A VEENA SINGH (DEAD) THROUGH LR

v.

THE DISTRICT REGISTRAR/ADDITIONAL COLLECTOR (F/R) AND ANOTHER

B (Civil Appeal No. 2929 of 2022)

MAY 10, 2022

[DR. DHANANJAYA Y CHANDRACHUD, A. S. BOPANNA AND BELA M. TRIVEDI, JJ.]

C *Registration Act, 1908:*

ss. 35, 72, 73, 74 – Execution and registration of sale deed – Agreement to sell certain land between the appellant and the second respondent – Execution of sale deed by the appellant in favour of second respondent, however, during registration of said sale deed, D *the appellant denied its execution – However, no denial on the part of the appellant in signing the sale deed and having placed her thumb impressions/fingerprints on the documents – Appellant also asserted commission of fraud and undue influence by the second respondent – Refusal of registration of the sale deed by the Sb-registrar in terms of s. 35(3)(a) – However, in appeal u/s. 72, the* E *District Registrar ordered registration of the sale deed – Said order upheld by the High Court – On appeal, held: Sub-Registrar having specifically denied registration in terms of s. 35(3)(a), the order was not amenable to an appeal u/s. 72, however, the Registrar, in the course of entertaining the appeal, instead took recourse to the* F *powers entrusted u/s. 73 – Mis-labelling of an application u/s. 73 as an appeal u/s. 72 would by itself not vitiate the proceedings before the Registrar – Execution happens when a person's signature on the document is accompanied by their full consent to the contents of the document, which they have understood before signing it – "Execution" of a document does not stand admitted merely because* G *a person admits to having signed the document – Thus, admission of one's signature on a document is not equivalent to admission of its execution – High Court conflated the mere signing of the sale deed with its execution – Such an approach is completely erroneous and cannot be upheld – Thus, the order of the Single Judge of the High Court and that of the District Registrar set aside.*

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ss. 35, 72-77 – Power of the Sub-Registrar/Registrar and their procedures under – Explained. A

Words and phrases: Expression 'execution' – Meaning of, in context of the Registration Act, 1908.

Allowing the appeal, the Court B

HELD: 1.1 From the objections filed before the Sub-Registrar by the appellant, it is clear that she did not deny having signed the sale deed. The essence of her grievance was that her signatures were taken forcibly; the sale deed did not reflect the intent of the parties in terms of the area which was intended to be sold; the sale consideration was undervalued; the consequence of the sale deed was that even the residential house of the appellant would be sold, contrary to her understanding; and the sale deed had been procured by fraud. The order of the Sub-Registrar makes it abundantly clear that the appellant was not ready to register the sale deed, which was claimed to have been executed in a fraudulent manner and whose execution was thus being denied. Registration was, therefore, refused by the Sub-Registrar in terms of Section 35(3)(a) of the Registration Act. [Para 32][765-A-C] C D

1.2 If a person by whom the document is purported to be executed denies its execution and registration is refused on those grounds, an appeal against the order of the Sub-Registrar denying execution would not be maintainable under Section 72 of the Registration Act. Section 72 clearly stipulates that an appeal will lie against an order of Sub-Registrar refusing to admit a document to registration "except where the refusal is made on the ground of denial of execution". [Para 33][765-C-E] E F

1.3 In the instant case, the Sub-Registrar having specifically denied registration in terms of Section 35(3)(a), the order was not amenable to an appeal under Section 72. However, the Registrar, in the course of entertaining the appeal, instead took recourse to the powers entrusted under Section 73. Section 73 empowers the Registrar where the Sub-Registrar has refused to register a document on denial of its execution by a person purporting to have executed it. Subsequently, the Registrar G H

appears to have followed the procedure which is emphasized in Section 74. Upon such an enquiry under Section 74, Section 75 enables the Registrar to order the document to be registered if it is found that: *(i)* the document has been executed; and *(ii)* the requirements of the law have been complied with. Section 75(4) also allows the Registrar to summon and enforce the attendance of witnesses to properly conduct the enquiry under Section 74. [Para 34][765-E-H]

1.4 Undoubtedly, the power of the Registrar while dealing with an application under Section 73 are wider than the powers which are entrusted to the Sub-Registrar under Section 35. Under Section 35(1)(a), the registering officer shall register the document if all the persons executing the document appear in person before the officer and admit the execution of the document. Section 35(2) empowers the registering officer to examine anyone present in the office, for the purpose of satisfying himself that the persons appearing before him are the persons they represent themselves to be. In contrast to sub-Section (1) of Section 35, sub-Section stipulates that once execution is denied by the person who purports to have executed the document, the registering officer shall refuse to register it. On the other hand, under Sections 73 and 74, the Registrar is entrusted with the duty to enquire whether the document has been executed and whether all the requirements of the law for the time being have been complied with. For the purposes of this enquiry, Section 75(4) provides the Registrar with the power to summon and enforce the attendance of witnesses. Thus, while the Sub-Registrar under Section 35(3)(a) has to mandatorily refuse registration when the execution of a document is denied by the person purported to have executed the document, the Registrar is entrusted with the power to conduct an enquiry on an application under Section 73 by following the procedure under Section 74. [Para 35][766-A-E]

1.5 In the instant case, the appeal before the Registrar was not maintainable under Section 72. Indeed, the appellant, in response to the memo of appeal filed by the second respondent, specifically pleaded in her objections that "hearing the appeal under Section 72 of the Registration Act or to deliver any judgment

will be against law". At the same time, however, the appellant also pleaded that she "had full right for argument under Section 75(4) of the Registration Act and under the CPC from the witnesses and the appellant". The Registrar is empowered to summon witnesses under Section 75(4) for the purpose of an enquiry under Sections 73 and 74. It thus, emerges that the parties proceeded on the basis that the proceedings would be decided on the basis of an enquiry under Section 73, and the enquiry was conducted with reference to the provisions of Section 74. The appellant herself understood this to be the position in her objections filed to the appeal filed by the second respondent, since she invoked her rights under Section 75(4), which applies to enquiry proceedings under Section 74. The appeal against the Sub-Registrar's order was not maintainable under Section 72. The remedy of the second respondent, where the Sub-Registrar refused registration on the ground that the appellant denied execution of the document, was under Section 73. The Registrar conducted an enquiry under the provisions of sections 73 and 74. Both parties participated in the enquiry. [Para 36][766-E-H; 767-A-B]

1.6 The mis-labelling of an application under Section 73 as an appeal under Section 72 would by itself not vitiate the proceedings before the Registrar. This becomes especially true when proceedings before the Registrar, in substance, were proceedings under Section 73 itself and both the parties acknowledged them to be so, explicitly or by their conduct. This is clearly what has happened in the present case as well, as is evident from the appellant's reference to Section 75(4) and her participation in the enquiry proceedings before the District Registrar. Therefore, the second respondent's mis-labelling of their application as an appeal under Section 72 will not vitiate the proceedings which led to the District Registrar's order. [Para 38][767-F-G; 768-A-B]

1.7 Section 35(1)(a) of the Registration Act uses the expression "admit the execution of the document", while Section 35(3)(a) uses the expression "denies its execution". Similarly, Section 72(1) has adopted the expression "denial of execution", while Section 73(1) uses the expression "denies its execution".

However, the word "execution" itself is not defined by the Registration Act. [Para 39][768-C-D]

Bryan A Garner, *Black's Law Dictionary* (Thomson Reuters, 2009) pgs 649-650; *Words and Phrases (Permanent Edition)* **(Thomson Reuters, 2020); Justice K Kannan, *Mulla's* *The Registration Act* (LexisNexis, 2012) pg 416 – referred to.**

1.8 "Execution" happens when a person's signature on the document is accompanied by their full consent to the contents of the document,which they have understood before signing it. This understanding of the phrase "execution" is also adopted by textbooks in relation to the law of evidence. Section 68 of the Evidence Act 1872 prescribes the requirement for proving that a document has been executed. The proviso to s. 68 stipulates that it shall not be necessary to call an attesting witness to prove the execution of a document if it has been registered under the Act, provided that its execution is not specifically denied by the person who is purported to have executed it. 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. In giving meaning to the expression "execute" in the provisions of the Registration Act, it is necessary to adopt a purposive construction to protect, facilitate and achieve the object of registration. [Paras 42, 43, 57, 58][771-A-B, B-C; 772-B; 780-C-E]

Suraj Lamps and Industries Private Limited v. State of Haryana & Another **(2009) 7 SCC 363 : [2009] 9 SCR 1048;** *Bharat Indu and Ors. v. Hakim Mohammad Hamid Ali Khan* **1920 SCC OnLine PC 37 – referred to.**

S P Sen Gupta, *Commentaries on the Registration Act, 1908* **(Kamal Law House, 2017) pgs 617-618; Sudipto Sarkar and Dr. H R Jhingta,** *Sarkar: Law of Evidence– In India, Pakistan, Bangladesh, Burma, Ceylon, Malaysia & Singapore: Volume 1* **(LexisNexis, 2016); N Vijayraghavan and Sharath Chandran,** *Ratanlal & Dhirajlal: The Law of Evidence* **(LexisNexis, 2021) – referred to.**

1.9 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. However, while adopting the current interpretation- that the admission of one's signature on a document is not equivalent to admission of its execution- it is important to consider the power of the Sub-Registrar/Registrar and their procedures under the Registration Act. [Paras 60, 61][781-E-H]

1.10 The decision of the Registrar in ordering document to be registered, or for that matter in refusing to register a document, is not conclusive and is amenable to judicial review. Therefore, in a situation where an individual admits their signature on a document but denies its execution, the Sub-Registrar is bound to refuse registration in accordance with Sections 35(3)(a) of the Registration Act. Subsequently, if an application if filed under Section 73, the Registrar is entrusted with the power of conducting an enquiry of a quasi-judicial nature under Section 74. If the Registrar passes an order refusing registration under Section 76, the party presenting the document for registration has the remedy of filing a civil suit under Section 77 of the

Registration Act, where a competent civil court will be able to adjudicate upon the question of fact conclusively. [Para 63, 64][784-G-H; 785-A-C]

1.11 In the instant case, where Sub-Registrar had in the first instance declined to order the registration of the document and the order of the Sub-Registrar was questioned in an appeal under Section 72 filed by the second respondent. The Registrar, in the course of the appellate proceedings, purported to hold an enquiry of the nature contemplated under Section 74 of the Registration Act and concluded that the execution of the sale deed had been established and it was liable to be registered. The Registrar was evidently seized of a case where the Sub-Registrar had declined to order registration on the ground that the execution of the document was denied by the appellant under Section 35(3)(a). While exercising the jurisdiction pursuant to the invocation of the remedy under Section 72, the Registrar relied on the statements of the scribe of the sale deed and the attesting witnesses to the effect that the sale deed had been signed by the appellant and that the appellant had also affixed her fingerprints on it. However, as rightly pointed out by the appellant, the signing of the sale deed by her and the affixation of her fingerprints is not in dispute. The real issue is whether there was due execution of the sale deed by the appellant. The appellant in the course of her objections specifically pleaded fraud. The plea of the appellant, that the purported sale deed though signed by her was procured by fraud and undue influence, was a matter which raised a serious substantive dispute. In support of her contentions, the appellant has also adduced the inspection report by the Sub-Registrar and the Naib Tahsildar. However, this court cannot decide on the merits of the dispute at this stage, since the Registrar clearly exceeded his jurisdiction by adjudicating on the issue of fraud and undue influence. [Para 67][788-E-H; 789-A-B, D-F]

