

**THE HIGH COURT OF SIKKIM : GANGTOK**  
(Civil Extraordinary Jurisdiction)

DATED: 26<sup>th</sup> September, 2018

---

**SINGLE BENCH : THE HON'BLE ACTING CHIEF JUSTICE, MRS. JUSTICE MEENAKSHI MADAN RAI**

---

WP(C) No. 60 of 2017

Himalaya Distilleries Limited

..... Petitioner

Versus

State of Sikkim and Others

..... Respondent(s)

**Application under Article 226 of the Constitution of India**

---

**Appearance:**

Mr. Debashis Baruah, Ms Nirmala Upadhyaya and Mr. Passang Tshering Bhutia, Advocates for the Petitioner.

Mr. Karma Thinlay, Senior Government Advocate with Mr. Thinlay Dorjee, Government Advocate, Mr. S.K. Chettri and Mrs. Pollin Rai, Assistant Government Advocates for State-Respondents No.1 to 4.

Mr. T.B. Thapa, Senior Advocate with Mr. T.R. Barfungpa, Advocate for the Respondent No. 5.

Ms Yangchen D. Gyatso and Ms Tshering Palmoo Bhutia, Advocate for the Respondents No. 6 and 7.

Mr. Sajal Sharma, Advocate for the Respondents No. 8 and 10.

Mr. N. Rai, Senior Advocate with Ms Malati Sharma, Advocate for the Respondent No. 9.

---

**J U D G M E N T**

Meenakshi Madan Rai, ACJ

**1.** The Petitioner is a limited company registered under the provisions of the Registration of Companies Act,

**Himalaya Distilleries vs. State of Sikkim & Others**

1961 and is in the business of manufacturing and bottling of liquor at Majitar, Rangpo. The Petitioner's case is that one late Kashi Raj Pradhan and his son, late Bhim Raj Pradhan, agreed to sell a plot of land situated at Baghey Khola, measuring 5.3160 hectares, recorded in their names as well as that of Swarup Raj Pradhan (Respondent No.8) and Kishore Raj Pradhan (Respondent No.9), late Kashi Raj Pradhan being their guardian. Towards this a Sale Deed was executed on 17.01.1983 between the Petitioner and late Kashi Raj Pradhan and the land transferred to the Petitioner while the Sale Deed was submitted to the Office of the Sub-Registrar for registration the same year. Evidently, registration was completed as a certified copy of the Sale Deed (Annexure P-1) was furnished to the Petitioner on 5.12.84, in terms of Rule 8 of the Registration of Document Rules, 1930 (hereinafter 'Registration Rules'). That, the Petitioner has since been in possession of the land being of the impression that the right, title and interest thereof stood transferred to it absolutely unfettered. In the year 2009, however, the Petitioner came to learn that the land in question stood recorded in the names of one Sinora Pradhan and the Respondent No.10, Urmila Pradhan. Vide a letter dated 28.09.2009, the Petitioner questioned the Respondent No.3 of the above circumstance in response to which confirmation was received of the fact vide a communication (Memo No. 1013/DCE) dated 01.02.2013. That, the Sale Deed (Annexure P-1) according to Respondent

**Himalaya Distilleries vs. State of Sikkim & Others**

No. 3 had been submitted for registration but could not be registered by the Authority then, for reasons best known to them and the Petitioner was requested by the Respondent No.3 to execute a fresh Sale Deed with the persons in whose name the land stood mutated as the previous Deed could not be considered in view of Rule 28 of the Registration Rules. The Petitioner avers that the ambit of Rule 28 of the Registration Rules pertains to documents which though registered remain unclaimed for a period exceeding three years and not with documents pending registration as in the instant case. In the meanwhile, the search and enquiries pertaining to mutation of the properties and land records in regard to Sinora Pradhan and Respondent No.10 proved futile despite invocation of the provisions of the Right to Information Act, 2005. Thus aggrieved, the Petitioner approached this Court in W.P(C) No. 39 of 2013 (*M/s Himalaya Distilleries Ltd. vs. State of Sikkim and Others*) which was disposed of vide Judgment and Order dated 14.11.2013, with a direction that as agreed by the parties, the petitioner could prefer an appeal before the Registrar against the Memo dated 01.02.2013. The Registrar was directed to hear the appeal on merit and the Petitioner was free to approach this Court in the event of adverse orders by the Registrar.

