

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****101****RSA-2759-1994 (O&M)****Surjit Kaur (deceased) through LRS and others ...Appellant(s)****Vs.****Apjeet Singh****...Respondent(s)**

The date when the judgment is reserved:	16.02.2026
The date when the judgment is pronounced:	17.03.2026
The date when the judgment is uploaded on the website:	18.03.2026
Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced:	Full judgment

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms. Aashna Gill, Advocate for the appellants.

Mr. Vaibhav Sharma, Advocate for the respondent.

NIDHI GUPTA, J.

Defendants are in Second Appeal against the judgment of reversal dated 21.10.1994 passed by the learned Additional District Judge, Kurukshetra; whereby suit filed by the plaintiff/respondent under Section 77 of the Registration Act for issuance of direction to the Sub Registrar to register sale deed, although dismissed by the learned trial court; has been decreed by the Id. First Appellate Court "to the effect that the sale deed shall be registered by the Sub Registrar, Pehowa within a period of 30



days. However, the appellant would deposit balance amount with a period of 20 days with the Sub Registrar for being paid to the respondents. If the amount is not deposited by the appellant within that period then the Sub Registrar would not be obliged to register the sale deed. In the peculiar circumstances of the case the parties are left to bear their own costs.”

2. Brief facts of the case are that plaintiff had filed the instant suit under Section 77 of the Registration Act, 1908 challenging orders dated 12.05.1988 (Ex. P-6; pg. 49) and 18.01.1989 (Ex. P-7; pg. 51) passed by the Sub-Registrar, Pehowa and Registrar, Kurukshetra respectively. Further direction was sought to the Sub-Registrar, Pehowa to register the sale deed dated 12.02.1988 (Ex. P-1: pg.83) pertaining to suit property measuring 15K 16M situated in V. Gumthala Garhu, Tehsil Pehowa, District Kurukshetra.

2A. It was pleaded in the plaint by the respondent/plaintiff that Waryam Singh, predecessor-in-interest of the appellant/defendants (husband of defendant No.1 and father of defendants No.2 to 4), was owner in possession of the suit property as per Jamabandi for the year 1981-1982. Waryam Singh had executed Sale Deed dated 12.02.1988 with regard to suit land measuring 15K 16M in favour of the plaintiff/respondent for total sale consideration of Rs.62,000/-. The said Sale Deed was executed on stamp paper and was duly attested by witnesses on stamp. Of the total sale consideration of Rs.62,000/-, the plaintiff had paid an amount of Rs. 12,000/- by way of earnest money; and



Rs.775/- was again paid as earnest money by the plaintiff to Waryam Singh; and only Rs.49,225/- remained to be paid as balance of sale price. Plaintiff had further pleaded that **Sale Deed was not presented before the Sub Registrar on the same day as the Income Tax Clearance Certificate was not produced by Waryam Singh.** The said Certificate was produced by Waryam Singh before the Sub Registrar only on the following Monday. However, on 14.02.1988, Waryam Singh had died and registration of the same could not be affected. Thereafter, plaintiff had approached the legal representatives of the deceased Waryam Singh i.e. defendants/appellants herein but they did not comply. Therefore, Sub Registrar gave notice to them; and Defendants were directed to produce mutation of inheritance. It was pleaded that however, **on 12.05.1988 all of a sudden, Sub Registrar rejected and refused to register the Sale Deed without granting any opportunity to the plaintiff to pay the balance sale consideration.** It was the case of the plaintiff that the order of the Sub Registrar Pehowa in refusing to register the Sale Deed is patently illegal. Plaintiff had accordingly moved to the Registrar, Kurukshetra for registration of Sale Deed. However, vide order dated 18.01.1989, Registrar Kurukshetra had also refused to register the Sale Deed. It was averred that the order dated 12.05.1988 passed by the Sub Registrar Pehowa and order dated 18.01.1989 passed by Registrar Kurukshetra are illegal, null and void and liable to be set aside because Sub Registrar was not competent to refuse registration of Sale Deed. **It was averred that plaintiff has always been ready and willing to perform his part of contract and it was the**



defendants who are legal representatives of Waryam Singh who had failed to perform their part of contract. It was alleged that plaintiff had requested defendants many times to get the Sale Deed registered. However, they had refused to do so. Accordingly, present suit was filed on 17.02.1989 under S. 77 of the Act.

3. To the contrary, the defendants/appellants while refuting the case on merits, asserted that Waryam Singh had entered into the sale deed dated 12.02.1988 so as to arrange money for the marriage of his daughter which was to take place on 20.02.1988 making time the essence of the contract. On 12.02.1988 Waryam Singh was present at the office of Sub-Registrar, Pehowa but the Plaintiff lacked money to make payment of the balance sale consideration and thus went away from the tehsil compound. Due to shock, Waryam Singh died on 14.02.1988. Respondent never approached the Appellants to get the sale deed registered. Rather Respondent instituted various civil proceedings in a bid to delay the matter as he lacked the funds to make payment of balance amount. Thus, prayer was made to dismiss the civil suit.

4. Upon appraisal of the pleadings and evidence led by the parties, the Additional Senior Sub Judge, Pehowa, had dismissed suit of the plaintiff with costs vide judgment and decree dated 21.05.1993. Addl. Senior Sub. Judge, Pehowa dismissed the suit while observing that the Respondent was blowing hot and cold as to why the sale deed was not registered on 12.02.1988. It was also found that Respondent lacked the



funds to pay balance sale consideration and there being lapse on his part, the suit was not maintainable.

5. However, in the Civil Appeal filed by the respondent/plaintiff, the learned Additional District Judge, Kurukshetra while upholding the findings of fact against the plaintiff, had accepted the Civil Appeal vide impugned judgment and decree dated 21.10.1994. Addl. District Judge, Kurukshetra allowed the appeal of the respondent by relying upon **Jogesh Prasad Singh and others vs. Ramchander Prasad Singh and others, AIR 1950 Pat 370** while observing that although the sale deed could not be registered due to non-availability of funds with Respondent at the relevant time however the same was to be registered de hors the same.

6. It is in this background that the Appellants-Defendants have preferred this appeal against the judgment and decree dated 21.10.1994 of the Ld. First Appellate Court reversing the judgment and decree dated 21.05.1993 passed by the Ld. Addl. Senior Sub. Judge, Pehowa.

7. It is *inter alia* submitted by learned counsel for the appellants that learned First Appellate Court has decreed the suit of the plaintiff on the basis of a judgment of Patna High Court passed in **Jogesh Prasad Supra**. However, the learned Additional District Judge has erred in applying the dictum laid down in AIR 1950 Patna 370. The law as laid down by the Patna High Court in this authority is not applicable to the present case, as the same differs on fact.

7A. Further, learned Additional District Judge has erred in observing that payment of balance consideration was not a condition



precedent for registration of the sale deed. Out of the total amount of Rs. 62,000/- only Rs. 12,775/- had been paid, and balance amount of Rs.49,225/- was agreed to be paid before the Sub-Registrar at the time of registration of the sale deed. By any stretch of imagination, it cannot be concluded that the payment of balance amount was not a condition precedent to the registration of sale deed. The order dated 12.5.1988 correctly shows that the sale deed had not been registered on account of refusal/default on behalf of the plaintiff. Thus, suit of plaintiff could not have been decreed.

7B. It is further submitted by learned counsel for the appellants that the learned Additional District Judge has erred in observing that a person cannot be expected to be carrying Rs.50,000/-with him on each and every date of hearing. It is submitted that the said observation of the first Appellate Court is uncalled for as plaintiff was well aware that Sale Deed had to be registered; and should therefore have been in possession of the balance sale consideration when he came for registration of sale deed.

7C. Learned counsel further submits that there are concurrent and undisputed facts on record that on 12.02.1988, respondent had paid only an amount of Rs.12,775/- to the appellants out of total sale consideration of Rs.62,000/-. It is also admitted fact on record that on 12.05.1988, respondent was not in possession of the balance sale consideration of Rs.49,225/-. It is submitted that the Sub Registrar in his order dated 12.05.1988 has recorded a categorical finding that on the said



date, the respondent did not possess the balance sale consideration and, therefore, Sale Deed could not be registered. This finding of fact has been affirmed by learned First Appellate Court. In this admitted position, learned Additional District Judge has wrongly directed registration of sale deed.

7D. Learned counsel for the appellant further submits that Waryam Singh had sold the suit property to the respondent because he needed money for the marriage of his daughter, which was fixed for 20.02.1888. However, Sale Deed could not be registered on 12.02.1988 as the plaintiff failed to produce the same before the Sub Registrar. From this shock, Waryam Singh had died on 14.02.1988, as the plaintiff had failed to make payment of balance sale consideration; and therefore, Waryam Singh did not have money for the marriage of his daughter. It is submitted that even on the subsequent date fixed for registration of the Sale Deed on 12.05.1988, plaintiff had failed to pay the remaining balance price. First Appellate Court has upheld findings of the learned Trial Court that plaintiff was not in possession of balance sale consideration. As such, suit of the plaintiff was not maintainable.

