



**act of the registering authority, there must be reliance on the documents presented for registration. (Para - 10,11)**

Petitioner, co-sharer in inherited property - challenged the Sub-Registrar's act of registering a sale deed executed by his cousins through a power of attorney - arguing the Sub-Registrar failed to perform his statutory duty under Section 34 of the Registration Act - breach of preferential right under Section 22 Hindu Succession Act. (Para - 1, 2, 7)

**HELD:** - Writ petition was not maintainable as the underlying controversy between the parties was civil in nature. Petitioner must seek his remedy in a civil court and refused to exercise its writ jurisdiction to interfere with the official act of the Sub-Registrar. (Para - 10 to 12)

**Petition disposed of.** (E-7)

**List of Cases cited:**

1. Asset Reconstruction Company (India) Ltd. Vs S.P. Velayutham & ors., Civil Appeal nos. 2752-2753 of 2022
2. Jugraj Singh Vs Jaswant Singh, (1970) 2 SCC 386
3. K. Gopi Vs the Sub-Registrar & ors., Civil Appeal no.3954 of 2025

(Delivered by Hon'ble Arindam Sinha, J.  
&  
Hon'ble Avnish Saxena, J.)

1. Mr. Shreyas Srivastava, learned advocate appears on behalf of petitioner and submits, his client inherited half share in the property. Respondent nos.3 to 5 are his cousins and respondent no.6, purported purchaser of almost their entire aggregate half share. He relies on section 22 in Hindu Succession Act, 1956 and submits, his client has preferential right to acquire the property, when his cousins decide to sell their shares.

2. Challenge in the writ petition is against respondent no.2, (the Sub-

Registrar), in having illegally registered the sale deed dated 2nd April, 2025. He draws attention to the deed and submits, vendors described therein were represented by respondent no.3. Though there is mention of power of attorney dated 17th October, 2024, the Sub-Registrar abdicated his duty mandated by sub-section (3) in section 34 of Registration Act, 1908 in not refusing registration. He relies on clause (c) in the sub-section. The sale deed does not bear signature of the other vendors. The Sub-Registrar thus, as appears on face of the document, did not satisfy himself that the executor appearing as representative of respondent nos.4 and 5, had the right to so appear and present the document for registration. He also relies on rule 285 in Uttar Pradesh Registration Manual. Section 34 and the rule are reproduced below.

Section 34 in Registration Act, 1908.

***"34. Enquiry before registration by registering officer.***

*(1) Subject to the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorised as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25 and 26:*

*Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee,*

*in addition to the fine, if any, payable under section 25, the document may be registered.*

*(2) Appearances under sub-section (1) may be simultaneous or at different times.*

*(3) The registering officer shall thereupon*

*(a) enquire whether or not such document was executed by the persons by whom it purports to have been executed;*

*(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and*

*(c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.*

*(4) Any application for a direction under the proviso to sub-section (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.*

*(5) Nothing in this section applies to copies of decrees or orders."*

*Rule 285 in UP Registration Manual.*

**"285. Examination of documents.** *When a document is presented for registration the points requiring the attention of the registering officer may be summarized as follows:*

*1. Whether he has jurisdiction to register the document?*

*2. Whether the document is time-barred?*

*3. Whether the document is free from the objections in Section 19, 20 and 21 ?*

*4. Whether the document is properly stamped?*

*5. Whether the document is presented by a proper person?*

***6. Whether the document was executed by the persons by whom it purports to have been executed ?"***

*(Emphasis supplied)*

3. On query Mr. Srivastava submits, cancellation of the registration is not same as declaring the document to be null and void. His client is challenging administrative act of the authority in not having duly exercised the same, on omission to make enquiry in respect of it under section 34, to register the document, which ought not to have been registered. He relies on judgment of the Supreme Court in **Asset Reconstruction Company (India) Limited vs. S.P. Velayutham and Others** dealt with on **judgment dated 4th May, 2022 (Civil Appeal nos. 2752-2753 of 2022)**, paragraph 53 in Live Law print. The paragraph is reproduced below.

