



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 4TH DAY OF JANUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

R

WRIT PETITION NO. 106890 OF 2023 (GM-ST/RN)

BETWEEN:

RAMESH S/O. TIMMANNA UMARANI,
AGE: 50 YEARS, OCC: AGRICULTURE,
R/O. TUNGAL, TQ: JAMKHANDI,
DIST: BAGALKOT-587 330.

...PETITIONER

(BY SRI. GIRISH A. YADAWAD &
SMT. DIVYA J. DESHPANDE &
SRI RAHUL S. KUNTOJI, ADVOCATES)

AND:

THE SUB-REGISTRAR,
JAMKHANDI,
DIST: BAGALKOT-587 301.

...RESPONDENT

(BY SRI. PRAVEEN UPPAR, AGA)

GIRIJA A
BYAHATTI


Digitally
signed by
GIRIJA A
BYAHATTI

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI TO QUASH THE IMPUGNED ENDORSEMENT DATED 26-09-2023 BY THE RESPONDENT IN S.No./Uu.No.Ka.Ja/2023-24/47 VIDE ANNEXURE-G, IN THE INTEREST OF JUSTICE AND EQUITY.B) ISSUE A WRIT OF MANDAMUS DIRECTING THE RESPONDENT TO DELETE TO ENTRIES IN RESPECT OF THE AGREEMENT OF SALE DATED 15-04-2021 FROM THE ENCUMBRANCE CERTIFICATE PERTAINING TO RS NO. 104/3K MEASURING 2 ACRES 34 GUNTHAS, AS REQUESTED BY THE PETITIONER IN THE REPRESENTATION DATED 14-09-2023 VIDE ANNEXURE-F, IN THE INTEREST OF JUSTICE AND EQUITY.



THIS PETITION IS COMING ON FOR PRELIMINARY HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. The petitioner is before this Court seeking for the following reliefs:

- a) *Issue a writ of certiorari to quash the impugned endorsement dated 26.09.2023 by the respondent in S.No./Uu.No.Ka.Ja/2023-24/47 vide Annexure-G, in the interest of justice and equity.*
- b) *Issue a writ of mandamus directing the respondent to delete to entries in respect of the agreement of sale dated 15.04.2021 from the encumbrance certificate pertaining to RS No. 104/3K measuring 2 acres 34 gunthas, as requested by the petitioner in the representation dated 14.09.2023 vide Annexure-F, in the interest of justice and equity.*
- c) *Pass such other order or orders which this Hon'ble court deems fit and necessary under the facts circumstance of the case.*

2. The brief facts of the case are:

- 2.1. The petitioner claims to be the owner and in exclusive possession of the land measuring 02



acres 34 guntas in R.S.No.104/3K of Tungal village in Jamkhandi Taluk.

- 2.2. It is alleged that, one Ramesh S/o.Sangappa Umarani, taking undue advantage of the similarity in his name and name of the petitioner, i.e., Ramesh S/o. Timmanna Umarani, impersonated the petitioner and executed a registered agreement of sale dated 15.04.2021 in respect of the petitioner's land in favour of one Avinash S/o. Mallappa Anadanni.
- 2.3. In pursuance of the said registered agreement of sale, necessary entries are also found in the encumbrance certificate.
- 2.4. The said Avinash S/o. Mallappa Anadanni, on coming to know of the fraud committed by Ramesh S/o. Sangappa Umarani, had filed a complaint before the jurisdictional police on 14.07.2022 for offences punishable under Section 406, 420, 465, 468, 504, 506 read with



Section 34 of the IPC, which has been registered by the Jamakhandi Town Police Station in Crime No.68/2022 and is at present under investigation.

- 2.5. On coming to know of the execution of the said agreement of sale as regards the property of the petitioner, the petitioner approached the said Jamkhandi Town Police Station with a complaint, however, he was informed that, since already a complaint has been filed as regards the very same allegation, all investigation would be done in the said matter.
- 2.6. The petitioner's right in the property being adversely affected, the petitioner had submitted a representation on 14.09.2023, calling upon the respondent to delete the entries in the encumbrance certificate, which came to be rejected vide endorsement dated 26.09.2023 at Annexure-G.