7E. Further, even regarding the maintainability of the suit, learned First Appellate Court has given no cogent reason for reversing the well reasoned judgment of the learned Trial Court. However, the Hon'ble Supreme Court in 3-Judge Bench judgment in ***Veena Singh (Dead) through Legal Representative vs. District Registrar/Additional Collector (F/R) and another, (2022) 7 Supreme Court Cases 1***, has held that merely



appending signature to the document will not constitute 'execution' thereof.

7F. It is accordingly prayed that the present Appeal be allowed; and the impugned judgment dated 21.10.1994 passed by learned Additional District Judge, Kurukshetra be set aside.

8. *Per contra*, learned counsel for the respondent vehemently opposes submissions made on behalf of the appellant and submits that:

I. THE SCOPE OF A SUIT UNDER SECTION 77 OF THE REGISTRATION ACT IS NARROW AND LIMITED

1. Ld. Counsel submits that Ld. Trial Court committed a manifest error of law by examining the readiness and willingness of the respondent to pay the balance sale consideration, a concept that is entirely alien to a suit under Section 77 and properly belongs to the realm of suits for specific performance under the Specific Relief Act, 1963. A suit under Section 77 of the Registration Act cannot be, and must not be, conflated with a suit for specific performance or any other proceeding where the readiness and willingness aspect is material. The District Judge rightly corrected this error.

2. Ld. Counsel for the respondent further drew the attention of this Court to the precise statutory language employed by the legislature in Sections 34, 35 and 60 of the Registration Act, 1908 ("**the Act**"), which, when read together, lay down a mandatory and exhaustive pathway for registration — a pathway that the registering authority is bound to follow and from which he has no power to deviate.



3. The conditions prescribed by Section 34(1) are narrow and specific:

- (i) the persons executing the document, or their representatives, assigns or agents, must appear before the registering officer; and
- (ii) such appearance must be within the time prescribed under Sections 23 to 26.

4. It is argued that these, and only these, are the pre-conditions that the legislature laid down for the registering officer to examine before proceeding further. The section does not mention, even obliquely, the readiness and willingness of the parties, the payment of consideration, or any other aspect that goes to the validity or enforceability of the underlying transaction. It is submitted that once the conditions under Section 34 are satisfied, the statute moves to Section 35, which prescribes the procedure to be followed by the registering officer. Section 35 creates a binary and exhaustive scheme:

**Where the executant is dead and his representative admits execution —
Section 35(1)(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."*

5. The pathway culminates in Section 60, which provides:

"After such of the provisions of sections 34, 35, 58 and 59 as apply to any document presented for registration have been



*complied with, the registering officer **shall** endorse thereon a certificate containing the word 'registered'..."*

II. THE WORD "SHALL" IS THE KEY — IT ADMITS OF NO DISCRETION:

6. It is contended that the legislature has, with unmistakable deliberation, employed the word "**shall**" — and not "may" — at every critical juncture in this statutory chain. The registering officer "shall register" where execution is admitted; he "shall refuse" where execution is denied; and he "shall endorse" the certificate of registration once the provisions of Sections 34, 35, 58 and 59 are complied with. The use of the word "shall" imposes a mandatory duty upon the registering officer. It leaves no room for the exercise of discretion, judgment, or independent evaluation of matters extraneous to the conditions prescribed by the statute. It is argued that, therefore, the statutory scheme creates a closed and self-contained code. The enquiry that the registering officer is mandated to conduct under Sections 34 and 35 is confined to ascertaining:

- a. whether the persons executing the document, or their representatives, have appeared;
- b. whether they have appeared within the prescribed time;
- c. whether they are who they represent themselves to be; and
- d. whether they admit or deny execution.

It is submitted that once these questions are answered, the statute itself dictates the outcome, either registration (if execution is admitted) or refusal (if execution is denied). There is no third category, no intermediate step, and no residual discretion.



III. THE REGISTRATION ACT CONTAINS NO POWER — EXPRESS OR IMPLIED — TO EXAMINE READINESS AND WILLINGNESS:

7. Ld. Counsel submits that the primary argument on behalf of the respondent is that nowhere in the Registration Act, 1908 has the legislature conferred upon the registering authority any power, jurisdiction, or competence to enquire into the readiness and willingness of the parties to a transaction. This power is conspicuous by its complete absence from the Act. The respondent challenges the appellants to point to a single provision in the Registration Act that empowers the Sub-Registrar to examine whether the buyer was ready and willing to pay the balance consideration, or to refuse registration on the ground of the buyer's alleged unreadiness.

8. It is submitted that absence of such a power is not an oversight or a lacuna. It is a deliberate legislative choice. The legislature, when it enacted the Registration Act in 1908, was fully aware that transactions of sale often involve questions of readiness and willingness, questions of sufficiency of consideration, and questions of the enforceability of the underlying contract. The legislature deliberately chose not to place the determination of these complex questions in the hands of the Sub-Registrar. Instead, it confined the Sub-Registrar's enquiry to the narrow question of execution, and reserved all other questions — validity, consideration, readiness, willingness, title — for the civil court. Ld. Counsel elaborates to further submit that this legislative architecture is not accidental. The Sub-Registrar is an administrative officer. He is not a judicial



officer. He does not conduct trials. He does not record evidence. He does not frame issues. He does not hear arguments on questions of fact and law. He is not equipped, either by training or by institutional design, to adjudicate upon complicated questions of readiness and willingness, which involve the evaluation of conduct over time, the assessment of financial capacity, the interpretation of contractual terms, and the drawing of inferences from surrounding circumstances. These are, by their very nature, questions that demand the discipline of a judicial proceeding i.e. the framing of issues, the recording of evidence, the cross-examination of witnesses, and the application of rules of evidence. It is for precisely this reason that the legislature reserved these questions for the civil court and did not burden the Sub-Registrar with an enquiry that he is neither competent nor equipped to undertake.

IV. THE COURT CANNOT READ INTO SECTIONS 34 AND 35 WHAT THE LEGISLATURE CHOSE NOT TO PUT THERE:

9. Ld. Counsel further submits that if this Court were to sustain the refusal of registration on the ground that the buyer was not ready and willing to pay the balance consideration, it would amount to reading into Sections 34 and 35 an obligation and a power that the legislature deliberately chose not to confer. It would amount to adding, by judicial pronouncement, a condition precedent to registration that the statute does not contain. Where the legislature has said "shall register" upon admission of execution, this Court cannot interpolate the words "shall register, provided the buyer is ready and willing to pay the balance consideration."



The legislature knew how to impose conditions; it imposed the conditions it thought fit; and the readiness and willingness of the buyer was not one of them.

10. It is further submitted that it is a well-settled principle of statutory interpretation that where the legislature has used clear and unambiguous language, the Court must give effect to the plain meaning of the words used and cannot supply omissions or read into the statute words that are not there. The words "shall register" in Section 35(1) admit of no ambiguity. They impose a mandatory duty that is triggered by one and only one condition: the admission of execution. To superimpose upon this clear statutory mandate an additional requirement of readiness and willingness would be to rewrite the statute, a function that belongs exclusively to the legislature.

V. THE DISTINCTION BETWEEN EXECUTION AND VALIDITY — THE LEGISLATURE'S CONSCIOUS DESIGN:

11. Ld. Counsel for the respondent next submits that the entire scheme of the Registration Act rests upon a conscious and fundamental distinction between the **execution** of a document and its **validity**. Execution is whether the document was understood and signed by the person who purports to have signed it. Validity encompasses everything else — whether the transaction is enforceable, whether consideration was paid, whether the parties were ready and willing, whether the vendor had title. The Registration Act concerns itself exclusively with the former. The latter is the domain of the civil court.



12. This distinction was recognized as far back as 1924 by the Calcutta High Court in ***Dwijendra Narain Roy v. Jogish Chandra Dey (AIR 1924 Cal 600)***, where the Court observed that in a suit under Section 77, the court is concerned not with the validity but with the genuineness of the document, and the question of its validity must be determined in a suit properly framed for the purpose. The Patna High Court in ***Jogesh Prasad Singh supra*** held at Para 8 that whether the money was paid or not was immaterial so far as the due execution of the document was concerned. Most recently, the Hon'ble Supreme Court in ***K. Gopi v. The Sub-Registrar (AIR 2025 SC 1800)*** held at Para 15 that the registering officer has no adjudicatory power to decide questions beyond procedural compliance and admission of execution, and that even if the executant has no title whatsoever, the document must be registered if execution is admitted and procedural requirements are met.

13. It is argued that if the registering authority cannot refuse registration even when the vendor has no title - a circumstance that strikes at the very root of the validity of the transfer - it is a logical impossibility that the registering authority could refuse registration on the far less fundamental ground that the buyer did not have balance consideration ready on one particular date.