Satya Pal Anand v. State of M.P. **(2016) 10 SCC 767 : [2016] 12 SCR 26 – distinguished.**

1.12 The Registrar purported to exercise the powers conferred under Section 74 and arrived at a finding that the sale deed had been duly signed by the appellant and was therefore

liable to be registered. However, the objections of the appellant raised serious issues of a triable nature which could only have been addressed before and adjudicated upon by a court of competent civil jurisdiction. As a matter of fact, during the course of the hearing, this Court has been apprised of the fact that in respect of the remaining area of 1000 square meters in the front portion of the land, a suit for specific performance has been instituted by the second respondent, resulting in a decree for specific performance. As regards the subject matter of the sale deed, the second respondent instituted a suit for possession before the Civil Judge, where certain proceedings are pending. In view thereof, the Registrar acted contrary to law by directing the sale deed to be registered. [Para 68][789-F-H; 790-A-B]

1.13 In the impugned judgment, the Single Judge of the High Court observed that registration does not depend upon the consent of the executant but on the Registrar's finding that the executant had actually signed the document. The High Court held that having found in the course of the enquiry that the sale deed was duly prepared by a scribe, that the attesting witness had stated that the sale deed was signed by the appellant and she also placed her fingerprints in their presence, it was open to the Registrar to direct registration in spite of a denial of its execution by the appellant. In doing so, the Single Judge of the High Court has, with respect, conflated the mere signing of the sale deed with its execution. Such an approach is completely erroneous and cannot be upheld. The impugned judgment and order of the Single Judge of the High Court as also the order passed by the District Registrar is set aside. [Paras 69, 70][790-B-E]

Rajendra Pratap Singh v. Rameshwar Prasad **(1998) 7 SCC 602 : [1998] 2 Suppl. SCR 444;** *N.M. Ramachandraiah v. State of Karnataka* **2007 SCC OnLine Kar 192;** *Banasettappa Laljichikkanna v. District Registrar* **1965 SCC OnLine Kar 132;** *Sayyapparaju Surayya v. Ramchandar Prasad Singh and Others* **1949 SCC OnLine Mad 227;** *Jogesh Prasad Singh & Others v. Ramchandar Prasad Singh and Others* **1950 SCC OnLine Pat 31;** *Ebadut Ali v.*

A *Muhammad Fareed* **AIR (3) 1916 Pat 206:35 Ind. Cas. 56;** *Mohima Chunder Dhur v. Jugul Kishore Bhutta Charji,* **ILR Volume VII Calcutta;** *Smt. Uma Devi v. Narayan Nayak* **1984 SCC OnLine Ori 94;** *Bhutkani Nath v. Smt. Kamaleswari Nath,* **AIR 1972 Assam and Nagaland 15;** *Puran Chand Nahatta v. Monmotho Nath Mukherji and Others* **1927 SCC OnLine PC 100;** *Ghasita Ram Bajaj v. Raj Kamal Radio Electronic* **1973 SCC OnLine Del 109;** *Kamlabai v. Shantirai* **1980 SCC OnLine Bom 152;** *S. Ramamurthy v. Jayalakshmi Ammal* **1990 SCC OnLine Mad 501;** *Union Bank of India v. Dhian Pati* **1996 SCC OnLine HP 90;** *In Re Kuttadan Velayudhan* **2001 SCC OnLine Ker 14;** *Bank of Baroda v. Shree Moti Industries* **2008 SCC OnLine Bom 486;** *Smt. Raisa Begam v. District Registrar, Saharanpur and Anr.* **2011 SCC OnLine All 2335 – referred to.**

Case Law Reference

[2016] 12 SCR 26	**distinguished**	**Para 11(i)**
[1998] 2 Suppl. SCR 444	**referred to**	**Para 44**
AIR (3) 1916 Pat 206	**referred to**	**Para 48**
AIR 1972 Assam and Nagaland 15	**referred to**	**Para 49**
[2009] 9 SCR 1048	**referred to**	**Para 58**

F CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2929 of 2022.

From the Judgment and Order dated 31.05.2018 of the High Court of Judicature at Allahabad in Writ-C No. 24928 of 2012.

G Pradeep Kant, Sr. Adv., Rohit Kumar Singh, Simranjeet Singh Rekhi, Advs. for the Appellant.

V. K. Shukla, Sr. Adv., P. H. Vashishtha, Divyansh Tiwari, Ms. Parul Shukla, Pradeep Kumar Yadav, Vishal Thakre, Aryan P. Nanda, Sanjeev Malhotra, Advs. for the Respondents.

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The Judgment of the Court was delivered by

DR DHANANJAYA Y CHANDRACHUD, J.

This judgment has been divided into sections to facilitate analysis. They are:

A Introduction

1. This appeal has arisen from a judgment dated 31 May 2018 of a Single Judge of the High Court of Judicature at Allahabad. By the impugned judgment, the High Court dismissed a petition under Article 226 filed by the appellant, seeking a writ in the nature of certiorari for quashing an order dated 31 March 2012 of the District Registrar/ Additional Collector (Finance and Revenue), Bareilly[1], who is the first respondent in the present appeal. During the pendency of this appeal, the appellant has passed away and has been substituted by her legal heir, by an order of this Court dated 9 December 2021.

2. At the heart of this dispute is a certain piece of land admeasuring 3,793 square yards, situated at 110-B, Civil Lines, Bareilly, Uttar Pradesh, which was owned by one C P Singh. During his life time, he had alienated approximately 415 square yards of the land to four distinct persons. After his death, the appellant, who is his spouse, together with her two daughters, namely Nita Singh and Neelam Singh, and son, Pradeep Singh, became joint owners of the property. A power of attorney was executed on 17 April 2010 in favour of the appellant by her daughters and son, which is stated to have been cancelled on 27 September 2011.

3. The appellant is alleged to have entered into two agreements with a developer – Gujral Associates, who is the second respondent in

[1] "**District Registrar**"

*Ed. Note: The pagination is as per the original judgment.

A the present appeal: *(i)* the first was allegedly a development agreement in respect of an area admeasuring 1000 square meters in the front portion of the land. It is important to note that the nature of this agreement is disputed by the second respondent (who alleges that it was instead an agreement to sell), but that dispute is not before this Court in the present appeal; and *(ii)* the second was an agreement to sell for an area admeasuring 839.4 square meters in the rear portion of the land for a sale consideration of Rs 1.6 crores, which was executed on 22 October 2010. On the other hand, the second respondent contends that this agreement to sell was for an area admeasuring 1839.4 square meters. It is also important to note that the stamp duty in the amount of Rs 39,61,000 C (according to counsel for the second respondent) was paid on the agreement on the basis of the circle rate of the land, *i.e.*, Rs 6,11,53,000.

4. Between October 2010 and 3 January 2011, the second respondent allegedly paid the appellant a sum of Rs 93 lakhs in twelve instalments. A cheque for the remaining sum of Rs 67 lakhs was handed D over to the appellant by the second respondent on 20 June 2011. The appellant has stated that she did not encash this cheque upon realising that a fraud had been committed upon her. On the same date, a sale deed was purported to have been executed by the appellant in favour of the second respondent based upon the agreement to sell and upon the payment of the remaining sale consideration. The execution and E registration of this sale deed forms the bedrock of the dispute in the present appeal.

5. On 5 December 2011, the second respondent filed an application seeking permission to execute the sale deed. Thereafter, on 15 December 2011, they presented the sale deed for registration before the Sub- F Registrar-I, Bareilly. In response to a notice from the Sub-Registrar, the appellant appeared before the Sub-Registrar on 17 February 2012 and submitted an objection in writing, with a request not to execute the incomplete and forged sale deed in favour of the second respondent. The appellant stated that she was 78 years of age, "a chronic patient of G depression, heart ailment and hypertension" under medical treatment and that her son was an alcoholic who was incapable of taking any decision on his own. The appellant stated that the second respondent had been harassing her into forcibly signing the sale deed in respect of her property. The appellant further stated that the second respondent furnished her with misleading and false information in order to ger her to

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sign the papers, all the while even forcing her to hide the transaction from the members of her own family. Specifically in relation to the two transactions in regards the front and rear portion of the land, the appellant alleged as follows:

> "(A) Details of 100 sq. meter agreement with m/S Gujral Associates **having a market value of not less than Rs.5 Crore** showing a meagre sale consideration of Rs.1,30,00,000/- on 22.10.2010 forming part of 110-B Civil Lines, Bareilly, stipulating to have paid a sum of Rs.18,00,000/- to me including a sum of Rs.90,00,000/- in cash and a sum of Rs.3,00,000/- through cheque No.111681 dated 03.06.2009 Bank of Baroda, which in fact was never paid to me and the cheque referred to above stands credited in someone else account and not in my account. According to me and the Law the agreement becomes NULL and VOID as the intention of the party is to do a fraud by illegal measures.
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> (B) Details of 1839.48 Sq. meter agreement with M/s Gujral Associates **having a market value of not less than Rs.7 Crore** showing a meagre sale consideration of Rs.1,60,00,000/- on 22.10.2010 forming part of 11-B Civil Lines, Bareilly, stipulating to have paid a sum of Rs.83,00,000/- including a sum of Rs.8,00,000/- shown to have been paid in cash, which in fact has never been paid to me (Mrs. Veena Singh). According to me and the Law the agreement becomes NULL and VOID as the intention of the party is to do a fraud by illegal measures."

The appellant further stated:

> "That the time within which sale deed was allegedly agreed to be executed was period of eight months which too has expired on 22.06.2011 and to avoid legal consequences they obtained signature on INCOMPLETE SALE DEED dt. 20.06.2011 from me under misleading and false information when they were pressurizing me to quickly sign the papers before the registry office closes and didn't give a chance to read the papers before signing, my granddaughter entered the room and enquired about the doing. She asked if the papers had been read by one to which I replied NO. So she asked a photo copy of the documents so that our Lawyer could go through them. It was at that moment that this fact came to light that whatever was undergoing was wrong and

misleading, M/ s Gujral Associates people and his lawyer Mr. Anil Ku. Agarwal was shocked when my granddaughter asked for a photo copy as she was scared to see me surrounded by 5 people in my Room and then when we realized that they manipulated the land area and they were taking my manipulated the land area and they were taking my HOUSE also illegally, so I am against this SALE deed as they have done a fraud."

The appellant further claimed that:

(i) The boundaries which were set out in the deed for 1839.48 square meters were erroneous and did not clearly reflect what was to be sold. Further, the second respondent had manipulated the actual land area by also including within it the appellant's house, where she was residing for over five decades, though it was not her intention to alienate it;

(ii) The sale deed itself was incomplete, but the second respondent forcibly made her sign it on the pretext of a rush to file the sale deed within time for registration; and

(iii) The second respondent himself was aware that there was no partition between the co-sharers of the land, yet went ahead with the sale deed.

Hence, based on her above contentions, the appellant requested the Sub-Registrar to take action for the forgery which had been committed by the second respondent and prevent the second respondent from getting the incomplete sale deed registered for an area admeasuring 1839.48 square meters.