2.7. It is challenging the said endorsement that the petitioner is before this Court.

3. Sri. Girish A. Yadawad, learned counsel appearing for the petitioner would submit that;

3.1. The petitioner not having executed any agreement of sale, someone else impersonated the petitioner and encumbrance has been created on the property of the petitioner, which could not have been so created and thus impinging on the right of the petitioner to exercise his ownership rights over his property.

3.2. Insofar as the agreement of sale is concerned, that is a matter between Avinash S/o. Mallappa Anadanni and Ramesh S/o.Sangappa Umarani, which is under investigation, but however, the entries in the encumbrance certificate would be required to be deleted so as to enable the petitioner to exercise the ownership rights in his property.



3.3. It is on that basis, he submits that the relief sought for are required to be granted.

4. Sri. Praveen Uppar, learned AGA, who has accepted notice for respondent Sub-Registrar, would submit that;

4.1. The Sub-Registrar has, after accepting the identity card produced, namely aadhar card, has accepted the identity of the person presenting the document and gone ahead with the registration.

4.2. The Sub-Registrar not being entitled to cause any enquiry into the execution of the document or otherwise, acceptance of the said Aadhar card for the purpose of establishing the identity is proper and correct and any dispute that the petitioner has with Ramesh S/o. Sangappa Umarani would have to be decided in an appropriately instituted suit.



- 4.3. Further, until the registered agreement of sale continues to be on the books of the Sub-Registrar, the question of deleting the entries in the encumbrance certificate, which has an automatic and consequential act post the registration of agreement of sale, cannot be made by the Sub-Registrar, since the Sub-Registrar is *functus officio* post the registration of a document.
- 4.4. On these grounds he submits that the petition is required to be dismissed.
5. Heard Sri. Girish Yadwad, learned counsel for the petitioner and Sri. Praveen Uppar, learned AGA for respondent Sub-Registrar. Perused the papers.
6. The points that would arise for determination in the present matter are:
- 6.1. *Whether there is a requirement of the Sub-Registrar to ascertain the identity of the person presenting the document***



going beyond the identity card and/or the persons identifying the executant?

6.2. *Whether the entries reflected in the encumbrance certificate can be deleted by the Sub-Registrar, when the registered agreement, on which basis those entries are found, being cancelled or set aside?*

6.3. *What order?*

7. Answer to Point No.1: *Whether there is a requirement of the Sub-Registrar to ascertain the identity of the person presenting the document going beyond the identity card and/or the persons identifying the executant?*

7.1. The Indian Registration Act, 1920 (hereinafter referred to as the 'Act, 1920', for short) deals with registration of various documents. An agreement of sale, though not a compulsorily registrable document, is permitted to be registered with the jurisdictional Sub-Registrar. The procedure to be followed by the Sub-Registrar for registration of a document in the State of Karnataka is in terms of the Karnataka Registration Rules, 1965 (hereinafter referred



to as 'the Rules, 1965', for short). The said Rules detail out the role and responsibilities of the Sub-Registrar, the manner of presentation of document, manner of registration and actions taken post the said registration.

- 7.2. Rule 73 of the Rules 1965 denotes in particular the duties of the registering officer, which reads as under:

73. Duties of the Registering Officer.-----

(i) It shall form no part of the Registering Officer's duty to enquire into the validity of a document brought to him for registration or to attend to any written or verbal protest against the registration of a document, provided execution is duly admitted; but in case of executants who are unable to read, the document shall be read out and if necessary explained to them. If the document is in a language which they do not understand it must be interpreted to them.

(ii) If registration is objected to by any person on any of the following grounds, viz.,

(a) that a person appearing or about to appear before the Registering Officer as an executant or claimant the person he Professes to be, or that he is a minor, an idiot, or lunatic.,

(b) that the instrument is forged;



(c) that the person appearing as a representative, assignee or agent has no right to appear in that capacity;

(d) that the executing party is not really dead, as alleged by the party applying for registration.