VI. EQUITY:

14. Ld. Counsel further submits that it is the respondent who stands to suffer irreparable prejudice if registration is refused. Out of the total sale consideration of Rs. 62,000/-, a sum of Rs. 12,000/- was paid as



earnest money and a further sum of Rs. 775/- was paid subsequently — amounting to Rs. 12,775/- paid to the vendor at or around the time of execution. In compliance with the judgment of the Ld. Addl. District Judge dated 21.10.1994, the respondent deposited the entire balance amount of Rs. 49,225/- on 02.11.1994, well within the stipulated period of 20 days.

15. It is pointed out that the respondent filed the suit within time, pursued his appeal, and deposited the balance consideration within the period fixed by the appellate court. To deny him the benefit of a sale deed whose execution has never been denied and whose entire consideration of Rs. 62,000/- stands discharged would occasion a manifest injustice to a party who has, for nearly four decades, done nothing but seek the enforcement of a right that the law confers upon him. It is argued that Equity must flow both ways.

VII. THE BURDEN IS ON THE APPELLANTS TO SHOW STATUTORY AUTHORITY FOR THE REFUSAL:

16. It is a well-established principle that where a statutory authority exercises a power, it must point to the provision that confers that power. The Sub-Registrar refused registration on the ground that the buyer did not have the balance consideration ready. The respondent respectfully submits that the burden lies squarely upon the appellants to demonstrate, from the text of the Registration Act, the provision that empowers the Sub-Registrar to refuse registration on this ground. The respondent submits, that no such provision exists.



17. The legislature, in its wisdom, understood that a Sub-Registrar is not a civil court. It understood that complicated questions of readiness and willingness, adequacy of consideration, and enforceability of contracts are questions that demand judicial proceedings — evidence, cross-examination, and the application of rules of law. It therefore confined the Sub-Registrar's function to the narrow, ministerial task of verifying execution and completing procedural formalities. To enlarge this function by judicial pronouncement — by reading into Sections 34 and 35 powers that the legislature did not confer — would be to alter the legislative scheme in a manner that is impermissible.

18. In support, learned counsel for the respondent relies upon the following judgments: -

- 1. Shinishan Devi and others vs. Anandi Jha and others
MANU/BH/0769/2016**
- 2. Jogesh Prasad Singh and others vs. Ramchandar Prasad
Singh and others, AIR 1950 Pat 370**
- 3. K.Gopi vs. The Sub Registrar and others, AIR 2025 SC 1800**
- 4. Nishakar Dass vs. State of Odisha and others, Supreme
(Online) (Ori) 6148;**
- 5. Rakhil Chandra Nayak vs. State of Odisha and others,
MANU/OR/1108/2025; and**
- 6. Baikuntha Kumar Shil vs. Sarat Chandra Nath and others,
AIR 1925 Cal 1257.**

9. It is accordingly prayed that the present Appeal be dismissed.

10. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the case file alongwith Lower Court



Record in minute detail. I have given my thoughtful consideration to the rival submissions made by Id. counsel for the parties.

11. At first blush, the arguments advanced by learned counsel for the respondent appear to be enticing and convincing. However, a deeper enquiry into the facts of the present case reveal the same to be mere legal semantics, rhetorical legalese, devoid of substance. The main thrust of argument on behalf of the respondent is that as per the Registration Act, it is not open to the Sub Registrar to conduct an enquiry into the readiness and willingness of the buyer to perform the contract; and that the Sub Registrar is compulsorily mandated under the Statute to register the document once its execution is admitted. This Court may have no dispute or issue with the said legal proposition. However, the arguments of the respondent have to be seen in context of the facts of the present case. To appreciate the incorrectness of the argument of the respondent, it is necessary to briefly recapitulate the factual matrix of the case, as follows:

12.02.1988: Waryam Singh executed the Sale Deed dated 12.2.1988 (**Ex. P1 @ Pg. 83 of LCR**) in favour of Apjeet Singh/plaintiff. Whereby Waryam Singh sold the suit property measuring 15K 16M to the plaintiff for total sale consideration of ₹62,000/-; of which ₹12,775/- was received as earnest money. Balance Sale Consideration was ₹49,225/-. It is to be noted that Time was the essence of the contract as Waryam Singh required the funds for the marriage of his daughter, which was scheduled for 20.2.1988. It is accordingly, recorded in the Sale Deed that *“I will take the balance amount of ₹49,225/- before the Sub Registrar Sir Pehowa in cash for my own need.”*



Thus, time was of the essence in the contract. However, when Waryam Singh went to get the Sale Deed registered before the Sub-Registrar on 12.2.1988, the same could not be registered as plaintiff had gone from the Tehsil without producing the original sale deed. On the other hand, presence of Waryam Singh in Tehsil on 12.2.1988 is proved from his Affidavit of Attendance Ex. D2.

14.02.1988: As Waryam Singh did not receive the desired funds by due date and for the purpose required, he died from the shock on 14.2.1988.

04.04.1988 (Ex. P2 @ Pg. 47 of LCR): It is only on 4.4.1988, that the plaintiff produced original sale deed before the Sub Registrar; and notice was issued to defendants to appear on 20.04.1988 for registration.

08.04.1988: However, most inexplicably, prior to 20.4.1988 itself Plaintiff filed Civil Suit No. 154 of 1988 (**Ex. D3 @ Pg. 71 of LCR**), against the present defendants for Permanent Injunction. It is very important to note that in paras 3 and 8 of the said Suit plaintiff has taken the plea that Sale Deed could not be registered on 12.2.1988 because:

“3. That the aforesaid Waryam Singh entered into an agreement to sell the suit land for Rs.62,000/- to the plff. And actually executed the sale-deed dated 12.2.1988 on a proper stamp paper, which was duly executed and duly attested by the witnesses. But the same could not be produced before the Sub Registrar, Pehowa as it got very late and office hours were also over. So it was mutually agreed to get it registered on 15.2.1988.

XXX XXX XXX XXX



8. That the plff. has already, applied to Sub Registrar Pehowa for registration of the sale deed in favour of the plaintiff and has also tendered the sale deed. Sub Registrar has given notice to the defendants for registration of sale deed for 20.4.1988. Certified copy of the same is attached.

Thus, plaintiff was well aware that for registration of sale deed on 20.4.1988, balance sale consideration was to be paid on said date.

20.04.1988 (Ex. P3 @ Pg. 47 of LCR): Pursuant to the notice issued by the Sub Registrar, Plaintiff and Defendant No. 2/Avtar Singh (for himself and on behalf of other defendants) appeared in the Tehsil Office. However, Sub-Registrar was on leave that day; and matter stood adjourned to 27.4.1988.

27.04.1988 (Ex. P4 @ Pg. 47 of LCR): On 27.4.1988, the defendants again appeared before the Sub Registrar. However, the Plaintiff failed to appear. Sub-Registrar was again on leave; and matter stood adjourned to 3.5.1988.

03.05.1988 (Ex. P5 @ Pg. 47 of LCR): On 3.5.1988, both parties appeared. However, matter was adjourned to 12.5.1988, as mutation had not been sanctioned in favour of the Defendants. Sub-Registrar directed sanction of mutation first.

11.05.1988: On 11.5.1988, Mutation was sanctioned in favour of defendants.

12.05.1988 (Ex. P6 @ Pg. 49–50 of LCR): Accordingly, Defendants produced photostat copy of mutation and expressed readiness to get Sale Deed registered; and further stated that they were always ready to perform their part of the contract. However, sale deed could again not be registered on



12.5.1988, as plaintiff outrightly refused to get it registered as he did not have the balance sale consideration. Consequentially, Sub Registrar dismissed application of the plaintiff for registration of sale deed; while categorically observing that the sale deed could not be registered on 12.5.1988, as: **Relevant observation (@ Pg. 50 of LCR):** *“When plaintiff was asked to get the sale deed registered in his favour, he refused to do so. Although the application to get the sale deed registered was filed by the plaintiff himself on 04.04.1988, he thereafter refused to get it registered; therefore, the same could not be done.”*

13.07.1988. (Ex. D1 @ Pg. 61 of LCR): Plaintiff filed appeal against order dated 12.05.1988. It is very important to note that in the Grounds of Appeal before the Registrar, Kurukshetra, the plaintiff has pleaded as follows:

“1. That the appellant entered into an agreement to purchase the land with one Waryam Singh, son of Meher Singh, resident of Gumthala Garhu, Tehsil Pehowa, District Kurukshetra and accordingly a sale deed was executed and was attested by the witnesses on 12.2.1988, but after the execution of document said Waryam Singh refused to present himself before the Sub Registrar and went back to his house and thereafter he died on 14.2.1988.

2. That thereafter, the appellant approached the legal representatives of said Waryam Singh, but since no mutation was entered in their name, so the sale deed could not be registered.

*3. That the mutation was sanction on 11.5.1988 and on 12.5.88 the Sub Registrar, asked the appellant to get the sale deed register, **but since no proper opportunity was given, it was not possible for the appellant to get the sale deed registered as all of sudden, the balance amount could not be arranged.** The appellant requested the learned Sub Registrar to grant him time to get the sale deed registered, so that the*



appellant may be able to arrange the money, but the learned Sub Registrar refuse to provide the opportunity and instead filed the sale deed.