*"53. In suits for declaration of title and/or suits for declaration that a registered document is null and void, all the aforesaid three steps which comprise the entire process of execution and registration come under challenge. If a party questions the very execution of a document or the right and title of a person to execute a document and present it for*

*registration, his remedy will only be to go to the civil court. But where a party questions only the failure of the Registering Authority to perform his statutory duties in the course of the third step, it cannot be said that the jurisdiction of the High Court under Article 226 stands completely ousted. This is for the reason that the writ jurisdiction of the High Court is to ensure that statutory authorities perform their duties within the bounds of law. It must be noted that when a High Court, in exercise of its jurisdiction under Article 226 finds that there was utter failure on the part of the Registering Authority to stick to the mandate of law, the Court merely cancels the act of registration, but does not declare the very execution of the document to be null and void. A declaration that a document is null and void, is exclusively within the domain of the civil court, but it does not mean that the High Court cannot examine the question whether or not the Registering Authority performed his statutory duties in the manner prescribed by law. It is well settled that if something is required by law to be done in a particular manner, it shall be done only in that manner and not otherwise. Examining whether the Registering Authority did something in the manner required by law or otherwise, is certainly within the jurisdiction of the High Court under Article 226. However, it is needless to say that the High Courts may refuse to exercise Jurisdiction in cases where the violations of procedure on the part of the Registering Authority are not gross or the violations do not shock the conscience of the Court. Lack of jurisdiction is completely different from a refusal to exercise jurisdiction."*

He follows up by relying on an earlier judgment of said Court in **Jugraj Singh vs. Jaswant Singh** reported in

**(1970) 2 SCC 386**, paragraph 7, reproduced below.

*"7. It is plain that presentation for registration could be, either by the Principal or by a duly constituted attorney. It is equally plain that a proper power of attorney duly authenticated as required by law had to be made before power could be conferred on another either to execute the document or to present it for registration. That indeed is the law."*

4. Mr. Devesh Vikram, learned advocate, Additional Chief Standing Counsel appears on behalf of State. He relies on **judgment dated 7th April, 2025 of the Supreme Court in Civil Appeal no.3954 of 2025 (K. Gopi vs. the Sub-Registrar and Others)** paragraphs 11 - 15, to oppose the writ petition. Said paragraphs are reproduced below.

*"11. None of Clauses (a) to (j) provides for framing Rules conferring power on the registering authority to refuse registration of a document of transfer. No provision under the 1908 Act confers power on any authority to refuse registration of a transfer document on the ground that the documents regarding the title of the vendor are not produced, or if his title is not established. Even Sections 22-A and 22-B, incorporated by way of State amendment, do not have such a provision.*

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*15. The registering officer is not concerned with the title held by the executant. He has no adjudicatory power to decide whether the executant has any title. Even if an executant executes a sale deed or a lease in respect of a land in respect of*

*which he has no title, the registering officer cannot refuse to register the document if all the procedural compliances are made and the necessary stamp duty as well as registration charges/fee are paid. We may note here that under the scheme of the 1908 Act, it is not the function of the Sub-Registrar or Registering Authority to ascertain whether the vendor has title to the property which he is seeking to transfer. Once the registering authority is satisfied that the parties to the document are present before him and the parties admit execution thereof before him, subject to making procedural compliances as narrated above, the document must be registered. The execution and registration of a document have the effect of transferring only those rights, if any, that the executant possesses. If the executant has no right, title, or interest in the property, the registered document cannot effect any transfer."*

5. Petitioner is up against an official act of respondent no.2. State opposes. Section 86 provides, no registering officer shall be liable to any suit, claim or demand by reason of anything in good faith done or refused in his official capacity. It is on this premise, we must proceed to deal with petitioner's challenge.

6. We have perused the document (sale deed dated 2nd April, 2025). It does mention that the vendors were represented by one of them and a power of attorney. On query Mr. Srivastava submits, the power of attorney has not been disclosed. Petitioner ought to have obtained inspection of the power of attorney, to first ascertain on the document's validity. There cannot be a presumption that respondent no.2 did not duly inquire regarding respondent no.3

executing the document, on behalf of respondent nos.4 and 5 and himself. There is nothing in section 34 that requires the registering authority to make an order regarding satisfaction, as opposed to section 76, mandating the authority to make an order of refusal, recording the reasons for such order. The Act provides for appeal from an order of refusal. It does not carry provision for impeaching a registration made. There is indication thereby of intention of the Legislature.