**2.** Although, the Petitioner complied with the directions and assailed the said Memo dated 01.02.2013 of the

**Himalaya Distilleries vs. State of Sikkim & Others**

Sub-Divisional Magistrate/Sub-Registrar, East District, before the Respondent No.2, the matter was kept pending for almost three years resulting in the Petitioner filing yet another petition before this Court being WP(C) No. 26 of 2016 (*M/s Himalaya Distilleries Limited vs. State of Sikkim and Others*) complaining of the inaction *supra*. This Writ Petition was considered on 12.06.2017 and an Order of the same date directed the Appellate Authority to dispose of the Appeal not later than 45 (forty-five) days from the above date. Consequently, on 05.07.2017, the Petitioner was summoned to appear before the Respondent No.2 (Appellate Authority) on 10.07.2017, who upon recording that the original Sale Deed was not before him directed the Respondent No.3 to locate it and also to produce the original certified copy of the deed obtained by the Petitioner. On 21.07.2017, when the matter was heard although the Petitioner furnished the original certified copy but the Respondent No.3 failed to furnish the original deed. A written report dated 21.07.2017 (for clarity, Memo No. 484/DCE) submitted by the Respondent No.3 to the Respondent No.2 (Appellate Authority) was duly considered sans copy or information being furnished to the Petitioner. The report informed that the original Sale Deed document dated 17.01.1983, as well as the entire related registration proceedings could not be traced in the office of the Respondent No.3 despite thorough search of the Record Section contrary to what was stated in the Communication

**Himalaya Distilleries vs. State of Sikkim & Others**

dated 01.02.2013. That, it would stand to reason therefore, that the Sale Deed and the registration records were deliberately misplaced/lost to deprive the Petitioner of its rights in respect of the land. The Order dated 25.07.2017 of the Respondent No.2, dismissed the Petitioner's Appeal, *inter alia*, on grounds that the original Sale Deed document could not be produced by the Respondent No.3, the relevant File pertaining to the Registration proceedings were not traceable, the executant of the Sale Deed had passed away and 26(twenty-six) years had elapsed since execution of the Sale Deed and its submission for registration. It was also held that insufficient material furnished before the Respondent No.2 disabled it from further investigation into the matter. That, the Sale Deed dated 17.01.1983 sought to be registered is no longer in existence, hence no question of registration arises. According to the Petitioner, even if the original sale deed dated 17.01.1983 and the related files are missing, the contents thereof can easily be traced from the original certified copies issued by the Respondent No.3. That, as the execution, presentation and submission of the original sale deed are undisputed, there ought to be a reconstruction of the original sale deed by using the original certified copy thereof and the deed registered if not already completed. In fact, on due application of Rule 8 of the Registration Rules, the certified copy should have been treated as sufficient evidence of the instrument on loss, misplacement or destruction of the

**Himalaya Distilleries vs. State of Sikkim & Others**

original instrument. That, merely because a delay of 26 (twenty-six) years occurred, the Petitioner cannot be deprived of its right as the Registering Authority cannot refuse registration of a deed validly presented before it and accepted. That, the procedure prescribed in Rule 7 to Rule 54 of the Registration Rules ought to be observed. The reliefs sought for, *inter alia*, are as follows;

- (1) Writ or in the nature of mandamus cancelling or recalling the impugned Order dated 25.07.2017 of the Respondent No.2 and Memo dated 01.02.2013 issued by the Respondent No.3.
- (2) Writ or in the nature of certiorari commanding the Respondents No. 2 and 3 to forward all relevant records in relation to the instant case.
- (3) Writ in the nature of mandamus or like nature commanding the Respondent Authorities to forthwith complete the process of registration of the instrument dated 17.01.1983, by treating the certified copy thereof as the original instrument.
- (4) Rule NISI in terms of the prayers.
- (5) In the absence of sufficient cause to make the Rule NISI absolute.

**3.** The Respondents No. 1, 2, 3 and 4 filed a joint counter-affidavit denying and disputing the allegations and would specifically aver that the Petition is liable to be

**Himalaya Distilleries vs. State of Sikkim & Others**

dismissed having been brought after more than 26 (twenty-six) years when the executants thereof are no more and there is a change in ownership, hence the Petitioner's remedy lies before the Civil Court. The Respondents No. 1 to 4 deny that the Registration Rules indicate that when the original deeds are not forthcoming, the copies of the deeds shall be received as evidence of such deeds and the provisions of the Registration Rules, being Rule 8 and Rule 28 are being wrongly interpreted by the Petitioner. Annexure P-1 is an unregistered certified copy as it does not contain the registration seal with the book number, serial number and date of registration. While supporting the Order of the Respondent No.2 dated 25.07.2018, it was averred that it was a detailed order taking into consideration all aspects placed before it and that allegations of misplacement of original by the Registering Authority are bereft of material particulars. On the failure of the Petitioner to place the Sale Deed for registration in 1983, they cannot now allege that the authorities have in connivance with the private Respondents purposely misplaced the records pertaining to the registration. Responsibility rests on the Petitioner to see that the documents so presented receive proper registration, hence the grounds set out by the Petitioner are not tenable in the eyes of law.