6. By an order dated 17 February 2012, the Sub-Registrar declined to register the sale deed after recording the following statement of the appellant:

"I was alone, my signature was forcibly taken on this sale deed, I do not remain well, and I take Alprex also, I am diabetic also, I r4emain under Hypertension also. Many persons who were 4-5 in number by reaching there, got my signature forcibly. Other paper was read to me, and signature was taken on other paper. I live alone. They trouble me from day to today. The land not so in quantity which they have written. As per them, they try to occupy that house also which is mine. I do not want to execute this sale deed. I be let live comfortably."

Relying upon her statement, the Sub-Registrar held as follows:

"On the basis of the aforesaid statement as Smt. Beena is not ready to register the aforesaid sale deed which she tells to be executed fraudulently and cheatingly. Therefore, the registration of the sale deed is denied under Section 35(3)A of the Indian Registration Act and under Rule 249 of the Registration Manual, Part -2."

7. The Sub-Registrar having refused to order the registration of the sale deed, the second respondent instituted an appeal[2] under Section 72 of the Registration Act 1908[3] on 2 March 2012. The appellant objected to the maintainability of the appeal under Section 72, besides supporting the order of the Sub-Registrar on the ground that the sale deed in dispute had not been executed by her.

8. By an order dated 31 March 2012, the District Registrar, while entertaining the appeal, proceeded to follow the procedure prescribed by Section 74 of the Registration Act to determine whether the sale deed had been executed by the appellant. The District Registrar subsequently held that the appellant had admitted her signature on the document and that the second respondent was entitled to get the sale deed registered. In arriving at the conclusion, the District Registrar relied on the statements made on solemn affirmation by the scribe of the sale deed and by the witnesses to the sale deed, to the effect that the document had been executed by the appellant in their presence without any pressure. The District Registrar also noted that prior to the sale deed, an agreement to sell had been registered on 22 October 2010 in terms of which the appellant received an amount of Rs 93 lakhs by cash and cheque, as token money towards the sale consideration of Rs 1.6 crores. The receipt of the consideration by cheque in pursuance of the agreement to sell was stated to not be in dispute. Further, the District Registrar noted that during the period of about one year and two months, between the registration of the agreement to sell and the presentation of the sale deed on 15 December 2011, the appellant had not lodged any complaint alleging fraud. The District Registrar also observed that the signatures and thumb impressions/fingerprints of the appellant on the agreement to sell and sale deed had been examined by a handwriting expert, and were found to be identical. Based on these findings, the District Registrar set

[2] Appeal No 01 of 2012

[3] "**Registration Act**"

A aside the Sub-Registrar's decision and ordered the registration of the sale deed presented on 15 December 2011. Consequently, the sale deed was registered on 16 April 2012.

9. Crucially, the appellant has adverted to certain developments which took place after the order of the District Registrar. According to
B the appellant, the Assistant Inspector General, Registration, Bareilly ordered a spot inspection by the Sub-Registrar of the land covered by the sale deed. In his report dated 30 April 2012, the Sub-Registrar concluded that the actual area covered by the deed was 1341.73 square meters, out of which 740.73 square meters was the area of the appellant's
C house. Further, the Sub-Registrar noted that while the northern and western boundaries were present as according to the sale deed, the southern and eastern boundaries at the spot did not match with the boundaries mentioned in the sale deed. Later, pursuant to the recommendation of the Sub-Registrar, a further spot verification was also carried out by the Naib Tahsildar. In a report dated 26 May 2012,
D the Naib Tahsildar stated that the boundaries mentioned in the sale deed were completely incorrect. Further, it was stated that the actual area on the spot was 849.12 square meters, as opposed to the area of 1839.48 square meters shown in the sale deed. The report noted that if the area of 1839.48 square meters was taken as the area of the sale deed, it would partly cover the residential house of the appellant, garden area
E situated in front of the house and three properties which had been previously sold by the deceased husband of the appellant. Therefore, the Naib Tahsildar concluded that the registered sale deed was completely incorrect.

10. At this stage, it would also be material to note that a first
F information report[4] was filed by the appellant on 4 May 2012 at PS Kotwali, Sub-District Sadar, Bareilly against the proprietors of the second respondent for offences punishable under Sections 420, 467, 468, 471 and 506 of the Indian Penal Code 1860. Subsequently, a final report was filed in the FIR by the Investigating Officer. A protest petition filed by
G the appellant against the final report has since been dismissed by the Magistrate by an order dated 20 September 2013[5], against which the appellant's revision remains pending.

[4] FIR No 192 of 2012; Case Crime No 1118 of 2012

H [5] Misc Case No 225 of 2013

11. Along with these developments, the appellant challenged the order dated 31 March 2012 of the District Registrar before the High Court of Judicature at Allahabad in proceedings under Article 226 of the Constitution. In adjudicating the appellant's writ petition by the impugned judgment dated 31 May 2018, a Single Judge of the High Court framed the following questions for consideration:

> "38. The question to be considered by this Court in facts and circumstances of this case and in the light of arguments made by the counsel for the parties can be summarized thus: Whether the Writ Petition was maintainable in the form and manner it had been filed? What is the scope of power exercised by the Deputy Registrar under section 35(3)(a) of the Act? Whether the denial of execution of Sale Deed by the petitioner was correctly interpreted by the Deputy Registrar to exercise power under Section 35(3)(a) and refuse registration? Whether the District Registrar could have considered, the appeal filed by Respondent No. 2 as a representation and exercise power as an original Authority and not as an Appellate Authority? Whether Sale Deed which was Registered on 16.04.2012 before this Court passed its interim order can be set aside by this Court by holding that it was wrongly registered?"

The Single Judge then observed:

(i) In terms of this Court's judgment in **Satya Pal Anand** v. **State of M.P.**[6], the Sub-Registrar under Sections 34 and 35 of the Registration Act has no quasi-judicial power to conduct an enquiry regarding the validity of the title or legality of the transaction in a sale deed, but only has to ascertain whether the provisions of the Registration Act have been complied with. Questions regarding the validity of the title or legality of the transaction can only be decided by a competent civil court; and

(ii) The Sub-Registrar, in the present case, had denied the registration of the sale deed under Section 35(3)(a) of the Registration Act since the appellant had, while admitting that she had placed her thumb impressions/fingerprints and signatures on the sale deed, objected to the registration on

[6] (2016) 10 SCC 767 ("**Satya Pal Anand**")

the ground that her signatures had been taken in a fraudulent manner by representing to her that she was selling only 839 square meters of land whereas the area shown in the sale deed was 1839 square meters. However, it was held that the Sub-Registrar under Section 35 did not have the power to conduct an inquiry regarding the execution of the sale deed, and could have only recorded the denial of execution by the appellant. On the other hand, it was noted that a wider power is entrusted to the Registrar under Section 74(a) of the Registration Act to determine whether the document has been executed. On these premises, the Single Judge held:

> "55…The registration does not depend upon the consent of the executant, but on the Registrar finding that the executant had actually signed the document concerned, but now was requesting that it may not be registered for reasons other than its execution. The registrar is required under Section 74 to conduct an inquiry. If the Registrar finds that the document was duly prepared by the Scribe/ Deed Writer and the attesting witnesses to such document also deposed that the document was signed and the thumb and finger print impressions were made thereon by the vendor in their presence, and on inquiry from the vendor it comes out that indeed such facts were correct, the Registrar can direct registration of a document in spite of denial of execution before him by the person aggrieved if such registration of such a document is compulsory under the Act."

12. The Single Judge also observed that the writ petition had been instituted after the registration of the FIR by the appellant, prior to which the order of the District Registrar dated 31 March 2012 had already been complied with by the registration of the sale deed on 16 April 2012. The Single Judge noted that initially, the appellant had pleaded before the High Court that her signatures and thumb impressions/fingerprints had not been placed on the sale deed, but had been forged by the second respondent. However, the Single Judge noted that this was an improvement from the appellant's story as detailed in the FIR dated 4 May 2012, where it was stated that the appellant willingly put her

signatures and thumb impressions/fingerprints on the sale deed and only later did her granddaughter realise the incorrect figure of the area in the sale deed. In any case, the High Court observed that whether the signatures and thumb impressions/fingerprints of the appellant had been forged by the second respondent raised a disputed question of fact which could only be resolved on the basis of evidence before a competent civil court. Holding that the High Court in the exercise of its writ jurisdiction could not render a finding either way, the writ petition was dismissed by the Single Judge while leaving it open to the appellant to move the civil court for a declaration that the sale deed had been obtained by fraud and was a nullity.

B Submissions of Counsel

13. We have heard Mr Pradeep Kant, learned Senior Counsel appearing on behalf of the appellant and Mr V K Shukla, learned Senior Counsel appearing on behalf of the second respondent.

14. Mr Pradeep Kant, learned Senior Counsel submitted that:

(i) An appeal under Section 72 of the Registration Act lies to the Registrar against an order of the Sub-Registrar refusing to admit a document to registration except where the refusal is made on the ground of denial of execution. In the present case, the execution of the sale deed had been denied by the appellant and the Sub-Registrar refused registration on that ground under Section 35(3)(a). Hence, no appeal would be maintainable under Section 72;

(ii) In any event, in an appeal under Section 72, it is not open to the Registrar to pursue an enquiry under Section 74. The procedure under Section 74 has to be followed only when an application is filed under Section 73. Under Section 74, a person who had applied under Section 73 challenging the non-registration of a document, of which execution is denied by any person by whom it purports to have been executed, may apply to the Registrar to establish his right to have the document registered. In the present case, the second respondent having filed an appeal under Section 72, the provisions of Sections 73 and 74 could not have been attracted;

(iii) The appellant does not deny having signed the sale deed and having placed her thumb impressions/fingerprints on the

documents. However, the execution of a document cannot be conflated with its mere signing. The appellant admitted her signatures but objected to registration on the ground of fraud and undue influence. Hence, the question of proving her signature on the sale deed was never an issue. Pertinently, neither the Registrar nor the High Court has recorded a finding that the appellant understood the contents of the sale deed or she was made to understand the obligations which were being assumed by her with respect to the subject matter of the sale, including the boundaries and area of the land, at the time when she placed her signatures and thumb impressions/fingerprints on the documents. Therefore, the mere fact that the witnesses proved the signatures of the appellant on the sale deed cannot lead to the conclusion that the appellant had duly 'executed' the sale deed or that there could not have been any denial of execution;

(iv) The specific objection of the appellant is that the sale deed is fraudulent and contrary to the agreed terms since:

(a) The area reflected in the sale deed is almost double the area agreed upon between the parties; and

(b) The area reflected in the sale deed includes a public way on the northern side as well as a part of the appellant's residential house; and

(v) In sum and substance, the submission for the appellant is that:

(a) The appeal itself was not maintainable before the Registrar under Section 72 of the Registration Act;

(b) The appellant does not deny her signatures or thumb impressions/fingerprints on the sale deed. Hence, the Registrar's reliance on the statements of the two witnesses and handwriting experts to prove the appellant's signature on the sale deed, while concluding that it was thus duly 'executed' by appellant, is misplaced;

(c) There has been no finding in regards to the due execution of the sale deed by the appellant, which is the matter in dispute; and

(d) There could have been no 'execution' by the appellant when there is a serious dispute between the parties over the area reflected in the sale deed and what had been agreed earlier.