4.That the order of the learned Sub Registrar is manifestly wrong and illegal as the appellant was always ready and willing to get the sale deed register on payment of balance amount and the sale deed could not be registered on account of death of vendor and subsequently on account of non-attestation of mutation, the appellant was not at fault at all. The learned Sub Registrar was wrong and refusing the registration of the sale deed.

5.That the learned Sub Registrar should have provide the proper opportunity and sufficient time for getting the sale deed registered.

.....”

21.07.1988: Vide judgment and decree dated 21.7.1988, Suit for Permanent Injunction Ex.D-3 was disposed of. However, in the LCR there is no decree/order showing the decision. Even on Court query, learned counsel for the respondent has been unable to apprise this Court as to what transpired in the suit for permanent injunction filed by the plaintiff.

18.01.1989. (Ex. P7 @ Pg. 51 of LCR): Appeal filed by the plaintiff against the order dated 12.5.1988, was dismissed by the Registrar vide order dated 18.1.1989; with the following **Relevant observations (@ Pg. 57 of LCR)**

“In application dated 4.4.1988, it is nowhere mentioned by the appellant that on 12.2.1988, Waryam Singh had refused to get the sale deed registered. Although it is now so mentioned in para 1 of the appeal, however, this appears to be concocted. It is further established that appellant was not willing to get the registry done and that he had gone from the Tehsil, even though Waryam Singh deceased was present in the Tehsil. On 12.05.1988 LRs of Waryam Singh were present in the office of Sub-Registrar and they were ready



and willing to get the sale deed registered; however, plaintiff refused to get it registered. There is no evidence on record that plaintiff requested time to arrange balance sale consideration. In this situation it is established that appellant deliberately did not get the sale deed registered because he did not have the balance sale consideration; and therefore, present appeal is baseless.....”

Consequentially, the appeal filed by the plaintiff before the Registrar, Kurukshetra, was dismissed vide the impugned order dated 18.1.1989.

17.02.1989: Thereafter, plaintiff filed the instant Civil Suit CS-1301/90/89 under Section 77 of the Registration Act, seeking a direction to the Sub Registrar to register the sale deed. In the plaint, plaintiff has now pleaded to the contrary that sale deed could not be registered on the same day/12.2.88 *‘as Waryam Singh had not got the Income Tax Clearance Certificate.’* Plaintiff has further pleaded in the plaint that *‘On 12.05.1988 all of a sudden, Sub Registrar rejected and refused to register the Sale Deed without granting any opportunity to the plaintiff to pay the balance sale consideration.’*

21.05.1993: Suit of the plaintiff was dismissed with costs by the Id. Additional Senior Sub Judge, Pehowa vide judgment and dated 21.5.1993.

05.06.1994: Plaintiff filed Civil appeal against Judgment and Decree dated 21.05.1993.

21.10.1994: Vide the impugned judgment and decree of reversal dated 21.10.1994 the learned Additional District Judge, Kurukshetra, has allowed the Civil Appeal; and decreed suit of the plaintiff. Sub-Registrar has been directed to register Sale Deed within 30 days.



(All Emphasis in above List of Dates are mine)

12. It is in the background of the aforesaid factual matrix that this Court has been called upon to examine the correctness of the impugned judgment and decree of reversal dated 21.10.1994.

13. Suit of the plaintiff has been decreed by the learned First Appellate Court for the following reasons given in the impugned judgment:

*“8. The counsel for the appellant has assailed the findings on issue no. 1. Mr. Sawheny has submitted that as per copy of order placed on file 12.5.1988 was fixed for producing copy of mutation by the respondents. That he was not aware that he would be required to make payment there and then. He has further submitted that even if the payment was not made the scope of section 35 of the Registration Act is to see whether there was execution of sale deed or not. He further admitted that in suit under section 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. In support he has placed reliance upon **Jogesh Prashad Singh and others Vs. Ramchander Prasad Singh and others, AIR (37) 1950 Patna 370.** In dictum laid down in this authority fully supports the case of the appellant. The counsel for the respondents has referred to **Banasetappa Laljicbikkanna Vs. District Registrar and another AIR 1966 Mysore 310.** In this case the executant has denied due execution of the sale-deed. In that authority it was held that execution does not mean merely signing but signing by way of assent to terms embodied in document. In the present case as per the stand*



taken by the respondents in the trial Court as well as by Waryam Singh in his affidavit Ex,D2 sworn in before the Sub Registrar, the sale deed was executed by Waryam Singh and even his heirs have not disputed the genuineness of the execution of the sale deed. In these circumstances as per law referred in Jogesh Prashad Singh's case (supra) the Sub Registrar was bound to register the sale deed. The scope of the trial court under section 77 was also to see as to whether there was due execution or not. There was no condition precedent for registration of the sale deed. As far as consideration is concerned it was only mentioned that the remaining amount will be received before the Sub Registrar. Meaning thereby the receipt of amount was not a condition precedent for due execution of the sale deed. In this view of the matter although I hold that the sale deed could not be registered due to non availability of funds with the appellant at the relevant time yet as per law laid down in the above authority the sale deed was to be registered by the Sub Registrar.

(Emphasis is mine)

14. A reading of the aforesaid extract shows that findings of fact of the Revenue Authorities as also the Trial Court to the effect that sale deed could not be registered at the relevant time as plaintiff was not in possession of the balance sale consideration, has been upheld. It may be pointed out, that plaintiff has not challenged the aforesaid concurrent findings of fact.

15. The first Appellate Court has further given the finding that there was no condition precedent for registration of sale deed – which is



factually incorrect – as, a perusal of the sale deed reveals that there is a condition precedent of payment of Rs.49,225/- by plaintiff to Waryam Singh before the Sub-Registrar, Pehowa at the time of registration of the sale deed which has not been met. The Sale Deed bears a clear recital from the executant Waryam Singh to the effect that *“I will take the balance amount of ₹49,225/- before the Sub Registrar Sir Pehowa in cash for my own need.”* The imperative need of the executant for getting the sale deed registered on 12.2.1988 was because he needed the funds for the impending marriage of his daughter on 20.2.1988. Undisputedly, therefore, plaintiff was well aware that time was the essence of the contract. Yet, plaintiff did not produce the original sale deed and ran away from the Tehsil on 12.2.1988. Thus, the finding of the first Appellate Court that there was no condition precedent for registration of sale deed, is incorrect.

16. Yet, suit of the plaintiff has been decreed by the first Appellate Court on the ground that as ‘execution’ of the document has not been denied by the executant/Waryam Singh, therefore, in terms of judgement of Patna High Court in ***Jogesh Prashad Supra***, suit of the plaintiff was to be decreed. Therefore, it is first to be seen as to what constitutes ‘executing’ a document. Needless to say, mere appending of signature on a document would not amount to its execution. Thus, the real issues which arise for consideration do not call into question the powers of the Registering Authority under the Registration Act, 1908; but rather raises the question of whether, in the set of facts in the present



case, the sale deed can be said to have been admitted to execution?

Accordingly, the pertinent issues which require decisive adjudication in present case are:

- a. *When is a sale deed said to be executed? What is the meaning of “execution” of sale deed?*
- b. *When the condition precedent of ‘payment of sale consideration before the Sub-Registrar’ has not been met, can the sale deed be deemed to be ‘admitted to execution’ for the purpose of section 35 of the Registration Act, 1908?*
- c. *Whether mere signing of the sale deed can be conflated to mean due admission of ‘execution’ of the same when the intent of the terms of the sale deed has not been adhered to?*
- d. *Whether it is within the power of the registering Authority to refuse to register a sale deed when execution, as embodied in the said document, has not been admitted to?*
- e. *Whether the Registering Authority can refuse to register a sale deed when the seller refuses to give receipt of payment of sale consideration, as was required under the terms of the sale deed so sought to be registered?”*

17. For a proper determination of the issues at hand, it is necessary to consider as to what is termed as ‘execution’ of a document in related legislations.

18A. TRANSFER OF PROPERTY ACT, 1882

18A-i. The Transfer of Property Act, 1882 (hereinafter referred to as “TPA”) is a key Indian legislation regulating the transfer of both movable and immovable property between living persons. It establishes a legal framework for sales, mortgages, leases, exchanges, and gifts, ensuring that



property transfers are recognized by law. The Act, in force since July 1, 1882, requires that transactions, particularly for immovable property over ₹100, be documented and registered. It details therein the Modes of Transfer of property, such as sale, mortgage, lease, gift, etc.

18A-ii. Chapter II of the TPA deals with 'Of Transfer of Property by Act of Parties' and section 8 details as under: -

"S. 8 Operation of transfer. – Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof." (Emphasis supplied)

Chapter III of the TPA deals with 'Of Sales of Immovable Property' and "Sale" in the TPA is defined under section 54, as follows:

"S. 54. "Sale" defined. –

"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.—Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.