Such objections shall be duly weighed by the Registering Officer and if they are substantiated, registration shall be refused but under subsection (2) of Section 58, if execution be admitted, registration should take place even if the executant refuses to sign the Registering Officer's endorsement of admission.

7.3. Rule 73 of the Rules 1965 makes it very clear that, it shall form no part of the Registering Officer's duty to enquire into the validity of a document brought to him for registration or to attend to any written or verbal protest against the registration of a document, provided execution is duly admitted.

7.4. In terms of the Sub-Rule (ii) of Rule 73, if the objections mentioned therein are taken up, then such objections shall be duly weighed by the Registering Officer and if they are



substantiated, registration shall be refused, however, if the execution is admitted, registration should take place even if the executant refuses to sign the Registering Officer's endorsement on admission.

7.5. One of the grounds under Sub-Rule (ii) of Rule 73 is that, if the instrument is forged it may be attracted.

7.6. In the present case, since in terms of the allegation made by Avinash S/o. Mallappa Anadanni in Crime No.68/2022, as also that made by the petitioner is that, one Ramesh S/o. Sangappa Umarani has impersonated the petitioner and signed as the petitioner, which would amount to forgery. However, at the time of registration, neither of the executants to the agreement, which was registered, took up the said contention requiring the Sub-Registrar to



cause any enquiry or vain the officials and as such, registration was proceeded with.

7.7. Rule 81 of the Rules, 1965, which deals with identification of executants, reads as under:

81. Identification of Executants. ----

(i) When a Registering Officer is acquainted either with the person admitting execution of a document or with the identifying witness, he shall make a note in the endorsement to this effect. If the Registering Officer is not acquainted with the executant and no witness with whom the Registering Officer is acquainted is produced to identify the executant, the Registering Officer shall either.

(a) examine any two witnesses, produced by the executant to prove his identity; or

(b) examine on oath the executant and two witnesses produced by the executant to prove his identity.

(ii) Where the person appearing before the Registering Officer as an executant of a document in the military employment of Government and is unable to produce any witness or witnesses to identify him or to prove his identity, as the case may be, the Registering Officer shall, if such person produces his identity card duly certified and bearing his photograph, accept it as sufficient proof of his identity, unless the Registering Officer has ground to believe that the identity card is not genuine. If the in identity card is



accepted as such proof, the Registering Officer shall endorse on the document the number of the identity card and the designation of the authority purporting to have signed and certified it.

(iii) x x x x x.

(iv) Identification by deed writer, Stamp vendors, petition writers and hangers-on in office shall be avoided. Care must be taken that identification does not become a business.

(v) After affixing the photograph in the endorsement and in the thumb impression register, the registering authority shall sign across the same carefully to ensure that it cannot be removed. If possible such photographs may be got laminated}.

7.8. The said Rule could be divided into three portions:

7.8.1. Where the Registering Officer himself is acquainted with the executants or persons identifying the executant;

7.8.2. Where the identifying witnesses of the executants are known to the Registering Officer;

7.8.3. Where neither the executant nor the identifying witnesses are known to the Registering Officer.



7.9. Insofar as the executant being known to the Registering Officer, or the identifying witnesses being known to the Registering Officer, such an endorsement has to be made by the Registering Officer. However, when neither the executant nor the Identifying Officer is known to the Registering Officer, the Registering Officer shall examine two witnesses produced by the executant to prove his identity and examine on oath the executant and two witnesses to prove the identity.

7.10. Sub-Rule(ii) of Rule 81, which is extracted above, would indicate that, where a person appearing before the Registering Officer as an executant of a document is in the military employment of Government and is unable to produce any witness or witnesses to identify him, then, if an identity card duly certified and bearing his photograph is produced, the same



can be accepted as sufficient proof and the Registering Officer shall make an endorsement on the document the number of the identity card and the designation of the authority purporting to have signed and certified it.

7.11. In the present case, the alleged executant Ramesh S/o. Sangappa Umarani is stated to have produced his Aadhar card to establish his identity and the Aadhar number is found mentioned in the registered document. The said Aadhar number is not reproduced herein in order to safeguard the privacy of the parties.