15. On the other hand, Mr V K Shukla, learned Senior Counsel appearing on behalf of the second respondent submitted that:

(i) The appellant has admitted to the execution of the sale deed both in her objections before the Sub-Registrar and in the FIR which was lodged on 4 May 2012, where the appellant admits that the sale deed was signed by her. If an instrument is signed by both the parties, it is presumptive of the fact that both of them have executed it, though the presumption is rebuttable. In the present case, the sale deed having been signed by the parties and attested by the two witnesses, it has to be regarded as having been validly 'executed';

(ii) Under the Registration Act, the Registrar is vested with a duality of powers:

(a) An appellate power under Section 72; and

(b) A power under Section 73 read with Section 74 to determine upon enquiry whether a document has been executed and can be registered;

Since the Registrar has an independent power under Section 73 and Section 74, the mere mentioning of a wrong provision (Section 72) by the second respondent and the Registrar will not invalidate the proceedings;

(iii) A document, once it is registered, can be cancelled or set aside only by a civil court of competent jurisdiction. Upon the registration of the sale deed on 16 April 2012, the registration authorities are rendered infructuous and would have no power to cancel registration even on the ground of fraud or other irregularities;

(iv) The following conduct of the appellant has disentitled her to relief:

(a) The appellant placed her signature and thumb impressions/ fingerprints on each page of the sale deed as well as the photocopies totaling over 340 pages;

A (b) The appellant received all the payments towards the sale consideration of Rs 1.6 crores, except the last cheque of Rs 67 lakhs which she has deliberately not encashed in order to resist registration;

(c) The appellant has instituted a civil suit[7] claiming to be an
B owner of the entire 3,172 square meters of land, despite her husband having sold portions nearing 300 square meters to third parties during his lifetime;

(d) The appellant has executed gift deeds dated 4 October 2011 and 22 October 2011 in favour of her granddaughter, in
C respect of land which has been registered in the name of the second respondent under the sale deed; and

(e) The sale deed was preceded by an agreement to sell, which is also a registered document executed by the appellant. The registered agreement to sell dated 22 October 2010
D was also used by the handwriting/fingerprint expert for the purpose of comparing the appellant's signatures on the sale deed, which was found to be identical.

16. The rival submissions would now fall for analysis.

C Analysis

E

17. There are two broad issues which arise in the present civil appeal:

(i) Whether the recourse by the second respondent to Section 72 of the Registration Act, against the order of the Sub-
F Registrar refusing registration on the basis of the appellant's denial of execution, would deprive them of any remedy whatsoever; and

(ii) Whether the appellant's admission of her signatures and thumb impressions/fingerprints on the sale deed also amounts to an admission of its "execution".

G

However, before proceeding with a discussion of these issues, it is important to understand the statutory framework of the Registration Act.

H [7] Suit No 727 of 2012

C.1 Statutory Framework of the Registration Act

18. 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 immoveable property of a value higher than Rs 100. Section 23, which deals with the time for presenting documents, stipulates that subject to Sections 24, 25 and 26, no documents other than a will shall be accepted for registration unless presented to the proper officer within four months from the date of its execution.

19. Section 32 then entails that every document, to be registered, shall be presented at the registration office by: *(a)* person executing or claiming under the document; or *(b)* a representative or assign of such a person; or *(c)* the agent of such a person, or their representative or assign, duly authorized by a power of attorney executed and authenticated in the manner provided.

20. Section 34[8] stipulates that, subject to the provisions referred to in it, no document shall be registered unless the person executing such a

[8] "**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 authorized 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."

document or their representative, assign or agent authorized, appear before the registering officer within the time allowed for presentation. The provision also outlines the duties of enquiry placed upon the registering officer once a document is presented before them within the time limit prescribed.

21. Section 35 entails that the registering officer shall register the document if:

(i) All the persons executing the document appearing personally, are personally known to the registering officer, or if the registering officer is otherwise satisfied that they are the person they represent themselves to be and all of them admit the execution of the document;

(ii) A person appearing by a representative, assign or agent admits the execution to the registering officer; and

(iii) Where the person executing the document is dead, their representative or assign appears before the registering officer and admits its execution.

On the other hand, sub-Section (3)(a) of Section 35 stipulates, *inter alia*, that if a person by whom the document purports to be executed denies its execution, the registering officer will refuse to register the document. Section 35 is extracted below:

"**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."

22. 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.

23. Section 58 provides for the particulars to be endorsed on the documents admitted to registration. Section 58(2) provides that "[i]f any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall at the same time endorse a note of such refusal". Section 59 stipulates that the endorsements are to be dated and signed by the registering officer. Section 60 provides that once the requirements of Sections 34, 35, 58 and 59 have been complied with, the registering officer shall endorse the document with a certificate of registration.

A 24. Section 71[9] requires the Sub-Registrar who refuses to register a document, except on the ground that the property to which it relates is not situated within his sub-district, to make an order of refusal and record his reasons, and endorse the refusal of registration on the document. Further, the Sub-Registrar is required to furnish a copy of the reasons recorded, to any person executing or claiming under the document.

B 25. 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. Section 72 is in the following terms:

> C "**72. Appeal to Registrar from orders of Sub-Registrar refusing registration on ground other than denial of execution.**—(1) Except where the refusal is made on the ground of denial of execution, an appeal shall lie against and order of a Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-Registrar is subordinate, if D presented to such Registrar within thirty days from the date of the order; and the Registrar may reverse or alter such order.
>
> (2) If the order of the Registrar directs the document to be registered and the document is duly presented for registration within thirty days after the making of such order, the Sub-Registrar E shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in Sections 58, 59 and 60; and such registration shall take effect as if the document had been registered when it was first duly presented for registration."

F In terms of sub-Section (1) of Section 72, an appeal lies to the Registrar against an order of the Sub-Registrar refusing to admit a

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[9] "**71. Reasons for refusal to register to be recorded.**—(1) Every Sub-Registrar refusing to register a document except on the ground that the property to which it G relates is not situate within his sub-district, shall make an order of refusal and record his reasons for such order in his Book No. 2, and endorse the words "registration refused" on the document; and, on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

(2) No registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be H registered."

document to registration, except where the refusal is made on the ground of a denial of execution.

26. 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. Section 73 provides thus:

> "**73. Application to Registrar where Sub-Registrar refuses to register on ground of denial of execution.**—(1) When a Sub-Registrar has refused to register a document on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution, any person claiming under such document, or his representative, assign or agent authorized as aforesaid, may, within thirty days after the making of the order of refusal, apply to the Registrar to whom such Sub-Registrar is subordinate in order to establish his right to have the document registered.
>
> (2) Such application shall be in writing and shall be accompanied by a copy of the reasons recorded under Section 71, and the statements in the application shall be verified by the applicant in manner required by law for the verification of plaints."

In terms of Section 73, where a Sub-Registrar refuses registration on the ground that the person by whom it purports to be executed (or their representative or assign) denies execution, any person who claims under the document (or a representative assign or authorized agent) may apply to the Registrar within thirty days "in order to establish [their] rights to have the document registered". Such an application has to be in writing, accompanied by the reasons recorded under Section 71. The statements in the application have to be verified in the manner required by law for the verification of plaints.

27. On such an application being preferred, the Registrar has to follow the procedure which is spelt out in Section 74. Section 74 stipulates as follows:

> "**74. Procedure of Registrar on such application.**—In such case, and also where such denial as aforesaid is made before a Registrar in respect of a document presented for registration to him, the Registrar shall, as soon as conveniently may be, enquire—
>
> (a) whether the document has been executed;

A (b) whether the requirements of the law for the time being in force have been complied with on the part of the applicant or person presenting the document for registration, as the case may be, so as to entitle the document to registration.''

In terms of the above provision, the Registrar in such a case, and
B also where a denial of execution is made before the Registrar, has to enquire:

(i) Whether the document has been executed; and

(ii) Whether the requirements of law for the time being in force
C have been complied with on the part of the applicant or person presenting the document for registration.

28. Section 75[10] provides that if the Registrar finds that the document has been executed and the requirements under the law have been complied with, the Registrar shall order the document be registered.
D Thereafter, if the document is duly presented for registration within thirty days of the order of the Registrar, the registering officer has to obey the order and, as far as may be practicable, must follow the procedure in Sections 58, 59 and 60. The registration then takes effect as if the document has been registered when it was first presented for registration.
E Pertinently, under sub-Section (4) of Section 75, the Registrar may, for the purpose of an enquiry under Section 74, summon and enforce the attendance of witnesses, and compel them to give evidence, as if the Registrar were a civil court under the Code of Civil Procedure 1908[11].

F [10] "**75. Order by Registrar to register and procedure thereon.**—(1) If the Registrar finds that the document has been executed and that the said requirements have been complied with, he shall order the document to be registered.
(2) If the document is duly presented for registration within thirty days after the making of such order, the registering officer shall obey the same and thereupon shall, so far as may be practicable, follow the procedure prescribed in Sections 58, 59 and 60.
(3) Such registration shall take effect as if the document had been registered when it was
G first duly presented for registration.
(4) The Registrar may, for the purpose of any enquiry under Section 74, summon and enforce the attendance of witnesses, and compel them to give evidence, as if he were a Civil Court, and he may also direct by whom the whole or any part of the costs of any such enquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure, 1908 (5 of 1908)."

H [11] "**CPC**"

29. Section 76[12] provides for that the order of refusal by the Registrar under Sections 72 or 75 has to be reasoned, and the Registrar is required to furnish a copy of the reasons recorded to any person executing or claiming under the document. It further provides that no appeal shall lie against such an order of refusal.

30. In the event of a refusal by the Registrar, a suit can be filed by a party in terms of the provisions of Section 77[13] before a civil court, praying for a decree directing the document to be registered. On the other hand, an order of the Registrar directing the registration of a document is amenable to a challenge under Article 226 of the Constitution. While seeking a writ of certiorari, the person moving the petition before the High Court would be entitled to establish whether the registration has been ordered in breach of the statutory provisions and is contrary to law. The mere existence of the remedy available before a civil court, under Section 9 of the CPC to avoid the document or to seek a declaration in regard to its invalidity, will not divest a person, who complains that the order passed by Registrar for the registration of the document was contrary to statutory provisions, of the remedy which is available in the exercise of a court's writ jurisdiction under Article 226 of the Constitution. Undoubtedly, whether a writ should be entertained lies at the discretion of the court and in a given case, the High Court may decline to do so on

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[12] "**76. Order of refusal by Registrar.**—(1) Every Registrar refusing—
(a) to register a document except on the ground that the property to which it relates is not situate within his district or that the document ought to be registered in the office of a Sub-Registrar, or
(b) to direct the registration of a document under Section 72 or Section 75, shall make an order of refusal and record the reasons for such order in his Book No. 2, and, on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded.
(2) No appeal lies from any order by a Registrar under this Section or Section 72."

[13] "**77. Suit in case of order of refusal by Registrar.**—(1) Where the Registrar refuses to order the document to be registered, under Section 72 or Section 76, any person claiming under such document, or his representative, assign or agent, may, within thirty days after the making of the order of refusal, institute in the Civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree.
(2) The provisions contained in sub-sections (2) and (3) of Section 75 shall, mutatis mutandis, apply to all documents presented for registration in accordance with any such decree, and, notwithstanding anything contained in this Act, the document shall be receivable in evidence in such suit."