7. Petitioner says he is in possession of the entire property, it having devolved upon him and his cousins. Hence, there is reliance on section 22 of Hindu Succession Act, 1956. His co-sharers not having informed him of their intention to sell thus deprived him of exercising his right of pre-emption under the provision. This alleged omission on part of his cousins gives petitioner cause to sue them. It cannot come in aid of challenge to an administrative act of registering a document, executed by one of them on behalf of all. We, in taking this view are supported by **K. Gopi** (supra).

8. On query Mr. Srivastava submits, section 4 in Partition Act, 1893 does not provide for the relief his client is seeking. We think otherwise. Private respondent no.6 is purchaser of almost 50% share in the property. In event said respondent files suit for partition, petitioner can claim under section 4, to purchase his share in resisting the claim for possession.

9. **Jugraj Singh** (supra) is declaration of law that there must be a proper power of attorney, duly authenticated as required by law as had to be made before the power could be conferred on another, either to execute the

document or to present it for registration. We do not have the power of attorney before us. Petitioner has not been able to even allege that his cousins or any one of them have raised some dispute regarding dealing with their shares on the sale deed, as could not be done in exercise of the power. As such we presume that the official act of the Sub-Registrar in registering the document (sale deed) was pursuant to satisfaction obtained that the power of attorney produced was a good and valid one, to enable respondent no.3 to also deal with the shares of respondent nos. 4 and 5. Clearly, **Jugraj Singh** (supra) is not applicable.

10. In **S.P. Velayutham** (supra) the Supreme Court said that where a party questions only the failure of the registering authority to perform his statutory duties in the course of third step i.e. failure of the registering authority to perform his statutory duty, the High Court's jurisdiction to interfere under article 226 in the Constitution of India cannot be said to stand completely ousted. The declaration has to be read like a demurrer. For a party to challenge the act of the registering authority, he must accept, inter alia, statements in the power of attorney empowering the person(s), to execute and present the document for registration since he is only challenging the discharge of statutory duty of the registering authority. In that case there was a sale made by the constituent attorney on strength of a power of attorney that specifically excluded power to sell. In such facts the Supreme Court said, action of the authority was amenable to writ jurisdiction. It reinforces our view that, to challenge the official act there must be reliance on the documents presented for registration. As aforesaid, petitioner has not even taken inspection of the power of attorney. Here, petitioner disputes the power of attorney and he is seeking to render the compulsorily

registerable sale deed, on the registration, if cancelled, to be a document of little or no consequence. We will not, in this way exercise our writ jurisdiction to usurp that of the civil Court. It follows, **S.P. Velayutham** (supra) does not come to aid of petitioner.

11. We see the underlying controversy between petitioner and unnoticed private respondents to be civil in nature. Petitioner must find his remedy.□ As aforesaid, we will not be drawn into exercising our writ jurisdiction.

12. The writ petition is **disposed of**.

13. Registry will communicate website copy of this order to respondent nos. 3 and 6 as we have not noticed them in dealing with the writ petition.

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**(2025) 5 ILRA 1510**  
**ORIGINAL JURISDICTION**  
**CIVIL SIDE**  
**DATED: ALLAHABAD 15.05.2025**

**BEFORE**

**THE HON'BLE SARAL SRIVASTAVA, J.**

Writ C No. 31912 of 2018

**C/M Janhit Madhyamik Vidyalaya & Anr.**  
**....Petitioners**

**Versus**  
**State of U.P. & Ors.                    ...Respondents**

**Counsel for the Petitioners:**  
 Ashok Khare (Sr. Adv.), Siddharth Khare

**Counsel for the Respondents:**  
 C.S.C., Pankaj Kumar Singh

**Civil Law - U.P. Basic Education Act, 1972**  
**- Inclusion in Grant-in-Aid List -**  
**Government Order dated 07.09.2006 -**  
**Government Order dated 14.07.2020 -**