Contract for sale.—A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.”

18B. REGISTRATION ACT, 1908

While the Registration Act, 1908 provides a comprehensive framework for registering various documents, ranging from property transactions to contractual agreements. This Act has been enacted with the primary objective of ensuring document authenticity and legal validity, this legislation plays a vital role in maintaining transparency and accountability in transactions involving immovable property and other valuable assets. By establishing a systematic registration method, the Act aims to prevent fraud, protect the interests of the parties involved, and facilitate the smooth functioning of property-related matters throughout the country.

18B-i. Section 17 of the Registration Act stipulates which documents are compulsorily registrable. Among them, in clause (b), are non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish a right, title or interest to or in immovable property of a value higher than Rs 100.

18B-ii. Section 35 of the Registration Act, 1908 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 persons 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.”

18B-iii. The above provisions indicate that the registration of a document by the Sub- Registrar must be preceded by:

- i. Presentation of the document by a proper person within the time allowed for presentation; and
- ii. Admission of the execution of the document

Section 72 provides for an appeal to the Registrar from an order of the Sub-Registrar refusing registration on a ground other than the denial of execution. While Section 73 provides for an application to the Registrar where the Sub-Registrar has refused to register a document on the ground of a denial of execution.

18C. INTERPLAY BETWEEN TRANSFER OF PROPERTY ACT, 1882 AND REGISTRATION ACT, 1908

Under the TPA, a sale is deemed to be complete when

- (1) the price is paid in full; or
- (2) price is paid in part; or
- (3) Partly paid and partly promised.

TPA provides that sale of any property valued at more than INR 100 has necessarily to be by way of a registered document. Thus, execution of a document conveying title of a property valued at more than INR 100 is



governed by TPA; while the registration of the same is governed by the Registration Act, 1908.

18C-i. It is necessarily understood that it is only when once the document comes into existence that the same can be presented for registration before the competent authority.

18C-ii. Furthermore, under the Registration Act, the Sub-registrar is enjoined upon a duty to register the document when it is duly presented by the correct persons and the execution of the same stands admitted by the said persons. In the event where execution is not admitted, the Sub-Registrar is competent to refuse registration of the same. While under section 75, during enquiry, the Registrar is enjoined the dual duty to enquire:

- a. Whether the document has been executed; and
- b. Whether the requirements of law for the time being in force have been complied with.

Thus, it is necessarily understood, that due execution and more importantly, the admission of such execution is a *sin qua non* for registration of the sale deed. In the above examined position of law, the question which arises before this Court is whether the sale deed dated 12.02.1988 can be said to have been admitted to be executed in the given set of circumstances.

18D. WHAT IS 'EXECUTION' OF A SALE DEED

18D-i. The word "execution" has not been defined in the Registration Act, 1908 however the same finds mention multiple times therein. Mulla's



The Registration Act notes the following in relation to the meaning of “execution” as - *“Admission of Execution ...It is submitted that the mere proof or admission that a person’s signature appears on a document cannot by itself amount to execution of the document.”*

18D-ii. Further, S.P. Sengupta’s Commentaries sets out the following position: *“A document is liable to be set aside or declared inoperative by a civil court when it was not voluntarily executed. But that is an altogether different consideration nor coming within the jurisdiction of Registering Officer. The correct legal position seems to be that though the Registering Officer cannot take any decision as to the legality and validity of an instrument which has been presented for registration, there cannot be any admission of execution when the plea taken by the executant before the Registering Officer, if found true, would invalidate the deed. An execution does not mean merely signing but signing by way of assent to the terms embodied in the document.”*

18D-iii. In ***Kuttadan Velayudhan, Muhammad, (Kerala)(DB) : Law Finder Doc Id # 4974***, a Division Bench of the Kerala High Court has held that:

“9.....The intention of the person signing is important. The person should have affixed the signature to the instrument in token of an intention to be bound by its conditions. It has been said that for a signing consists of both the act of writing a person's name and the intention in doing this to execute, authenticate or to sign as a witness. The execution of a deed or other



instrument includes the performance of all acts which may be necessary to render it complete as a deed or an instrument importing the intended obligation of every act required to give the instrument validity, or to carry it into effect or to give it the forms required to render it valid. Thus, the signature is an acknowledgement that the person signing has agreed to the terms of the document. This can be achieved only if a person signs after the document is prepared and the terms are known to the person signing. In that view of the matter mere putting of signature cannot be said to be execution of the document.”

18D-iv. The Bombay High Court in ***Bank of Baroda v. Shree Moti Industries 2008 SCC OnLine Bom 486*** held, “21... The term “execution” is not defined in any statute. It means completion i.e. the last act or acts which complete a document.”

18D-v. A 3-Judge Bench of the Hon’ble Supreme Court in ***Veena Singh v. District Registrar/ Additional Collector (F/R) (SC) : Law Finder Doc Id # 1985519***, has held that:

“57. The “execution” of a document does not stand admitted merely because a person admits to having signed the document. Such an interpretation accounts for circumstances where an individual signs a blank paper and it is later converted into a different document, or when an individual is made to sign a document without fully understanding its contents. Adopting a contrary interpretation would unfairly put the burden upon the person denying execution to challenge the registration before a civil court or a writ court, since registration will have to be allowed once the signature has been admitted.



60. The Registration Act exists so that information about documents can be put into the public domain, where it can be accessed by anyone in order to prevent forgeries and fraud, and so that individuals can be aware of the status of properties. If the interpretation conflating signing with execution is adopted, it would ensure that the Sub-Registrars/Registrars will continuously end up registering documents whose validity will inevitably be then disputed in a civil suit or a writ petition. While the suit or writ proceedings continue, the document would remain on the public records as a registered instrument, which has the potential to cause more disruption. Hence, such an interpretation should not be adopted by this Court.”

18D-vi. Thus, from a conspectus of the above referred judicial pronouncements it is established that mere signing of the document cannot be conflated to mean admission of execution of the same. For the purpose of execution of a document, the same is to comply with the provisions of TPA; and only thereafter the same can be presented for registration.

18E. PRINCIPLE OF INTENTION OF THE PARTIES

The Hon'ble Supreme Court in ***Kaliaperumal v. Rajagopal and Anr. (2009) 4 SCC 193*** held that in order to constitute a “sale”, the parties must intend to transfer the ownership of the property, on the agreement to pay the price either in present, or in future. The intention is to be gathered from the recitals of the sale deed, the conduct of the parties, and evidence on record.

18E-i. Recital in the sale deed



In the present case, as already noted above, the intention of the executant, the purpose for which sale is executed, as also the consequent recital in the sale deed (Ex. P-1) is clear beyond shadow of doubt wherein it is stated *"I will take the balance amount of Rs. 49,225/- before the Sub-Registrar Sir Pehowa in cash for my own need."* Thus, the recital in the sale deed was unequivocal that plaintiff was to pay the balance sale consideration at time of registration of sale deed before the Sub Registrar on 12.2.1988 itself, as time was of essence in the contract.

18E-ii. Conduct of the parties

The conduct of the parties has already been recounted. As demonstrated above, the record is replete with the varied, contradictory, and inconsistent pleas taken by the plaintiff from time to time; as also the dilatory tactics adopted by him in refusing/ avoiding registration of the sale deed. There are also concurrent and unrefuted findings of fact that sale deed was not registered on 12.2.1988 as, on the said date plaintiff had failed to produce the original sale deed and had run away from the Tehsil office; and the sale deed was not registered on 12.5.1988 as plaintiff did not possess the balance sale consideration. The said pleadings and findings may briefly be re-stated here:

- a) In the **Civil Suit No. 154 of 1988 (Ex. D3 @ Pg. 71 of LCR)**, for Permanent Injunction filed by the plaintiff against the defendants, pleading of the plaintiff is that Sale Deed could not be registered on 12.2.1988 because: *"...the same could not be produced before the Sub Registrar as it got very late and Office hours were also over. So it was mutually agreed to get it registered on 15.2.1988."*



- b) The **Sub Registrar** in order dated **12.05.1988 (Ex. P6 @ Pg. 49–50 of LCR)**, has given categoric finding that Defendants had produced photostat copy of mutation and expressed readiness to get Sale Deed registered. However, sale deed could again not be registered on 12.5.1988, as: *“When plaintiff was asked to get the sale deed registered in his favour, he refused to do so. Although the application to get the sale deed registered was filed by the plaintiff himself on 04.04.1988, he thereafter refused to get it registered; therefore, the same could not be done.”*
- c) In the **Grounds of Appeal dated 13.07.1988. (Ex. D1 @ Pg. 61 of LCR)** filed by the plaintiff against order dated 12.05.1988 before the Registrar, Kurukshetra, the pleading of the plaintiff is that:
- i) Sale deed could not be registered on 12.2.1988 as *“after the execution of document said Waryam Singh refused to present himself before the Sub Registrar and went back to his house and thereafter he died on 14.2.1988.”* and;
 - ii) Sale Deed was not registered on 3.5.1988 as the mutation was not there in favor of the defendants. And;
 - iii) After sanction of mutation on 11.5.1988, sale deed could not be registered on 12.5.1988 as *“no proper opportunity was given, it was not possible for the appellant to get the sale deed registered as all of sudden, the balance amount could not be arranged. The appellant requested the learned Sub Registrar to grant him time to get the sale deed registered, so that the appellant may be able to arrange the money, but the learned Sub Registrar refuse to provide the opportunity and*



instead filed the sale deed.” And therefore: “the sale deed could not be registered on account of death of vendor and subsequently on account of non-attestation of mutation, the appellant was not at fault at all. The learned Sub Registrar was wrong and refusing the registration of the sale deed.”