A the ground that disputed questions of fact arise. However, it needs to be emphasized that in the exercise of the writ jurisdiction, it would be open to the High Court to determine as to whether the statutory provisions which guide the power of the Sub-Registrar or, as the case may be, the Registrar to order the registration of the document have been duly fulfilled. Even where a decree is passed by the civil court for the cancellation of
B any instrument, sub-Section (2) of Section 31 of the Specific Relief Act 1963 provides that:

> "**31. When cancellation may be ordered.—** [...]
>
> (2) If the instrument has been registered under the Indian
C Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation."

C.2 Validity of the recourse by the Second Respondent

D 31. The Sub-Registrar before whom the sale deed was submitted for registration declined to order the registration of the sale deed by an order dated 17 February 2012. The order of the Sub-Registrar was prefaced by the statement of the appellant, which stated that her signatures on the sale deed had been taken forcibly. Before the Sub-Registrar, the
E appellant had filed an objection when the sale deed was presented for registration. The appellant, in the course of her objections before the Sub-Registrar specifically adverted to following grievances, namely that: *(i)* the second respondent had furnished false and misleading information to her; *(ii)* the market value of the land admeasuring 1839.48 square metres was not less than Rs 7 crores and the sale consideration of Rs
F 1.6 crore was meagre; *(iii)* the time stipulated in the sale deed had expired; *(iv)* the signatures of the appellant had been obtained on an incomplete sale deed; *(v)* the signatures of the appellant were taken without furnishing to her a chance to read or peruse the papers, and when she was surrounded by five persons; *(vi)* the land area having
G been manipulated under the sale deed, her residential house would also been taken away by fraud; *(vii)* the boundaries mentioned in the sale deed were incorrect and did not clearly reflect the land which was agreed to be sold; *(viii)* the sale deed was incomplete and all the co-sharers had never entered into any partition; *(ix)* the sale deed would attract a capital gains tax which would be in excess of the sale consideration; and *(x)* an
H active forgery had been committed by the second respondent.

32. As is evident from the objections filed before the Sub-Registrar by the appellant, it is clear that she did not deny having signed the sale deed. The essence of her grievance was that her signatures were taken forcibly; the sale deed did not reflect the intent of the parties in terms of the area which was intended to be sold; the sale consideration was undervalued; the consequence of the sale deed was that even the residential house of the appellant would be sold, contrary to her understanding; and the sale deed had been procured by fraud. The order of the Sub-Registrar makes it abundantly clear that the appellant was not ready to register the sale deed, which was claimed to have been executed in a fraudulent manner and whose execution was thus being denied. Registration was, therefore, refused by the Sub-Registrar in terms of Section 35(3)(a) of the Registration Act.

33. If a person by whom the document is purported to be executed denies its execution and registration is refused on those grounds, an appeal against the order of the Sub-Registrar denying execution would not be maintainable under Section 72 of the Registration Act. Section 72 clearly stipulates that an appeal will lie against an order of Sub-Registrar refusing to admit a document to registration "except where the refusal is made on the ground of denial of execution".

34. In the present case, the Sub-Registrar having specifically denied registration in terms of Section 35(3)(a), the order was not amenable to an appeal under Section 72. However, the Registrar, in the course of entertaining the appeal, instead took recourse to the powers entrusted under Section 73. As noted earlier in this judgment, Section 73 empowers the Registrar where the Sub-Registrar has refused to register a document on denial of its execution by a person purporting to have executed it. Subsequently, the Registrar appears to have followed the procedure which is emphasized in Section 74. Section 74 provides for a procedure where the Registrar has a two-fold function of determining: *firstly*, whether the document has been executed; and *secondly*, whether the requirements of the law for the time being in force have been complied with by the applicant or the person presenting document for registration, so as to entitle them to have the document registered. Upon such an enquiry under Section 74, Section 75 enables the Registrar to order the document to be registered if it is found that: *(i)* the document has been executed; and *(ii)* the requirements of the law have been complied with. Section 75(4) also allows the Registrar to summon and enforce the attendance of witnesses to properly conduct the enquiry under Section 74.

35. Undoubtedly, the power of the Registrar while dealing with an application under Section 73 are wider that the powers which are entrusted to the Sub-Registrar under Section 35. Under Section 35(1)(a), the registering officer shall register the document if all the persons executing the document appear in person before the officer and admit the execution of the document. Section 35(2) empowers the registering officer to examine anyone present in the office, for the purpose of satisfying himself that the persons appearing before him are the persons they represent themselves to be. In contrast to sub-Section (1) of Section 35, sub-Section (3) stipulates that once execution is denied by the person who purports to have executed the document, the registering officer shall refuse to register it. On the other hand, under Sections 73 and 74, the Registrar is entrusted with the duty to enquire whether the document has been executed and whether all the requirements of the law for the time being have been complied with. For the purposes of this enquiry, Section 75(4) provides the Registrar with the power to summon and enforce the attendance of witnesses. Thus, while the Sub-Registrar under Section 35(3)(a) has to mandatorily refuse registration when the execution of a document is denied by the person purported to have executed the document, the Registrar is entrusted with the power to conduct an enquiry on an application under Section 73 by following the procedure under Section 74.

36. In the present case, the appeal before the Registrar was not maintainable under Section 72. Indeed, the appellant, in response to the memo of appeal filed by the second respondent, specifically pleaded in her objections that "hearing the appeal under Section 72 of the Indian Registration Act or to deliver any judgement will be against law". At the same time, however, the appellant also pleaded that she "had full right for argument under Section 75(4) of the Indian Registration Act and under the Code of Civil Procedure, 1908 from the witnesses and the appellant". The Registrar is empowered to summon witnesses under Section 75(4) for the purpose of an enquiry under Sections 73 and 74. It thus emerges that the parties proceeded on the basis that the proceedings would be decided on the basis of an enquiry under Section 73, and the enquiry was conducted with reference to the provisions of Section 74. The appellant herself understood this to be the position in her objections filed to the appeal filed by the second respondent, since she invoked her rights under Section 75(4), which applies to enquiry proceedings under Section 74. The appeal against the Sub-Registrar's order was not

maintainable under Section 72. The remedy of the second respondent, where the Sub-Registrar refused registration on the ground that the appellant denied execution of the document, was under Section 73. The Registrar conducted an enquiry under the provisions of sections 73 and 74. Both parties participated in the enquiry.

37. *Mulla's commentary on The Registration Act* analyses a situation where an application under Section 73 is wrongly labelled as an appeal under Section 72, in the following extract[14]:

> "If a refusal is made on the ground of denial of execution, appeal would not lie under s 72 of the Act. When the refusal is denied on the execution, remedy is to file an application under s 73 of the Act. The mere fact that an application is wrongly headed as an appeal and an erroneous section of the statute is mentioned therein is immaterial, if in fact and in law it is an application under s 73 of the Registration Act."

Similarly, in *S P Sen Gupta's commentary on the Registration Act*, it is stated[15]:

> "4. Proceeding erroneously described as "appeal" or vice versa.- A proceeding under sec. 72 is an appeal whereas a proceeding under sec. 73 is not an appeal; it is merely an application before the Registrar in order to establish the applicants right to have the document registered. It is not always easy for the aggrieved party or even by the Registrar to decide which of the two sections – sec. 72 or sec. 73, would apply on a given facts circumstances. Law is meant for doing justice. As such the substance of the proceeding, and not its form, before the Registrar should be taken into account. As such it would not be fatal if an appeal under sec. 72 is filed as an application under sec. 73 and *vice versa*."

38. Thus, it is clear that the mis-labelling of an application under Section 73 as an appeal under Section 72 would by itself not vitiate the proceedings before the Registrar. This becomes especially true when proceedings before the Registrar, in substance, were proceedings under Section 73 itself and both the parties acknowledged them to be so,

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[14] Justice K Kannan, *Mulla's The Registration Act* (LexisNexis, 2012) pg 416 ("**Mulla's The Registration Act**")

[15] S P Sen Gupta, *Commentaries on the Registration Act, 1908* (Kamal Law House, 2017) pgs 617-618 ("**S P Sen Gupta Commentary**")

explicitly or by their conduct. This is clearly what has happened in the present case as well, as is evident from the appellant's reference to Section 75(4) and her participation in the enquiry proceedings before the District Registrar. Therefore, we hold that the second respondent's mis-labelling of their application as an appeal under Section 72 will not vitiate the proceedings which led to the District Registrar's order dated 31 March 2012. Hence, for the purpose of these proceedings, we will now proceed to analyse as to whether the District Registrar validly passed the order directing the registration of the sale deed.

C.3 Meaning of "execution"

39. Section 35(1)(a) of the Registration Act uses the expression "admit the execution of the document", while Section 35(3)(a) uses the expression "denies its execution". Similarly, Section 72(1) has adopted the expression "denial of execution", while Section 73(1) uses the expression "denies its execution". However, the word "execution" itself is not defined by the Registration Act. Before us, two possible interpretations have been urged by the parties:

(i) *First*, that "execution" is tantamount to "signing" a document. Hence, once a person admits to their signature on a document, they admit to having executed it; and

(ii) *Second*, that "execution" cannot be equated with merely signing a document. Hence, even if a person's signature on the document admitted, they can still deny its execution if they did not agree to or understand the contents of the document while signing it.

We must now decide which of these two interpretations should be adopted by this Court.

40. The first interpretation of "execution" is supported by the definition provided in the Stamp Act 1899[16]. Section 2(12) defines "executed" and "execution" in the following terms:

> "(12) Executed and execution.—"Executed" and "execution", used with reference to instruments, mean "signed" and "signature" and includes attribution of electronic record within the meaning of Section 11 of the Information Technology Act, 2000 (21 of 2000);"

[16] "**Stamp Act**"

However, since the Registration Act has been enacted for a purpose different from the Stamp Act, the definition under Stamp Act is not conclusive.

41. *Black's Law Dictionary* defines the expression "execute" and "executed" thus[17]:

> "**execute**, *vb.* (14c) 1. To perform or complete (a contract or duty) <once the contract was fully executed, the parties owed no further contractual duties to each other>…3. To make (a legal document) valid by signing; to bring (a legal document) into its final, legally enforceable form <each party executed the contract without a signature witness>…
>
> **executed**, *adj.* (16c) 1. (Of a document) that has been signed <an executed will>…
>
> "[T]he term 'executed' is a slippery word. Its use is to be avoided except when accompanied by explanation...A contract is frequently said to be executed when the document has been signed, or has been signed, sealed, and delivered. Further, by executed contract is frequently meant one that has been fully performed by both parties." William R. Anson, *Principles of the Law of Contract* 26 n.* (Arthur l. Corbin ed., 3d Am. ed. 1919)."

The expression "execute" has been further defined in *Words and Phrases* in the following terms[18]:

> "To complete as a legal instrument; to perform what is required to give validity to."

The definitions in both these dictionaries seem to once again suggest that the signing of a document can be equivalent to its execution. However, these definitions are by no means definitive and cannot be taken out of context, since they also do seem to suggest that executing an agreement is making it fully valid and legally enforceable.