**Himalaya Distilleries vs. State of Sikkim & Others**

4. The Respondents No. 8 and 10 in their joint counter-affidavit stated that the Petitioner has filed a Civil Suit being Title Suit No. 11 of 2017 (*Himalaya Distilleries Ltd. Vs. Urmila Pradhan and Ors.*) pending disposal before the Court of the learned District Judge, East Sikkim at Gangtok, praying for a decree, declaring right, title and interest in his favour in respect of the "Schedule A" land while in the present Writ Petition they have prayed for registration of certified copy of Annexure P-1, hence the prayers are similar. That, execution, presentation and submission of the original Sale Deed are disputed which only a trial can determine. That, the Government Respondents have rightly rejected the request of the Petitioner for registration, as it is invalid in the eyes of law sans the Sale Deed signed by late Kashi Raj Pradhan. That, the purported Sale Deed, Annexure P-1, clearly suggests that the property was not transferred to the Petitioner and neither was consideration value or advance, paid. Hence, the Orders dated 01.02.2013 of the Registering Authority and 25.07.2017 of the Appellate Authority were passed considering all relevant facts and records. In fact, late Kashi Raj Pradhan had no right, title and authority over the portion of the suit property recorded in the name of the said Respondents and any statement contrary to this fact is denied by the answering Respondents. That, late Bhim Raj Pradhan in his written statement in Title Suit No. 6 of 2014 (*Himalaya Distilleries Limited vs. Smt. Urmila Pradhan & Others*) before the Court of

**Himalaya Distilleries vs. State of Sikkim & Others**

the learned Principal District Judge, East Sikkim at Gangtok, had categorically denied the averments of the Plaintiff pertaining to sale of the property in question, execution of sale deed and transferring the possession of the property to the Petitioner. The Respondents also referred to Rule 8 and Rule 28 of the Registration Rules and averred that both were inapplicable to the instant matter. As per Registration Rules, two sets of signed sale deeds are presented for registration and one original sale deed is returned to the purchaser with certification of the registering authority but the Petitioner in all Fora is relying upon Annexure P-1, a copy, while interpreting the rules as per their convenience. That, the question of the Petitioner having a prima facie good case or suffering loss and injury does not arise. The instant Writ Petition besides being inordinately delayed, lacks in merit and considering that a Title Suit is pending, this Petition thereby deserves a dismissal.

**5.** Respondent No.10, Urmila Pradhan, the constituted attorney of the Respondent No.9, in her counter-affidavit on her son's behalf while denying and disputing the allegations in the Petition averred that simply obtaining a certified copy from the Registrar of documents will not confer rights on the Petitioner over the property/land of the parties. It is the duty of the Registrar to issue the certified copy from the records maintained by him if a party applies for such

**Himalaya Distilleries vs. State of Sikkim & Others**

copies and unless the document is registered as per the Registration Rules and in consonance with the Transfer of Property Act, 1881, the Petitioner has no case, moreover the disputed property is still in the possession of the original owner. Besides, Annexure P-1 is not an original document and the Registering Authority is not bound to put forth an explanation for an unregistered document. That, the possession of two plots of land was with the Respondent No.9 till 2005 and thereafter has been transferred in the name of Respondent No.10 which is now in her possession. That, the names of Sinora Pradhan and the Respondent No.10 were recorded after observing due formalities and the very fact that the Petitioner came to learn of this in the year 2009 indicates that their claims are illegal. The Respondent also raised questions about the interpretation of Rule 8, Rule 20 and Rule 28 of the Registration Rules and submitted that the instant Petition is not an efficacious method for obtaining the reliefs by the Petitioner. The response of this Respondent largely reiterated what the other respondents had stated and submitted that as the Petitioner has filed the instant misconceived Writ Petition devoid of merits, it deserves to be dismissed.

**6.** In the Rejoinder to the counter-affidavit of the Respondents No. 1 to 4, the Petitioner would, *inter alia*, state that it is the duty of the Registering Office being the custodian

**Himalaya Distilleries vs. State of Sikkim & Others**

of the said document to preserve and maintain safe custody of the document. Under no circumstances, the document could have been destroyed in violation of Rule 34 of the Registration Rules. The invocation of Rule 28 of the Registration Rules in the impugned Order/Memo dated 01.02.2013 is testament to the fact that the said document was destroyed by the Registration Office. The Appellate Authority could not find any records justifying or showing that the document was destroyed. In such circumstances, the rights of the Petitioner cannot be annulled as it was dereliction and abdication of the duties by the statutory authorities. The statement that there has been change of ownership of the land during the interregnum and as such the said document cannot be taken up for registration is totally misconceived. The Registering Authority is to look into the title as on the date of presentation and the presence of the executants or the person claiming under the document is not required for registration as evident from the Registration Rules. That, the burden lies upon the Registering Office to show as to what the Registration Office did to the duly executed Sale Deed dated 17.01.1983.