7.12. The Aadhar card having been produced, Aadhar number made available, the Registering Authority has accepted the same as proof of identity and gone ahead with the registration of the document, resulting in the present situation, where the petitioner claims that the



Aadhar card itself was forged and someone else has impersonated the petitioner.

7.13. From reading of the applicable law i.e., the Registration Rules, more particularly the rules extracted hereinabove, there appears to be no requirement other than what is mentioned above for Registering Officer to ascertain the identity of a person or to check veracity of the Aadhar card which had been produced and so long as said Aadhar number has been reflected in the document registered, that would be sufficient compliance of verification of prima facie identity of the person.

7.14. Thus, I answer point No.1 by holding that there is no requirement for the Sub-Registrar to ascertain the identity of the person presenting the document going beyond the identity card and/or the persons identifying the executant.



8. Answer to Point No.2: *Whether the entries reflected in the encumbrance certificate can be deleted by the Sub-Registrar, when the registered agreement, on which basis those entries are found, being cancelled or set aside?*

8.1. In the present matter, the petitioner vide Annexure-F had only requested the Sub-Registrar to delete the entries in the encumbrance certificate and there is no request which has been made for cancellation of the sale agreement dated 15.04.2021 and rightly so since the Sub-Registrar cannot cancel an agreement/document which has been registered.

8.2. However, it would also have to be taken note of that, once a document fulfilling the requirement of Section 17 of the Indian Registration Act, 1920 is registered, the entry of such registration would have to find place in the encumbrance certificate, which is more or less



automatic or at least consequential to the act of registration of the document.

8.3. Thus, cancellation of the entries in the encumbrance certificate is predicated by registration of a document and unless that document is set aside or cancelled, I am of the considered opinion that the entry in the encumbrance certificate cannot be cancelled or deleted. So long as the agreement of sale continues to be in the books of Sub-Registrar corresponding entries would have to be reflected and included in the encumbrance certificate.

8.4. Thus, I answer point No.2 by holding that, so long as agreement of sale continues to be on the books of the Sub-Registrar, the entries in the encumbrance certificate cannot be deleted.



9. What Order?

9.1. The manner in which the above events have transpired, would require this Court to issue general directions to the Inspector General of Registration and Commissioner of Stamps.

9.2. The petitioner who claims to have been impersonated, has now been forced to approach the Civil Court seeking for necessary relief as regards the registered agreement of sale and also forced to approach the jurisdictional police making complaints under the applicable provisions.

9.3. I am of the considered opinion that these kind of situations could well have been avoided if a suitable mechanism had been put in place to verify the authenticity of Aadhar card which had been produced, when it is the very purpose of



the said Aadhar card to establish the credentials and identifying a person.

9.4. In terms of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, any service provider could register with UIDAI and obtain a sanction to verify the identity on the basis of OTP generated on the phone number of the holder of the Aadhar card.

9.5. Thus, I am of the considered opinion that it would be required for the Inspector General of Registration to register itself under the UIDAI in terms of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, and whenever an identification in the form of Aadhar card is furnished or produced before the registering authority, the said Registering Authority verify the authenticity of the Aadhar card and identity



of the person and only thereafter proceed with the registration of a document.

9.6. A suitable detailed project report in this regard to be prepared and placed before this Court within a period of four weeks from the date of receipt of copy of this order.

10. In view of my answers to points No.1 and 2, I am of the considered opinion that no grounds have been made out to set aside the endorsement dated 26.09.2023 at Annexure-G and/or issue of mandamus for a deletion of the entries found in the encumbrance certificate. As such, I pass the following:

ORDER

- i. The petition stands dismissed.
- ii. Liberty is however reserved to the petitioner to approach the jurisdictional Court for cancellation of the agreement of sale.



- iii. Though the above matter is disposed of, re-list on 21.02.2024 for reporting compliance with the above general directions.

Sd/-
JUDGE

gab
ct-mck
List No.: 1 SI No.: 29