42. **Mulla's The Registration Act** (supra) notes the following in relation to the meaning of "execution"[19]:

> "**Admission of Execution**

[17] Bryan A Garner, *Black's Law Dictionary* (Thomson Reuters, 2009) pgs 649-650
[18] *Words and Phrases (Permanent Edition)* (Thomson Reuters, 2020)
[19] *Supra* at note 15, pgs 254-256

A …**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**...Where a person had signed a document after being aware of the nature of the document, he has executed the document, and, it is submitted, the Registrar cannot go into the question whether the document has been obtained by coercion; but **when a signature has been obtained by false representations and the ostensible executant did not sign with the intention of being bound by the terms of the document, such a person cannot be said to have executed the document.**"

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(**emphasis supplied**)

Similarly, **S P Sen Gupta Commentary** (supra) sets out the following position[20]:

"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. When the executant admits his signature on the document but takes a further plea that his signature was taken by force after detaining him in a room or fraud was practised upon him in obtaining his signatures on the deed or he was duped to sign on blank papers etc, and there is no material before the Registering Officer to rebut the plea of the executant, then there cannot be any "admission" within the meaning of sec. 35(1)(a) of the Act because the mind of the signer did not accompany the signature**…"

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(**emphasis supplied**)

H [20] *Supra* at note 16, pgs 389-390, 390, 617-618

While the above extract deals with the power of the registering officer under Section 35(1)(a), it does suggest that "execution" happens when a person's signature on the document is accompanied by their full consent to the contents of the document, which they have understood before signing it.

43. This understanding of the phrase "execution" is also adopted by textbooks in relation to the law of evidence. Section 68[21] of the Indian Evidence Act 1872[22] prescribes the requirement for proving that a document has been executed. The proviso to Section 68 stipulates that it shall not be necessary to call an attesting witness to prove the execution of a document if it has been registered under the Registration Act, provided that its execution is not specifically denied by the person who is purported to have executed it. In relation to this provision, *Sarkar's Law of Evidence* notes[23]:

> "The term "execution" is not defined in any statute. It means completion, i.e., the last act or acts which complete a document and in English law this is known as "signing, sealing and delivering." The ordinary meaning of executing a document is signing it as a consenting party thereto.
>
> [...]
>
> [s 67.4] Meaning and Proof of "Execution"
>
> [...]
>
> Execution consists in signing a document written out and read over and understood and does not consist of merely signing a name upon a blank sheet of paper..."

[21] "**68. Proof of execution of document required by law to be attested.**—If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:
Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied."

[22] "**Evidence Act**"

[23] Sudipto Sarkar and Dr. H R Jhingta, *Sarkar: Law of Evidence–In India, Pakistan, Bangladesh, Burma, Ceylon, Malaysia & Singapore: Volume* 1 (LexisNexis, 2016)

Similarly, *Ratanlal and Dhirajlal*'s treatise on the law of evidence states as follows[24]:

> "[s 67.3] Execution of Document — Meaning
>
> [...]
>
> Execution of a document is something different from mere signing of the document. The term execution is not defined...The ordinary meaning of executing a document is signing it as a consenting party thereto...Execution of the document means that the executant must have signed or put his thumb mark/impression, only after the contents of the document have been fully stated and read by the executant before he put his signature thereon. Mere admission of the initial by the executant would not be tantamount to an admission of execution of the document."

44. If we are to now look at the relevant precedent on the subject, in **Rajendra Pratap Singh** v. **Rameshwar Prasad**[25], the validity of a decree of the eviction under the Bihar Buildings (Lease, Rent and Eviction) Control Act 1982 was in question before a two-judge Bench of this Court. This Court, while considering the provisions of the third paragraph to Section 107 of the Transfer of Property Act 1882, noted that it required that a registered instrument for the lease of an immovable property had to be executed both by the lessor and lessee. While elaborating on the meaning of "executing", this Court held:

> "11…An instrument is usually executed through multifarious steps of different sequences. At the first instance, the parties might deliberate upon the terms and reach an agreement. Next, the terms so agreed upon would be reduced to writing. Sometimes one party alone would affix the signature on it and deliver it to the other party. Sometimes both parties would affix their signature on the instrument. If the document is required by law to be registered, both parties can be involved in the process without perhaps obtaining the signatures of one of them. In all such instances, the instrument can be said to have been executed by both parties thereto. **If the instrument is signed by both parties, it is presumptive of the fact that both of them have executed it,**

[24] N Vijayraghavan and Sharath Chandran, *Ratanlal & Dhirajlal: The Law of Evidence* (LexisNexis, 2021)

[25] (1998) 7 SCC 602

> **of course it is only rebuttable presumption.** Similarly, if an instrument is signed by only one party, it does not mean that both parties have not executed it together. Whether both parties have executed the instrument will be a question of fact to be determined on evidence if such a determination is warranted from the pleadings of the particular suit. Merely because the document shows only the signature of one of the parties, it is not enough to conclude that the non-signing party has not joined in the execution of the instrument."
>
> (**emphasis supplied**)

In view of the above enunciation, the Court held when the defendant in that case had not disputed in his written statement that the lease had been validly made, it was not be open to him to raise a contention subsequently that the instrument was void since it had not been executed both by the lessor and the lessee. The decree for eviction was thus upheld. However, as a general principle, the above extract from the decision of this Court, though in a different statutory context, emphasises that while the signing of an instrument by both the parties is presumptive of the fact that both of them have executed it, yet this is rebuttable presumption.

45. In **N.M. Ramachandraiah** v. **State of Karnataka**[26], a Single Judge of the Karnataka High Court, while construing power of the Registrar under Section 74 of the Registration Act, observed:

> "8. The answer to these questions revolve round the scope of enquiry as contemplated u/s. 74 of the Act. **In an enquiry u/s. 74 of the Act, the Registrar should enquire whether the document had been executed, and whether the requirements of the law has been complied with, so as to entitle the document to registration. The Registrar should not only be satisfied that the party in question has signed the document, but he should also come to the conclusion that the signature has been affixed by the party after understanding the contents and the terms of the document. The Registrar should summon witnesses required by the petitioner to prove execution. The enquiry under the**

[26] 2007 SCC OnLine Kar 192 ("**N.M. Ramachandraiah**")

A **section should be made by the Registrar himself and once after such enquiry, he is satisfied that the document not only bears the signatures of the executant, but it is also duly executed by the executant, after understanding the contents and terms of the document, he may order the document to be registered.** In the said enquiry he has no power
B to enter into probabilities and surrounding circumstances. He is merely to find out whether the document tendered actually is in the state in which it was executed by the parties to it. The scope of enquiry contemplated under Section 74 have been explained in various judgments, in particular, the meaning of the word
C "executed"."

(**emphasis supplied**)

In adopting this view, the Single Judge adverted to various judgments of the Karnataka High Court, as well as other High Courts,
D which we shall now note.

46. A Division Bench of the Madras High Court in **Banasettappa Laljichikkanna** v. **District Registrar**[27] held:

E "5…Section 74 enjoins upon the District Registrar to hold an enquiry and come to the conclusion as to 'whether a document has been executed.' In the present case all that the District Registrar has stated is that he was satisfied that the petitioner had signed the sale deed. **He should have come to the conclusion that the signature had been affixed by the petitioner after**
F **understanding the contents and the tenor of the document. Execution does not mean merely signing, but signing by way of assent to the terms of the contract of alienation embodied in the document.**"

(**emphasis supplied**)

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47. In **Sayyapparaju Surayya** v. **Ramchandar Prasad Singh and others**[28], a Division Bench of the Madras High Court, while

[27] 1965 SCC OnLine Kar 132
H [28] 1949 SCC OnLine Mad 227

construing the provisions of Section 35(1)(a) and (b) of the Registration Act, observed:

> "The admission required therefore is admission of the execution of the document…It is not enough for the person, who is the ostensible executant, to admit his signature on a paper on which, it may be, the document is ultimately engrossed. The identity of the papers on which the signature occurs is not sufficient. If a man says that he signed a blank paper on the representation that it was required for presenting a petition, as in the present case or if a man signs a completed document on the representation that his signature or thumb impression is required as an attesting witness, that admission of the signature or thumb impression in those circumstances cannot be construed to be an admission of the execution of the document. Far from its being an admission, it is a clear and unambiguous denial of the execution of the document. He must admit, in order to attract the provisions of S. 35(1) that he signed the document…The admission of execution therefore must amount to an admission that the person admitting entered into an obligation under the instrument; in other words, that he had executed the document, signed it as a sale deed, mortgage deed, or a lease deed, as the case may be."

48. In **Jogesh Prasad Singh & others** v. **Ramchandar Prasad Singh and others**[29], a Division Bench of the Patna High Court noted that the meaning of the phrase "execution" of a document had been well settled by another Division Bench of the High Court in **Ebadut Ali** v. **Muhammad Fareed**[30]. The decision of the Division Bench in **Ebadut Ali** (supra), which was cited with approval in **Jogesh Prasad Singh** (supra), held:

> "In our view, execution consists in signing a document written out and read over and understood, and does not consist of merely signing a name upon a blank sheet of paper. To be executed a document must be in existence; where there is no document in existence, there cannot be execution…Where an executant clearly says that he signed on blank paper and that the document which he had authorised is not the document which he contemplated, the statement is a denial not an admission, of execution."

[29] 1950 SCC OnLine Pat 31 ("**Jogesh Prasad Singh**")
[30] AIR (3) 1916 Pat 206 : 35 Ind. Cas. 56 ("**Ebadut Ali**")

A 49. Adverting to the above decisions and to the views of the Calcutta[31], Orissa[32] and Assam High Court[33], the Single Judge of the Karnataka High Court in **N.M. Ramachandraiah** (supra) emphasized that the execution of the document does not mean merely signing it, but signing it after having understood its contents in their entirety:

B "15. Therefore, the law is well settled. **Execution of a document does not mean merely signing, but signing by way of assent to the terms of the contract embodied in the document. Execution consists in signing a document written out and read over and understood, and does not consist of merely signing a name upon a blank sheet of paper. It is a solemn act of the executant who must own up the recitals in the instrument and there must be clear evidence that he put the signature after knowing the contents of document fully.** To be executed, a document must be in existence; where there is no document in existence there cannot be execution. Mere proof or admission that a person's signature appears on a document cannot by itself amount to execution of a document. Registration does not dispense with the necessity of proof of execution when the same is denied. Thus, execution of document is not mere signing of it."