- d) The findings recorded by the **Registrar**, Kurukshetra in order dated **18.01.1989. (Ex. P7 @ Pg. 51 of LCR)** while dismissing the above Appeal of the plaintiff are imperative, to the effect that: *“In application dated 4.4.1988, it is nowhere mentioned by the appellant that on 12.2.1988, Waryam Singh had refused to get the sale deed registered. Although it is now so mentioned in para 1 of the appeal, however, this appears to be concocted. It is further established that appellant was not willing to get the registry done and that he had gone from the Tehsil, even though Waryam Singh deceased was present in the Tehsil. On 12.05.1988 LRs of Waryam Singh were present in the office of Sub-Registrar and they were ready and willing to get the sale deed registered; however, plaintiff refused to get it registered. There is no evidence on record that plaintiff requested time to arrange balance sale consideration. In this situation it is established that appellant deliberately did not get the sale deed registered because he did not have the balance sale consideration; and therefore, present appeal is baseless.....”*
- e) Whereas, in the present **Civil Suit CS-1301/90/89** dated 17.2.1989, the plaintiff has taken the pleading that Sale Deed was not presented before the Sub Registrar on the same day i.e. 12.2.1988 *“as the Income Tax Clearance Certificate was not produced by Waryam Singh.”* Plaintiff has further pleaded that sale deed was not registered on 12.05.1988 because *“all of a sudden, Sub Registrar rejected and refused to register the Sale*



Deed without granting any opportunity to the plaintiff to pay the balance sale consideration.” ‘emphasis is mine’

Thus, it is well established that the plaintiff blew hot and cold in various proceedings as to why the sale deed could not be presented for registration. In the suit for injunction (Ex. D-3; pg. 71) he says due to it being late in the day; while in the present suit mentions due to lack of income-tax clearance certificate; while in the appeal before the Registrar alleges that Waryam Singh had refused to present himself. It clearly reflects the conduct of the plaintiff that he is trying to benefit from his own lapse and to obtain highly valuable property at 1987-88 rates. The necessity to sell the land in dispute arose due to the marriage of the daughter of Waryam Singh fixed for 20.02.1988 and time was of the essence of the contract. Plaintiff, having full knowledge of the same, ran away from the Tehsil premises with the signed sale deed, and failed to complete the execution of the sale deed.

18E-iii. Evidence on record

The undisputed facts on record are that the Sale Deed was executed by Waryam Singh, predecessor in interest of the appellants on 12.02.1988 in favour of the respondent for total sale consideration of Rs.62,000/- out of which Rs.12,000/- plus Rs.775/- was received as earnest money. As per the Grounds of Appeal presented by the respondent before the Registrar, Sale Deed could not be presented on 12.02.1988 for registration as, Waryam Singh, after execution of sale deed failed to present himself before the Sub Registrar. However, the facts in



evidence on record are to the contrary which reveal that on 12.02.1988, Waryam Singh was very much present before the Sub Registrar to get the Sale Deed registered. The defendants have duly placed on record the Affidavit of Attendance of Waryam Singh on dated 12.02.1988 as Ex.D2. It was the plaintiff who failed to produce the Sale Deed before the Sub Registrar, as a result of which, same could not be registered. Subsequently as Waryam Singh did not receive the total sale amount, which he required for the marriage of his daughter, he expired on 14.02.1988.

19. Thereafter, it was agreed between the appellants/defendants and the plaintiff to get the Sale Deed registered on 12.05.1988. It is the contention of the respondent that on 12.05.1988, Sale Deed could not be registered as the appellants failed to produce the mutation in their favour before the Sub Registrar. However again the findings on record are to the contrary as it is proved on record that the suit land was mutated in favour of LR's vide mutation dated 11.05.1988; and it was the plaintiff, who was not in possession of balance sale consideration on 12.05.1988. The said fact i.e. lack of funds is admitted by the plaintiff in the Grounds of Appeal filed by him before the Registrar.

20. In these peculiar facts and circumstances, respondent cannot seek to take protection of Section 77 of the Registration Act as on both dates, Sale Deed was not registered as there is a concurrent findings of fact to the effect that on 12.02.1988, Sale Deed could not be registered as the respondent had failed to produce the Sale Deed; and again on 12.05.1988, Sale Deed could not be registered as the respondent had



failed to make the payment of balance sale consideration. It is admitted case between the parties and significantly a conclusive and concurrent finding of fact that the plaintiff did not have the balance sale consideration with him on the date fixed for payment and registration and even thereafter. Thus, it was the Respondent who failed to complete the execution of terms of the sale deed and tried to delay the payment of the majority of the sale consideration.

21. A reading of the foregoing paragraphs reveals that the reason for refusing to register the sale deed was due to incomplete execution of the sale deed. The condition precedent therein was not fulfilled while the Respondent tried to take benefit of his own wrong. Therefore, the questions of law raised in the present appeal are not as have been framed by the plaintiff-respondent. Rather, the issue which is raised for consideration before this Court is whether execution can be deemed to be complete and thereby admitted. The interplay between the TPA and the Registration Act as well as the definition of 'execution' read with the principle of intention of the parties and the settled principle of interpretation that the interpretation of can statute or law cannot lead to absurdities; and therefore, in my view, answers the question in favour of the Appellants.

22. Having answered the question of 'execution', it is next to be seen whether the first Appellate Court has rightly placed reliance upon the judgment of *Jogesh Prasad supra* in non-suiting the defendants. It is my clear view that reliance of the first Appellate Court on the said judgment is misplaced as the facts of *Jogesh Prasad Singhs (supra)* are dissimilar to the



present case (reference be had to paragraphs 2 and 8 of the said judgment).

In the present case, in the sale deed there is a specific recital qua payment of balance sale consideration before the Sub-Registrar, Pehowa at the time of registration. Whereas in the case of *Jogesh supra*, no balance sale consideration remained to be paid by the plaintiff therein; and in the present case, it is admitted fact on record that the plaintiff was first required to pay amount of Rs.49,225/-. As such, facts of the said case cannot be applied to the facts of the present case, which are distinctly different.

23. It is also to be noted that a conclusive finding of fact has been arrived at by both the Trial Court and the First Appellate Court to the effect that the Respondent was lacking the funds to pay the balance sale consideration. The said findings have not been challenged by the Respondent and have attained finality. Rather, it is admitted in the plaint that sale deed could not be registered on 12.05.1988 as Respondent did not have the balance sale consideration. Respondent's appeal before the Registrar, Pehowa was also dismissed as balance sale consideration was not available nor had any attempt been made by Respondent to deposit or pay the same to the Appellants. In the face of these admissions, and peculiar facts and circumstances of the case, the impugned judgment of the learned First Appellate Court, cannot be sustained. In this regard, findings of learned Trial Court in paras 13 and 16 of the judgment dated 21.05.1993 are relevant and are reproduced herein below:-

“13. There is a force in the contention of learned counsel for the defendants. The plaintiff is blowing hot and



cold in the same breath. On 12.2.88 he got the sale deed executed but failed to produce the same before the Sub-Registrar so that the same may be got registered. He took away the sale-deed with him and did not turn up through-out the day. On the other hand, Sh.Waryam Singh waited for him through-out the day and got his presence marked regarding his readiness and willingness to perform the part of his contract. It was the plaintiff who failed to get the sale-deed registered on that day. The marriage of the daughter of Sh.Waryam Singh had to take place on 20.2.88 and this was the main reason that he had to dispose of the suit land out as the plaintiff failed to make the payment of the remaining sale price and Sh.Waryam Singh was not in a position to arrange the amount regarding the performance of the marriage of his daughter on 20.2.88, therefore, he suffered a shock and as a result of the same he died on 14.2.88. The contention of the learned counsel for the plaintiff that the sale-deed could not be produced before the Sub-Registrar on 12.2.88 because Sub-Registrar has demanded the income tax clearance certificate from deceased Waryam Singh is without any force because in the grounds of the appeal it was alleged by the plaintiff that deceased Waryam Singh refused to appear before the Sub Registrar on 12.2.88, therefore, the sale-deed could not be registered on that day. Not only this, the plaintiff has moved an application before the Sub-Registrar to summon the legal heirs of said Waryam Singh so that they may get the sale-deed registered in his favour. The Sub-Registrar had directed the defendants to bring the mutation of inheritance in their favour and the same was produced by them on 12.5.88 but the plaintiff refused to get the sale-deed registered because he was not having the remaining sale price with him and in this way that application of the plaintiff



was rejected by the Sub-Registrar and the order of the Sub-Registrar was challenged in the court of Registrar and he also dismissed his appeal vide his order dated 18.1.89. The authorities on which reliance is being placed by the counsel for the plaintiff the facts of the same are not disputed but facts of the same are not identical to the facts of the present case. Therefore, these authorities have no help to him. In this way this issue is decided against the plaintiff in favour of the defendants.

