace-
able in the concerned Volume Register maintained in the Reg-
istration Office and that another sale deed pertaining to a to-
tally separate plot of land with the identical registration details
was in the records, the High Court felt that the learned Single
Judge ought not to have rejected the writ petition filed by the
respondent No.1 only on the ground that a criminal case is pend-
ing. Accordingly, while disposing of the appeal the Division
Bench set aside the order of the learned Single Judge and di-
rected the District Registrar, South 24 Parganas, to conduct an
enquiry and if it appeared that the deed of the respondent No.1
herein was a genuine document, to place the copy of the same
at the appropriate place of the Book Volume. It was also ob-
served that in the event the Deed of the respondent No.1 was
not found to be genuine, the respondent No.2 would be required
to take appropriate action against the said respondent.

G 7. The special leave petition has been filed against the
said order of the Division Bench of the Calcutta High Court dis-
posing of the writ appeal of the respondent No.1. It appears
that in terms of the order of the Division Bench of the High Court
the District Registrar, fixed 12th January, 2007, for hearing but
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the said hearing was adjourned to 31st January, 2007, on the ground of the appellant's illness. In between on 11th January, 2007, the present Special Leave Petition was filed.

8. From the records it appears that the enquiry was held on 31st January, 2007, as scheduled in the absence of the appellant herein and the District Registrar came to a finding that the deed produced by the respondent No.1, Arun Bhattacharya, was genuine. However, according to the appellant the said order or finding was not communicated to him.

9. Meanwhile, on 8th March, 2007, when the Special Leave Petition was taken up for preliminary hearing, this Court issued notice and also stayed the directions of the High Court to keep a copy of the document which was found to be genuine in the appropriate place of the Book Volume.

10. On 6th September, 2007, a charge-sheet was submitted against the appellant in Alipore Police Station Case No.110 of 2006, which had been registered on the complaint of Shri S.K. Debnath, District Registrar, South 24 Parganas, alleging the commission of offences by the appellant under Sections 471/420 IPC.

11. Appearing for the appellant, Mr. Pradip Ghosh, learned senior counsel, questioned the propriety of the order passed by the Division Bench of the High Court on several grounds. It was firstly urged that the Division Bench of the High Court erred in directing the same officer, who had lodged the complaint against the appellant, to conduct the enquiry into the genuineness of the two sale deeds. Mr. Ghosh submitted that asking the same officer, who had already formed an opinion regarding the appellant's guilt, to conduct the enquiry as to whether the appellant's sale Deed was genuine or not, could prejudice the outcome of the enquiry as the judgment of the said officer could be clouded by bias against the appellant. It was submitted that the judgment of the High Court and the directions contained therein were heavily loaded against the appellant and to his severe prejudice.

A 12. It was also submitted that the bias of the District Registrar came through strongly on account of the fact that despite the High Court's directions to consider the genuineness of both the sale deeds executed in favour of respondent No.1 and the appellant, a decision was rendered by the said officer only with regard to the genuineness of the sale deed of the respondent No.1. It was submitted that, in fact, the enquiry directed to be conducted, was confined only to the genuineness of the respondent No.1's sale deed, without going into the genuineness of the appellant's document also.

C 13. It was urged that an error on the part of the office of respondent No.2 in dealing with the two Sale Deeds could not be discounted and it was, therefore, absolutely necessary for the respondent No.2 to have gone into the genuineness of the appellant's sale Deed as well before arriving at a finding as to whether any fraud or forgery had at all been committed.

E 14. Mr. Ghosh urged that on 2nd June, 2005, some miscreants had trespassed into the appellant's property and had demolished the rooms erected thereupon by the appellant. A written complaint was lodged by the appellant on 3rd June, 2005, before the Inspector-in-Charge, Sonarpur Police Station on the basis whereof Sonarpur P.S. Case No. 218 dated 3rd June, 2005, was registered under Sections 147/148/149/427/506 IPC and that during the investigation, the Investigating Officer seized certain articles from the place of occurrence to which one Dipankar Dey was a seizure witness. On 16th September, 2005, the said Mr. Dipankar Dey, in his alleged capacity as the Constituted Attorney of one Shrimati Anjali Ghosh, daughter of the appellant's vendor, filed a suit for declaration and permanent injunction, being Title Suit No. 141 of 2005, against the appellant before the learned Civil Judge (Junior Division) 2nd Court at Baruipur, in respect of the plot of land acquired by the appellant by virtue of the sale deed executed in his favour by Sayaram Basu, together with an application for temporary injunction under Order 39 Rules 1 and 2 and Section 151 of the Code of Civil Procedure. The said application for temporary

injunction was rejected by the learned Civil Judge but the suit is pending disposal before the said Court.