E **(emphasis supplied)**

50. The understanding of the Karnataka High Court in **N.M. Ramachandraiah** (supra) is consistent with precedents emanating from the Privy Council and various High Courts in India. In Privy Council's decision in **Puran Chand Nahatta** v. **Monmotho Nath Mukherji and Others**[34], Viscount Sumner, while construing the provisions of Section 35 of the Registration Act, observed:

F "By section 35 of the Registration Act registration is directed when certain persons have appeared, have been duly identified, and have admitted the execution of the document propounded, and the necessary persons are "the persons executing the document". **The appellant contends that in these words executing means and means only "actually signing". Their Lordships**

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[31] **Mohima Chunder Dhur** v. **Jugul Kishore Bhutta Charji**, ILR Volume VII Calcutta
[32] **Smt. Uma Devi** v. **Narayan Nayak**, 1984 SCC OnLine Ori 94
[33] **Bhutkani Nath** v. **Smt. Kamaleswari Nath**, AIR 1972 Assam and Nagaland 15
H [34] 1927 SCC OnLine PC 100

> **cannot accept this.** A document is executed, when those who take benefits and obligations under it have put or have caused to be put their names to it. Personal signature is not required, and another person, duly authorized, may, by writing the name of the party executing, bring about his valid execution, and put him under the obligations involved. Hence 'the words person executing" in the Act cannot be read merely as "person signing". They mean something more, namely, the person, who by a valid execution enters into obligation under the instrument. When the appearance referred to is for the purpose of admitting the execution already accomplished, there is nothing to prevent the executing person appearing either in person or by any authorized and competent attorney in order to make a valid admission. Their Lordships have failed to find in the scheme of the Act anything repugnant to this construction. Any other would involve risk of confusion and might even defeat the statutory procedure by multiplying the persons, who have to be traced and induced to attend, either by themselves or by some representative."
>
> (**emphasis supplied**)

51. In **Ghasita Ram Bajaj** v. **Raj Kamal Radio Electronic**[35], a Single Judge of the Delhi High Court, while differentiating between signatures on ordinary documents and documents stamped in accordance with the law relating to negotiation of instruments, observed that in the case of ordinary documents:

> "8…The meaning of execution of a document ordinarily implies that a person making his signature by way of execution knew or should have known the nature of the document which he was signing…"

52. In **Kamlabai** v. **Shantirai**[36], a Division Bench of the Bombay High Court, in the context of Section 68 of the Evidence Act, held:

> "30…In Sarkar's Evidence Act, page 639, the meaning and the proof of the word "execution" has been set out. It says **"Executed" means completed. 'Execution' is the last act or series of acts which completes it. Execution consists in signing a document written out and read over and**

[35] 1973 SCC OnLine Del 109
[36] 1980 SCC OnLine Bom 152

A **understood and does not consist of merely signing a name upon a blank sheet of paper. To be executed, a document must be in existence; where there is no document in existence, there can be no execution".**

31. It seems to us plain that a person cannot be said to execute a B document where he does not do so with the intention of making it. This may appear to be simple, but it is clearly, in our opinion, full of meaning and import. **The word "execution" in a sense means the making of a document, and a person can be said to have made or authorised a document where with the intention and knowledge of bringing into existence a** C **particular kind of document he prepares or gets prepared, such a document and signs it in token of his having accepted that document, with a desire to bring it into existence. Mere signing of a document without the intention of bringing that document into existence, meaning thereby giving effect to** D **it would not properly speaking attract the expression "execution"**…"

(**emphasis supplied**)

53. In **S. Ramamurthy** v. **Jayalakshmi Ammal**[37], a Single Judge of the Madras High Court, while interpreting Section 35 of the Registration E Act, observed:

"11. Let us first examine the meaning of "admission of the execution of a document for the purpose of section 35 of the Registration Act," The execution of a document is not mere signing of it. It is a solemn act of the executant who must own up the F recitals in the instrument and there must be clear evidence that he put his signature in a document after knowing fully its contents. The executant of a document must, after fully understanding the contents and the tenor of the document, put his signature or affix his thumb-impression. In other words, the execution of a document G does not mean merely signing but signing by way of assent to the terms of the contract of alienation embodied in the document."

54. In **Union Bank of India** v. **Dhian Pati**[38], a Single Judge of the Himachal Pradesh High Court had to determine whether a deed of

[37] 1990 SCC OnLine Mad 501

H [38] 1996 SCC OnLine HP 90

mortgage had been validly executed. Since the Indian Contract Act 1872 and the Registration Act did not define "execution", the Single Judge deduced the meaning of the phrase in dictionaries, legal lexicons and precedent. Thereafter, the Single Judge concluded:

> "21. Thus, on the basis of the aforesaid meaning of the words "execution of document" it only signifies that the person executing such a document should sign such a document with free consent. The execution of a document would be complete in case the executant had signed the document voluntarily, without any duress, knowing the contents of the document."

55. While interpreting the provisions of the Evidence Act, **In Re Kuttadan Velayudhan**[39], a Division Bench of the Kerala High Court determined whether the admission of signature on a document was tantamount to admission of its execution. After perusing the decisions of the Kerala High Court and other High Court across India, the Division Bench held:

> "9. To sign means to affix the signature. **But when it comes to the signing of a written instrument, it implies more than the act of affixing a signature.** It implies more than the clerical act of writing the name. **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 acknowledgment that the person signing has agreed to the terms of the document. This can be achieved only if a person signs after the documents 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.**"
>
> (**emphasis supplied**)

[39] 2001 SCC OnLine Ker 14

A 56. In **Bank of Baroda** v. **Shree Moti Industries**[40], a Single Judge of the Bombay High Court, in the context of proving a document under the Evidence Act, noted:

> "21…The term "execution" is not defined in any statute. It means completion, i.e. the last act or acts which complete a document
B and in English Law this is known as "signing, sealing and delivering". The ordinary meaning of executing a document is signing it as a consenting party thereto."

57. The "execution" of a document does not stand admitted merely because a person admits to having signed the document. Such an
C 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
D the signature has been admitted.

58. In giving meaning to the expression "execute" in the provisions of the Registration Act, it is necessary to adopt a purposive construction to protect, facilitate and achieve the object of registration. In **Suraj Lamps and Industries Private Limited** v. **State of Haryana & Another**[41], Justice R V Raveendran, speaking for a two-judge Bench
E of this Court, highlighted the purpose of registration:

> "18. Registration provides safety and security to transactions relating to immovable property, even if the document is lost or destroyed. It gives publicity and public exposure to documents
F thereby preventing forgeries and frauds in regard to transactions and execution of documents. Registration provides information to people who may deal with a property, as to the nature and extent of the rights which persons may have, affecting that property. In other words, it enables people to find out whether any particular
G property with which they are concerned, has been subjected to any legal obligation or liability and who is or are the person(s) presently having right, title, and interest in the property. It gives solemnity of form and perpetuate documents which are of legal

[40] 2008 SCC OnLine Bom 486

H [41] (2009) 7 SCC 363

> importance or relevance by recording them, where people may see the record and enquire and ascertain what the particulars are and as far as land is concerned what obligations exist with regard to them. It ensures that every person dealing with immovable property can rely with confidence upon the statements contained in the registers (maintained under the said Act) as a full and complete account of all transactions by which the title to the property may be affected and secure extracts/copies duly certified."

59. In **Bharat Indu and ors** v. **Hakim Mohammad Hamid Ali Khan**[42], Lord Philimore, speaking for the Privy Council, emphasized the purpose of the provisions of the Registration Act in the following terms:

> "The provisions of the Registration Act are very carefully designed to prevent forgeries and the procurement of conveyances or mortgages by fraud or undue influence, and though it may seem somewhat technical to insist upon exact compliance with the provisions of the Act, it is necessary so to do. Their Lordships have already given their sanction to the necessity of strict compliance with these forms in the case which was referred to at the Bar, Jambu Parshad v. Muhammad Aftab Ali Khan [L.R. 42 I.A. 22 : s.c. I.L.R. 37 All. 49; 19 C.W.N. 282 (1914).]."

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.

61. However, while adopting the current interpretation – that the admission of one's signature on a document is not equivalent to admission of its execution – it is important to consider the power of the Sub-Registrar/Registrar and their procedures under the Registration Act.

[42] 1920 SCC OnLine PC 37

62. In **Smt. Raisa Begam** v. **District Registrar, Saharanpur and Anr.**[43], a Single Judge of the Allahabad High Court observed:

> "33. Section 35 requires for satisfaction of the Registrar about execution of the document. If a document is properly presented and its execution is admitted by the competent person, as prescribed in statute, the Registrar has no option but to register the document. The purpose of Registration Act was to mitigate litigation in regard to property which in the absence of any documentary evidence was creating lot of administrative and otherwise problem to the then Government. It neither confers title upon the concerned person nor validates it but only recognizes execution of document relating to a transaction pertaining to property of the person concerned and acts like evidence to prove such transaction in the manner it is written in the document and registered with the Registrar."

The Single Judge then adverted to the UP Registration Manual, more particularly paragraphs 285, 304, 305, 306 and 307. Paragraphs 285 and 304, which are extracted in the judgment of the Single Judge, are reproduced below:

> "285. 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 sections 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?"
>
> [...]
>
> 304. When a document is accepted for registration the prescribed fees should be levied and the necessary entries made in the fees

[43] 2011 SCC OnLine All 2335

book. The counterfoil receipt should then be prepared and the receipts for the document and the fees delivered to the presenter. The registering officers should then, with as little delay as possible, enquire whether the document was executed by the alleged executant, and satisfy himself as to the identity of the person appearing before him to admit execution. He should also satisfy himself that the person admitting execution has read and understood the contents of the document and should if the person is illiterate or cannot read and understand the document will explain the nature and contents to him. If the presenter be the executant, or his representative, assign or agent, and if such executant, representative, assign or agent be present, the registering officer shall make the necessary enquiry at once. When the registering officer is not personally acquainted with executants, he shall require them to produce persons to testify to their identity. Such persons shall, if possible, be persons known to the registering officer personally, or failing these, persons of apparent respectability. Witnesses who are unknown to the registering officer shall have their thumb impressions recorded as in the case of executants (vide Rule 308, so far as it is applicable). Any distinctive physical peculiarity or marked deformity in a party or witness should be noted in the endorsement. But a descriptive roll need not be recorded except in suspicious cases. This procedure must be in addition to, and not take the place of, the procedure required by section 34, that the registering officer shall satisfy himself of their identity. Such descriptive rolls afford in themselves no proof identity."

The Single Judge held that where a serious question of fraud and manipulation was raised in a summary proceeding, such as the proceeding before the District Registrar, it would not have been a substitute to decide a serious civil dispute which has the effect of transferring an immoveable property from its owners to others. Hence, when the document was not presented by the proper person before the Sub-Registrar and the executant denied its execution, it was held that the remedy lay in filing a civil suit for declaration and specific performance, and not in the summary proceedings under Sections 72 and 73 of the Registration Act.

63. Section 73 of the Registration Act envisages that an application may be submitted to the Registrar by a person in order to establish their

A rights to have a document registered, in a situation where the Sub-Registrar has refused to register the document on the ground that the person by whom it purports to have been executed has denied its execution. Section 74 then lays down the procedure which is to be followed by the Registrar, which contemplates an enquiry by the Registrar into whether the document has been executed and whether requirements
B of law for the time being in force have been complied with on the part of the applicant or the person presenting the document for registration. When the twin requirements of clauses (a) and (b) of Section 74 are found by the Registrar to have been fulfilled, sub-Section (1) of Section 75 provides that the Registrar shall order the document be registered.
C Sub-Section (4) of Section 75 stipulates that for the purpose of the enquiry under Section 74, the Registrar may summon and enforce the attendance of witnesses and compel them to give evidence as if he is a civil court. The Registrar is also empowered to impose the obligation of paying the costs of the enquiry on a party, and such costs are to be recovered as if they have been charged in a suit under the CPC. Thus, sub-Section (4)
D of Section 75 incorporates a deeming fiction from two perspectives – *first*, in empowering the Registrar to summon and enforce the attendance of witnesses and for compelling them to give evidence "as if he were a civil court"; and *second*, in awarding costs which become recoverable "as if they have been awarded in a suit" under the CPC. The process
E which is conducted by the Registrar for the purpose of an enquiry under Section 74 cannot be equated to the powers of the civil court, though certain powers which are entrusted to a civil court are vested with the Registrar by the provisions of Section 75(4). A quasi-judicial function is entrusted to the Registrar for the purpose of conducting an enquiry under
F Section 74. Where the Registrar refuses to register a document under Sections 72 or 76, no appeal lies against such an order. Section 77, however, provides that when the Registrar refuses to order the document to be registered, any person claiming under such document or its representative, assign or agents may institute a suit before the civil court within the stipulated time for a decree directing that the document shall be registered.
G It is thus clear that the Registrar, when he conducts an enquiry under Section 74, does not stand constituted as a civil court. The enquiry before the Registrar is summary in nature. The decision of the Registrar in ordering document to be registered, or for that matter in refusing to register a document, is not conclusive and is amenable to judicial review.