XXX XXX XXX XXX

16. There is a force in the contention of learned counsel for the defendants. The plaintiff failed to get the sale-deed registered on 12.2.88 and thereafter on 12.5.88 it is a lapse on his part because he was not ready with the remaining sale price and that is the main reason he failed to get the sale-deed registered. Therefore, the suit of the plaintiff is not maintainable in the present form. Hence, this issue is decided in favour of the defendants and against the plaintiff."

24. The aforesaid findings of fact have been duly upheld by the learned First Appellate Court; and have not been challenged by the plaintiff. In this regard, reference may also be made to a judgment of the Hon'ble Supreme Court in ***M/s. Shivali Enterprises v. Godawari (Deceased) (SC): Law Finder Doc Id # 2034559.***

25. Contention of the respondent that it was not open to the Sub Registrar/Registrar to make a determination in respect of the readiness and willingness of the respondent to perform the contract is misconceived as, in the order date 12.5.1988 the Sub Registrar has clearly, categorically, and unambiguously recorded that it is the plaintiff himself who has ***refused*** to



get the sale deed registered. At the risk of repetition, however, to be crystal clear on the facts, the Sub Registrar, in order dated 12.5.1988 has recorded that: *“When plaintiff was asked to get the sale deed registered in his favour, he refused to do so. Although the application to get the sale deed registered was filed by the plaintiff himself on 04.04.1988, he thereafter refused to get it registered; therefore, the same could not be done.”*

26. Therefore, it is to be seen whether suit of the plaintiff is maintainable in face of his own refusal to get the sale deed registered.

27. It is unambiguously established on record that the respondent had time and again sought time by taking different and contradictory pleas on different times. Clearly, there are multiple contradictions in the case set up by the plaintiff. On the other hand, it is proved on record that on 12.02.1988 Waryam Singh was very much willing to get the Sale Deed registered. Even LR's of Waryam Singh were ready and willing to get the Sale Deed executed on 12.05.1988. In view of the refusal, and also mal-intent of the plaintiff as evident from discussion above, Civil Suit of the plaintiff was not maintainable. Sub Registrar/Registrar, learned Trial Court and First Appellate Court, all have given concurrent findings of fact that on all dates, plaintiff was not in possession of balance sale consideration. It is proven fact on record that LR's of the appellant had brought mutation on 12.05.1988. However, the Sale Deed could not be registered as admittedly respondent refuse to do so.

28. It is also to be seen that in the Grounds of Appeal filed by the plaintiff before the Registrar, plaintiff has nowhere denied his above said



refusal. Rather, plaintiff has admitted that he could not get the sale deed registered as he did not have balance sale consideration. In the said Grounds of Appeal before the Registrar, plaintiff has further decried the fact that he was granted no Time by the Sub Registrar to arrange the money. However, this plea of the respondent that he did not know that he had to bring balance sale consideration defies logic and is reflective of the mal-intent of the plaintiff.

29. Furthermore, the stand of the Respondent that he was not aware that he would be required to make payment on 12.05.1988 is falsified from his stand in his own civil suit for permanent injunction filed on 08.04.1988 (pg. no. 71) wherein it has been categorically mentioned that the Sub-registrar had given notice to the Appellants/Defendants for 20.04.1988 for registration of the sale deed. The Respondent has even appended a certified copy of the order of the Sub-Registrar. Thus, now it cannot lie in the mouth of the Respondent that he was caught unawares. Thus, in the present case, it is not as though the Sub Registrar was called upon to determine the readiness and willingness of the plaintiff or the other party.

30. Furthermore, this is not an Agreement to Sell. The present is a Sale Deed, a document of sale. An unregistered sale-deed, upon registration, would convey a completed title. Thus, prior to registration thereof, it is to be ensured that terms and conditions as embodied in the Sale Deed were to be complied with. Admittedly, terms and conditions as embodied in the Sale Deed, have not been complied with. Therefore, an



incomplete document cannot be registered. Contention of the plaintiff that under the Act, the Sub Registrar is bound to register the document is ill founded. A departure from the strictest interpretation of the provision, is indeed contemplated; and has to be determined in the facts and circumstances of each case - as held by this Court in ***Jagmal Singh v. Joint Sub Registrar, Kalayat (Punjab & Haryana) : Law Finder Doc Id # 341118*** wherein *Power of the Registrar* has been examined and it is held that:

“A. Registration Act, 1908 Sections 34 and 35 The scope of enquiry by a Sub-Registrar under Sections 34 and 35 is limited only as regards obtaining the proof of execution of the document - However, Sub-Registrar, while holding a public office, would not merely proceed to register a document with closed eyes without taking into consideration the interim orders passed by the Courts below and specifically brought to his notice in respect of land which forms subject matter of the sale-deed presented before him.

B. Registration Act, 1908 - Registration of sale deed - An order to maintain status quo regarding possession had been passed by the competent Courts below - Joint Registrar cannot proceed to register the sale deed and nullify the interim orders regarding status quo.

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10. Even though, the argument raised by learned counsel for the appellants is to be accepted that the scope of enquiry by a Sub Registrar under Sections 34 and 35 of the 1908 Act is limited only as regards obtaining the proof of execution of the document, still the fact cannot be lost sight of that the Sub Registrar, while holding a public office, would not merely proceed to register a document with closed eyes and would ignore the interim orders passed by the Courts below in respect of land which forms subject matter of the sale-deed



presented before him and such interim orders having specifically brought to his notice.”

31. The proposition on Limitations on Power of the Registrar has been examined by the High Court of Karnataka in **Smt.P.C.Padmamba v. Channaveeramma R., (Karnataka) : Law Finder Doc Id # 1963960**; and it is held that:

“73. Admittedly, Chikkanna-the purchaser was yet to pay the agreed balance sale consideration of Rs. 15,200/-though he claimed that a sale deed had been executed by Rudraiah. In fact, Chikkanna even after the registration of the sale, pursuant to the order of the Registrar, issued a legal notice calling upon Rudraiah to receive the balance sale consideration and hand over possession. Thus, though the purchaser himself admitted that the sale transaction was yet to be concluded, at least in terms of receipt of the sale consideration, by the intervention of the order of the District Registrar, the sale transaction has been concluded and the sale deed has been registered.

74. This essentially means that the Registrar has enforced a contract which had only been partly performed and some of the admitted terms of the contract were yet to be fulfilled. Furthermore, a sale deed executed by a person, who had no title over the property as on the date of the presentation of the sale deed, has been ordered to be registered, thereby purporting to convey the title to the buyer. This is, in fact, a power which is not available or conferred on a Civil Court even under the provisions of the Specific Relief Act. This is, thus obviously, beyond the purview of the Registration Act itself and the resultant registration of a document would have to be necessarily a complete nullity in the eye of law.

75. Since, the registration of the sale deed was a complete nullity in law, the same can have no significance at all and would also



confer no rights. In fact, such a null and void act, even if validated by consent of parties would not transform it into a legal act. It is settled law that an act, which is nullity, does not have to be impugned by way of a suit.” ‘emphasis is mine’

32. Thus, a contract which is a nullity in the eyes of law, even if validated by consent of the parties, cannot be transformed into a legal act and would confer no rights merely by registration.

33. Furthermore, the avowed objective of the Act is to maintain the authenticity and credibility of the property transaction and to prevent fraud. Statutory Provisions cannot be given an interpretation which is contrary to the principal objective of the legislation. In a case such as the present one, registration of sale deed would be otiose to the very objective of the Act. It is my view that upholding the impugned orders would not imply grant of or conferring the power upon the Sub Registrar which is beyond legislative intent. Rather, to achieve the very objective of the enactment, it necessarily implies and requires ensuring that the written terms and conditions of the transaction are satisfied. The Object of Registration as espoused by the Hon’ble Supreme Court in **Rajni Tandon v. Dulal Ranjan Ghosh Dastidar, (SC) : Law Finder Doc Id # 200766** is as under:

“27. The object of registration is designed to guard against fraud by obtaining a contemporaneous publication and an unimpeachable record of each document. The instant case is one where no allegation of fraud has been raised. In view thereof the duty cast on the Registering Officer under Section 32 of the Act was



only to satisfy himself that the document was executed by the person by whom it purports to have been signed. The Registrar upon being so satisfied and upon being presented with a documents to be registered had to proceed with the registration of the same.”