15. On 3rd March, 2006, the said Dipankar Dey having failed to obtain an interim order in his suit, made an application on 3rd March, 2006, to the Inspector General of Registration, Revenue Department, alleging that the registration of the appellant's sale deed had been effected in a forged and fraudulent manner. Mr. Ghosh submitted that though the title suit filed by Shri Dipankar Dey stood dismissed, the writ petition was thereafter filed despite the order of the civil court. Mr. Ghosh submitted that such an enquiry as directed by the Writ Court, which had the effect of by passing the decree of the civil court was, entirely without jurisdiction and was liable to be set aside.

16. Mr. Ghosh concluded on the note that on the strength of the two Conveyances both the appellant, as well as the respondent, have been in undisturbed possession of the properties conveyed to them by their respective deeds. Therefore, the dispute which has been raised only requires correction by the allotment of a different number to one of the two documents, particularly when the suit for declaration which had been filed by the said Dipankar Dey, on behalf of the daughter of the appellant's vendor, was dismissed and no further steps were taken in respect thereof.

17. The specific case made out on behalf of the respondent No.1 was that the Sale Deed of the respondent No.1 was the document which had been registered before the District Registrar, South 24 Parganas, on 14th March, 1989, and had been numbered as Deed No. 3203 of 1989 and recorded in Book No.1, Volume No. 75 at pages 167-174 and that any other document which purported to have the same registration particulars had to be a forged and/or fabricated document which had been fraudulently inserted in the records of the District Registrar in place of the Deed of the respondent No.1. A complaint had, therefore, been made to the District Registrar to hold an enquiry into the matter and thereafter to place the document of

- A the respondent No.1 in the concerned Book and Volume maintained under Section 51 of the Registration Act, 1908.

18. Reference was also made to the affidavit affirmed by the District Registrar, South 24 Parganas, the respondent No.3 herein, wherein it has been mentioned that an enquiry was commenced by him pursuant to the direction given by the High Court in its order dated 9th November, 2006. During the course of the enquiry, the appellant had been asked to produce his original document, but neither did he appear on the date fixed (12.1.2007) nor did he produce the original Sale Deed. Only a prayer was made by his learned advocate to adjourn the hearing. It was, in fact, adjourned to 31st January, 2007. On the said date, although, the respondent No.1 was present, the appellant again remained absent and his advocate merely informed the District Registrar that a Special Leave Petition had been filed before this Court against the order of the High Court directing him to conduct the enquiry. However, on a careful examination of the Deed produced by the Respondent No.1 and upon verification of the relevant office records, the District Registrar came to the conclusion that the Deed produced by the respondent No.1, bearing No. 3203 of 1989, executed and registered in his favour by Shri Manindranath Ghosal, was genuine.

19. Mr. Dhruv Mehta, learned advocate, who appeared for the respondent No.1 pointed out from the report of the District Registrar that he had taken due note of the stay order passed by this Court in this Civil Appeal in which the District Registrar was also directed to proceed with the enquiry.

20. Reference was also made to the affidavit filed on behalf of the Officer-in-Charge, Alipore Police Station, wherein it had been mentioned that during the course of investigation it was noticed that the Register Volume-I is accessible to the members of public for the purpose of searching for information in respect of properties. In the affidavit, it was also mentioned that any person with malafide intention could replace a document in the said Register, if he wanted to.

21. Mr. Mehta also urged that although the Registration Act is silent as to whether the District Registrar can conduct an enquiry of the nature undertaken in the instant case, there can be no bar to such an enquiry being conducted on the orders of the High Court, if the same was a fact-finding enquiry. It was urged that the High Court, in exercise of its powers under Article 226 of the Constitution, was fully competent to order such an enquiry to be conducted to enable the Court to arrive at a proper finding with regard to the dispute. Mr. Mehta submitted that the enquiry conducted by the District Registrar on the direction given by the High Court could not be challenged on the ground that the Registration Act did not provide for such an enquiry to be undertaken.