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64. Therefore, in a situation where an individual admits their signature on a document but denies its execution, the Sub-Registrar is bound to refuse registration in accordance with Sections 35(3)(a) of the Registration Act. Subsequently, if an application if filed under Section 73, the Registrar is entrusted with the power of conducting an enquiry of a quasi-judicial nature under Section 74. If the Registrar passes an order refusing registration under Section 76, the party presenting the document for registration has the remedy of filing a civil suit under Section 77 of the Registration Act, where a competent civil court will be able to adjudicate upon the question of fact conclusively.

65. Finally, our attention has been drawn to Section 58(2) of the Registration Act, which stipulates as follows:

> "58. Particulars to be endorsed on documents admitted to registration.— […]
>
> (2) If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register if, but shall at the same time endorse a note of such refusal."

It is submitted on behalf of the second respondent that above provision must be read along with paragraph 241 of the UP Registration Manual, which provides:

> "**241. Registering officers not concerned with validity of documents.** Registering officers should bear in mind that they are in no way concerned with the validity of documents brought to them for registration, and that it would be wrong for them to refuse to register on any such grounds as the following: (1) that the executants was dealing with property not belonging to him; (2) that the instrument infringed the rights of third persons not parties to the transaction; (3) that the transaction was fraudulent or opposed to public policy; (4) that the executants had not agreed to certain conditions of the document; (5) that the executants was not acquainted with the conditions of the document; (6) that the executants declared that he had been deceived into executing; (7) that the executants is blind and cannot count. These and such like are matters for decision, if necessary, by competent courts of law, and registering officers, as such, have nothing to do with them. If the document be presented in a proper manner, by a

A competent person, at the proper office, within the time allowed by law, and if the registering officer be satisfied that the alleged executants is the person the represents himself to be, and if such person admits execution, the registering officer is bound to register the document without regard to its possible effects. But the registering officer shall make a note of such objections of the kinds mentioned in grounds (1) to (7) above, as may by brought to his notice in the endorsement required by Section 58."

Reliance has been placed on the above provisions of the UP Registration Manual to highlight that an individual's refusal predicated upon any of the above-mentioned seven grounds shall not impact its "execution" but shall only require an endorsement under Section 58(2). We are inclined to disagree with this submission. For the reasons already mentioned in the judgment, we are inclined to accept the interpretation of the term "execution" to mean that a person has signed a document after having fully understood it and consented to its terms. Hence, since paragraph 241 and Section 58(2) only come into the picture when execution is admitted, they are not relevant at the present stage.

66. At this stage, it would be material to refer to a judgment of this Court in **Satya Pal Anand** (supra), where the three-judge Bench was constituted following a difference of opinion between two Judges. In that case, the mother of the appellant had been allotted a plot of land by a registered deed by a cooperative society. After her death, the cooperative society executed a deed of extinguishment unilaterally cancelling the allotment of the plot and executed a registered deed in favour of the fifth respondent. The appellant objected to the transaction, following which a tripartite deed of compromise was reached with the society and the fifth respondent. Notwithstanding this, the appellant moved the Deputy Registrar of Cooperative Societies. During the pendency of the dispute, the society permitted the transfer of the plot to the sixth and seventh respondents. The appellant then moved an application before the Sub-Registrar for cancelling the registration of the deed of extinguishment and the two subsequent deeds, but this application was rejected by the Sub-Registrar, *inter alia*, on the ground that he had no jurisdiction to cancel the registration of a registered document. The appellant then moved the Inspector General of Registration under Section 69 of the Registration Act, who rejected the application. The writ petition filed by the appellant before the High Court under Article 226, seeking a

declaration of the nullity of the deed of extinguishment and the two subsequent deeds, was also dismissed by the High Court. In this backdrop, Justice A M Khanwilkar, speaking for the three-judge Bench, observed that the appellant had entered into a deed of compromise and accepted valuable consideration, in spite of which he had instituted a dispute under the Madhya Pradesh Cooperative Societies Act 1960. Further, pending the dispute, an application was filed by the appellant before the Sub-Registrar seeking the same relief of cancellation of the registration of the deed of extinguishment and the subsequent deeds in favour of the third party. In view of these circumstances, this Court held that the High Court was justified in declining to entertain a writ petition at the instance of the appellant:

> "25. It is a well-established position that the remedy of writ under Article 226 of the Constitution of India is extraordinary and discretionary. In exercise of writ jurisdiction, the High Court cannot be oblivious to the conduct of the party invoking that remedy. The fact that the party may have several remedies for the same cause of action, he must elect his remedy and cannot be permitted to indulge in multiplicity of actions. The exercise of discretion to issue a writ is a matter of granting equitable relief. It is a remedy in equity. In the present case, the High Court declined to interfere at the instance of the appellant having noticed the above clinching facts. No fault can be found with the approach of the High Court in refusing to exercise its writ jurisdiction because of the conduct of the appellant in pursuing multiple proceedings for the same relief and also because the appellant had an alternative and efficacious statutory remedy to which he has already resorted to…"

Having held that the writ petition before the High Court was not maintainable for the above reasons, this Court also observed that the role of the Sub-Registrar stood discharged once the document had been registered, since there is no express provision in the Registration Act which empowers him to recall the registration. This Court held:

> "34. The role of the Sub-Registrar (Registration) stands discharged, once the document is registered (see Raja Mohammad Amir Ahmad Khan [State of U.P. v. Raja Mohammad Amir Ahmad Khan, AIR 1961 SC 787])…There is no express provision in the 1908 Act which empowers the Registrar to recall such registration.

A The fact whether the document was properly presented for registration cannot be reopened by the Registrar after its registration. The power to cancel the registration is a substantive matter. In absence of any express provision in that behalf, it is not open to assume that the Sub-Registrar (Registration) would be competent to cancel the registration of the documents in question. Similarly, the power of the Inspector General is limited to do superintendence of Registration Offices and make rules in that behalf. Even the Inspector General has no power to cancel the registration of any document which has already been registered."

C This Court observed that Section 35 of the Registration Act does not confer a quasi-judicial power on the registering officer, who is not expected to evaluate title or irregularity in the document. As such, the validity of the registered deed of extinguishment could be placed in issue only before a court of competent jurisdiction. On the above facts, this Court upheld the dismissal of the writ petition by the High Court, with an D opportunity being granted to the appellant to pursue a remedy in accordance with law. Therefore, the decision in **Satya Pal Anand** (supra) has held that once a deed of extinguishment had been registered by the registering officer, the registering officer had no power to recall it nor was it amenable to the supervisory control of the Inspector General of Registration under Section 69 of the Registration Act.

E 67. The aforesaid decision does not deal with a situation such as the present case, where Sub-Registrar had in the first instance declined to order the registration of the document and the order of the Sub-Registrar was questioned in an appeal under Section 72 filed by the second respondent. The Registrar, in the course of the appellate F proceedings, purported to hold an enquiry of the nature contemplated under Section 74 of the Registration Act and concluded that the execution of the sale deed had been established and it was liable to be registered. The Registrar was evidently seized of a case where the Sub-Registrar had declined to order registration on the ground that the execution of the G document was denied by the appellant under Section 35(3)(a). While exercising the jurisdiction pursuant to the invocation of the remedy under Section 72, the Registrar relied on the statements of the scribe of the sale deed and the attesting witnesses to the effect that the sale deed had been signed by the appellant and that the appellant had also affixed her fingerprints on it. However, as rightly pointed out by the appellant, the

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signing of the sale deed by her and the affixation of her fingerprints is not in dispute. The real issue is whether there was due execution of the sale deed by the appellant. The appellant in the course of her objections specifically pleaded fraud, submitting that:

(i) The area which was reflected in the sale deed which was presented for registration was at variance that what had actually been agreed between the parties;

(ii) The boundaries as reflected in the sale deed did not correspond with the land agreed to be sold;

(iii) The sale consideration was seriously undervalued;

(iv) The purported sale deed was resulting not only in the transfer of excessive land but also the residential house which was in occupation of the appellant after the death of her husband; and

(v) The full consideration payable under the terms of the transaction had not been received by the appellant.

The plea of the appellant, that the purported sale deed though signed by her was procured by fraud and undue influence, was a matter which raised a serious substantive dispute. In support of her contentions, the appellant has also adduced before us the inspection report by the Sub-Registrar and the Naib Tahsildar. However, we are inclined to hold that we cannot decide on the merits of the dispute at this stage, since the Registrar clearly exceeded his jurisdiction by adjudicating on the issue of fraud and undue influence.

68. The Registrar purported to exercise the powers conferred under Section 74 and arrived at a finding that the sale deed had been duly signed by the appellant and was therefore liable to be registered. However, the objections of the appellant raised serious issues of a triable nature which could only have been addressed before and adjudicated upon by a court of competent civil jurisdiction. As a matter of fact, during the course of the hearing, this Court has been apprised of the fact that in respect of the remaining area of 1000 square meters in the front portion of the land, a suit for specific performance[44] has been instituted by the second respondent, resulting in a decree for specific performance dated 16 November 2018. As regards the subject matter of the sale deed, the

[44] Original Suit No 568 of 2014

second respondent has instituted a suit for possession before the Civil Judge, Senior Division Fast Track Court[45], where certain proceedings are pending. In this view of the matter, we are clearly of the opinion that the Registrar in the present case acted contrary to law by directing the sale deed to be registered.

69. In the impugned judgment, the Single Judge of the Allahabad High Court has observed that registration does not depend upon the consent of the executant but on the Registrar's finding that the executant had actually signed the document. The High Court held that having found in the course of the enquiry that the sale deed was duly prepared by a scribe, that the attesting witness had stated that the sale deed was signed by the appellant and she also placed her fingerprints in their presence, it was open to the Registrar to direct registration in spite of a denial of its execution by the appellant. In doing so, the Single Judge of the High Court has, with respect, conflated the mere signing of the sale deed with its execution. For the reasons mentioned earlier in this judgment, such an approach is completely erroneous and cannot be upheld.

D Conclusion

70. For the above reasons, we allow the appeal and set aside the impugned judgment and order of the Single Judge of the High Court of Judicature at Allahabad dated 31 May 2018 in the appellant's writ petition. The order passed by the District Registrar on 31 March 2012 shall, in the circumstances, stand set aside. However, it is clarified that the present judgment shall not affect any of the civil/criminal proceedings that are pending in respect of the subject matter of the transaction. In the circumstances of the case, there shall be no order as to costs.

71. Pending application(s), if any, stand disposed of.

Nidhi Jain Appeal allowed.
(Assisted by : Tamana, LCRA)

[45] Suit No 264 of 2016