34. Thus, prior to registration, satisfaction of the Registrar is to be recorded. It is with a view to effectively achieve the purpose of the Act that some States have brought in amendments in form of promulgating Section 77A and Section 22A, which envisage setting aside of sale deeds by the Registrar. This is needed to ensure that the object of the Act is achieved. In particular, reference may be made to State of Andhra Pradesh, which has sought to insert Section 77A by way of registration (Andhra Pradesh Amendment) Bill, 2023 in the Registration Act, 1908 to provide for cancellation of registered document in certain cases. Vide the said Amendment Bill of 2023, powers have been delegated to the Registrar as well as to the Inspector General of Registration, for cancellation of instruments in certain cases. The said Amendment Bill of 2023 has received assent from the President of India on 17.12.2023. It may also be pointed out that several States have issued Circulars vesting power with the Registering Authority to cancel sale deeds where execution/registration of sale deed has been obtained fraudulently, either on orders of Inspector General of Registration or *suo moto* by the Registrar. Thus, it is not as though a departure from the strictest interpretation of Section 77 is not envisaged or undertaken. For this reason as well, no infirmity can be found in the impugned orders.



35. Over and above all else, the overarching purpose and premise of every law, statute, procedure, and all legal exercise and endeavour is to ensure complete justice between the parties. All the Statutes in the world shall be rendered meaningless pieces of parchment unless substantial justice is done between the parties. The purpose of every legal exercise is to serve the cause of Justice. A provision of law cannot be interpreted to foster manifest injustice. The Hon'ble Supreme Court has interpreted the role, scope, and purpose of procedural law in **Smt. Rani Kusum v. Smt. Kanchan Devi, (SC) : Law Finder Doc Id # 84339**; as follows:

"C. Interpretation of procedural law - A procedural law should not ordinarily be construed as mandatory, the procedural law is always subservient to and is in aid to justice - Provisions of the C.P.C. or any other procedural enactment ought not to be construed in a manner which would leave the Court helpless to meet extraordinary situations in the ends of justice - Processual law is not to be a tyrant but a servant not an obstruction but an aid to justice.

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11. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the Statute, the provisions of the Civil Procedure Code or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.



12. *The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.* " **'emphasis is mine'**

36. Thus, to relegate the appellants at this belated stage to another round of trial and another civil suit as advocated by the respondent, will be a shameful travesty of Justice; as also contrary to the tenet propounded by the Hon'ble Supreme Court viz to dissuade the scourge multiplicity of litigation. It may also be pointed out that all the submissions made on behalf of the respondent as noted hereinabove, have been made by the respondent for the first time before this Court; and have heretofore, not been raised by the plaintiff before the Courts below.

37. Rather, it is the plaintiff himself who was required to file a suit for specific performance. In this regard, the following observations of the Hon'ble Supreme in respect of scope of Section 77 of the Registration Act in case of ***Sita Dei v. Daitary Mohanty and others (Orissa) : Law Finder Doc Id # 320997***; are of great import:

"Execution of a deed and finding of fact regarding its execution are not assailable in second appeal. Reliefs beyond mere registration under Section 77 of the Registration Act can be granted in suits that are comprehensive in nature and include specific performance of contract.

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B. Registration Act, 1908 Sections 77 and 49, Proviso Suit for registration of document - Reliefs of confirmation of possession or recovery of possession also asked for - Court allowing specific performance of the contract contained in the sale deed



executed but not registered - Relief of possession held not to come within the scope of Section 77 - Suit being comprehensive, such relief can be granted even though no specific prayer for specific performance was made.

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6. The next contention that the suit is not for specific performance of contract but one under section 77 of the Registration Act is also not correct. On a perusal of the plaint, it is clear that the plaintiffs have also asked for reliefs of confirmation of possession, or, in the alternative, for recovery of possession. The relief of possession does not come within the scope of a suit under section 77 of the Registration Act which is limited to a decree for directing the document to be registered in the Sub- Registrar's office if it is duly presented for registration within 30 days after the passing of such a decree. There is, therefore, no substance in the contention that the frame of the suit is not one for specific performance of contract. In fact, ad valorem court-fees have been paid which are not necessary in a suit under section 77 of the Registration Act.

7. The third contention deserves careful examination. Mr. Pal's contention, in essence, amounts to that once the plaintiffs have resorted to the machinery provided under the Indian Registration Act, for getting the sale-deed (Ex. 3) registered, they are precluded from seeking specific performance of contract under the Specific Relief Act. It may be noted that Mr. Pal does not dispute the proposition that in this suit itself the plaintiffs are entitled to the relief under section 77 of the Registration Act as the suit was filed within 30 days from the date of refusal by the Registrar under section 76 of the Registration Act. There was some conflict of authority on this point prior to the amendment of section 49 of the Registration



Act. But the proviso added to it clarifies the position that an unregistered document, affecting immoveable property and required to be compulsorily registered either under the Registration Act or under the Transfer of Property Act, may be received as evidence of contract in a suit for specific performance. This amendment was necessitated on account of the dictum of the Privy Council taking the contrary view. The distinction between "a contract of sale" and "a contract for sale" is well known. The former completes the sale while the latter necessitates a further document to be executed to complete the sale. An unregistered sale-deed, on registration, would convey a completed title. Before registration, therefore, it can be used as an evidence of contract for sale in a suit for specific performance of contract under Section 49, Proviso of the Registration Act. Ex.3, therefore, can be used as a contract for sale and the present suit is properly constituted as one for specific performance of the contract. The next question arises whether the plaintiffs are precluded from bringing such a suit once they resorted to the machinery under sections 71 to 76 of the Registration Act for getting the narrow relief for registration. Despite some authority to the contrary, the correct view would be that they are not precluded. It is necessary to analyse the principle. A suit for specific performance of contract is based on original cause of action arising out of breach of contract. Subject to the limitation of equitable reliefs, granted by the Court as a Court of equity, the plaintiffs are entitled to specific performance of the terms of the contract. The plaintiffs can, therefore, ask for execution of a sale-deed, registration thereof, for confirmation of possession, or, in the alternative, for recovery of possession, and, in cases of trespass or disturbance of possession, for damages. The suit is, therefore, one of comprehensive nature



*and conceives of larger reliefs than the exclusive one claimed in a suit under section 77 of Registration Act. It would be fantastic to contend that when the cause of action for all the reliefs have arisen, the plaintiffs could be confined to the sole relief of getting the document registered, merely because they had resorted to the machinery under sections 71 to 76 of the Registration Act. So far as this Court is concerned, the matter is concluded by a Bench decision reported in *Rajan Patro v. Akur Sahu*, AIR 1959 Orissa 74. Though that is slightly distinguishable as the plaintiff did not approach the Sub-Registrar and there was no refusal of registration, in principle, however it makes no difference whether there was refusal or not. So far as the Patna Court is concerned, the matter is concluded by *Jhaman Wanton v. Amrit Mahton*, AIR 1946 Patna 62. The principle has been well discussed in *Nasiruddin Midda v. Sidhoo Mia*, AIR 1919 Calcutta 477 and in *Bal Kishen Das v. Bechan Pandey*, AIR 1932 Allahabad 96. The result, therefore, is that even though a party might have resorted to the machinery under sections 71 to 76 of the Registration Act, he is not precluded from bringing a suit for specific performance of contract for larger reliefs not conceived within the scope of section 77 of the Registration Act. This is, however, subject to the limitations of a Court of Equity and the matter is well discussed in *Rameshwar Prasad v. Anandi Devi*, AIR 1960 Patna 109, where their Lordships dismissed a suit for specific performance not on the ground that such a suit did not lie but on the ground that the equitable relief would not be exercised in favour of the party when the party itself was responsible for certain laches. For instance, when the plaintiff does not come with clean hands or is responsible in causing delay in asking for equitable reliefs. That again would vary according to the facts*



and circumstances of each case as to whether the equitable reliefs should be granted or not.” ‘emphasis is mine’

38. Therefore, sale deed could not have been mechanically registered by the Revenue Authorities in oblivion to the fulfilment of the fundamental conditions thereof. Thus, order dated 12.05.1988 Ex.P6 passed by Sub Registrar, and 18.01.1989 Ex.P7 passed by Registrar are in conformity with the provision of Section 58 of the Registration Act.

39. The aforesaid judgments relied upon by learned counsel for the plaintiff/respondent are distinguishable on facts and law and are not applicable in the peculiar facts of the present case.

40. In view of the above discussion, the present Regular Second Appeal is hereby **allowed**; and the impugned judgment and decree dated 21.10.1994 passed by the learned Additional District Judge, Kurukshetra is set aside; and the judgment and decree dated 21.05.1993 passed by the learned Additional Senior Sub Judge, Pehowa is restored; thereby dismissing the suit of the plaintiff/respondent.

41. Pending applications, if any, stand disposed of.

17.03.2026

Divyanshi

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No

(NIDHI GUPTA)

JUDGE