22. Mr. Tara Chand Sharma, learned advocate, appearing for the State of West Bengal and its officials, supported the submissions advanced on behalf of the respondent No.1 and urged that despite having been given an opportunity to prove that his document was genuine and that some mistake may have taken place in numbering of the two Deeds and recording their registration in Book No.1, Volume No.75, the appellant avoided the enquiry for reasons best known to him and even after appearing before the District Registrar through his learned advocate, he ultimately chose not to avail of such opportunity and filed the present Civil Appeal instead. It was urged that it was no longer open to the appellant to claim that his Deed had been rightly numbered as Deed No. 3203 of 1989.

23. Having carefully considered the submissions made on behalf of the respective parties and the materials on record, we are inclined to agree with Mr. Mehta that the enquiry conducted by the District Registrar under the directions of the High Court in exercise of its jurisdiction under Article 226 of the Constitution cannot be called into question on the ground that the Registration Act did not provide for such enquiry to be conducted by the said officer. We are, therefore, not inclined to interfere with the finding of the District Registrar that the Sale Deed executed in favour of the respondent No.1 by Shri Manindranath Ghosal had been correctly numbered as Deed

A No. 3203 of 1989 and correctly entered in Book No.1, Volume No.75 and that in terms of the order passed by the High Court a copy of the same is required to be kept in the said Book-Volume. To that extent, there is no reason to interfere with the directions and order passed by the High Court.

B 24. We are also not inclined to accept Mr. Ghosh's submission that since the suit filed by Shri Dipankar Dey on behalf of the daughter of the appellant's vendor had been dismissed for default, no further direction could have been given by the Writ Court to conduct an enquiry into the genuineness of the appellant's
C Deed in view of the provisions of Order 23 Rule 1 of the Code of Civil Procedure. Though, it may be said that the rights of the parties in the suit in regard to the land forming the subject matter of the appellant's Sale Deed cannot be gone into any further, the
D question relating to the genuineness of the Sale Deed executed and registered in the appellant's favour remains to be decided as the same had not been decided either in the suit or before any other forum. It is probably with that object in mind that both the High Court and this Court had directed the enquiry to continue while restraining the respondent No.1 from acting on the
E findings in the enquiry to place a copy of the Sale Deed of the respondent No.1 in the relevant place of Book No.1, Volume No.75, in the office of the District Registrar, South 24 Parganas.

25. However, there is another angle to the matter, which appears to have been overlooked both by the District Registrar as well as by the High Court. During the enquiry, on account of
F the failure of the appellant to produce his original document before the District Registrar, the status of his document was not decided, although, there was a direction by the High Court to consider both the documents. A finding should, therefore, have
G been arrived at either by the District Registrar or the High Court regarding the genuineness of the appellant's document. On such count we are inclined to agree with Mr. Ghosh that the genuineness of the appellant's Deed should also have been examined. We also agree with Mr. Ghosh that since the complaint had been
H lodged by the District Registrar concerned against the appel-

lant, the said officer should not have been entrusted by the High Court with the enquiry, since he had already dealt with the matter and had arrived at the conclusion that a prima facie case had been made out against the appellant. A

26. We, therefore, allow the appeal in part to the extent indicated hereinbelow: B

- (a) Without disturbing the findings of the District Registrar with regard to the genuineness of the Sale Deed of the respondent No.1, we direct the Inspector General of Registration, West Bengal, to conduct a separate enquiry into the matter, with reference to the genuineness of the appellant's document, and to pass appropriate orders thereupon. C
- (b) The appellant is directed to appear before the Inspector General of Registration on 20th October, 2008, at 11 a.m. for the purpose of the enquiry. In the event the appellant does not appear before the said Authority on the aforesaid date, the enquiry should be deemed to be closed, but this will not prevent the appellant from seeking his remedy, if any, before any other forum. D E
- (c) If the Inspector General of Registration is satisfied that even the appellant's Sale Deed is genuine and some mistake in numbering may have occurred in the office of the District Registrar, South 24 Parganas, he shall take necessary steps to have the error corrected so that both the Sale Deeds are placed in the Book/Volume maintained in the office of the District Registrar. If, however, he arrives at a finding that the appellant's Sale Deed does not appear to be genuine, he shall close the enquiry and direct the District Registrar, South 24 Parganas, to take such action as indicated in the order of the High Court. F G

27. There will be no order as to costs.