**7.** In the Rejoinder affidavit to the counter-affidavit of the Respondents No.8 and 10, the Petitioner would, *inter alia*, contend that the cause of action for filing of Civil Suit is completely different to the cause of action for filing the instant Writ Petition as the challenge in the Writ Petition is to the

**Himalaya Distilleries vs. State of Sikkim & Others**

Memo dated 01.02.2013 and Order dated 25.07.2017, on the grounds of abuse of power by the statutory authority and that the impugned Orders suffer from malice in law and fact. The suit filed by the Petitioner as Plaintiff is concerned with the Petitioner's rights over the Schedule lands mentioned in the Plaint, clouded by the action of the private Respondents herein and seeks confirmation of possession and restoration of the concerned property from the Respondents No. 8 to 10. That, the statement to the effect that late Kashi Raj Pradhan had no right, title and authority over the land recorded in the names of the Respondents No. 8, 9 and 10 is misconceived since acting as *karta* he had duly executed the deed of sale dated 17.01.1983. The written statement of late Bhim Raj Pradhan in Title Suit No. 6/2014 is only pleadings, not proof. Respondents No. 5, 6 and 7, who are the successors in interest of late Bhim Raj Pradhan, have admitted the fact of sale in their statements filed in Title Suit No. 11/2017, and thus waived their right to contest the suit filed by the Petitioner by filing written statement. That, the attempts by the Respondents to dispute the existence, contents and execution of Annexure P-1 amounts to a clear ruse of the Respondents to mislead this Court from the dispute involved in the present proceedings and the counter-affidavit ought to be rejected.

**Himalaya Distilleries vs. State of Sikkim & Others**

**8.** The Rejoinder of the Petitioner to the counter-affidavit filed by the Respondent No.9, *inter alia*, averred that the Respondent No. 9 having been divested of his rights in respect of the land in question vide a Deed of Sale dated 17.01.1983 could not have transferred the said land by any means to the Respondent No.10. That, when the Deed of Sale was executed on 17.01.1983, the Respondent No. 9 appears to have been 9 years old and attained majority in the year 1992, however, despite knowledge of the Document he neither challenged it nor did he have possession of any portion of the land mentioned in the said Deed until 24.04.2014, when the Respondents No. 8, 9 and 10 along with one Sinora Pradhan forcefully took possession of an area measuring 2.52 hectares of land. However, recording of the name of Sinora Pradhan could not have been done in accordance with law as the Respondents No. 8 and 9 had no authority whatsoever to transfer the land after the Sale Deed, Annexure P-1. It is for this reason that the Petitioner has filed a suit for recovery of possession of that land. This however is not relevant for determination of the issues involved in the instant proceedings. That, Rule 20 of the Registration Rules is not applicable to the present facts as admittedly Annexure P-1 was duly submitted after being executed in the year 1983 and the Registering Office never intimated the Petitioner or the executant who presented the Deed of Sale for registration that

**Himalaya Distilleries vs. State of Sikkim & Others**

it was barred by the said provision, hence the counter-affidavit ought not to be acted upon.

**9.** Learned Counsel for the Petitioner while advancing his arguments reiterated the facts put forth in his pleadings and contended that till the year 2009 the Petitioner was of the belief that the land in question was registered in the name of the Company in view of Annexure P-1. However, when the Petitioner sought to deposit tax for the land in question in 2009, they came to learn that it was registered in the name of one Sinora Pradhan and another. That, mere records of rights in the names of the aforesaid persons do not create title over immovable property. Besides, the Respondent No.3 is not required to look into the title or beyond the Sale Deed document for its registration. On this count, reliance was placed on the ratio of the High Court of Bombay in ***Chairman/Secretary, Deep Apartment CHS Ltd. vs. The State of Maharashtra & Ors***<sup>1</sup> and ***Satya Pal Anand vs. State of Madhya Pradesh and Others***<sup>2</sup>. That, to the contrary, Annexure P-1 is proof of sale of the property in question between Kashi Raj Pradhan and the Petitioner. Drawing attention to the impugned Memo of Respondent No.3, it was argued that Rule 21 of the Registration Rules stipulates that a document required to be registered shall be presented either by the

---

<sup>1</sup> 2013 (1) Bom CR 663

<sup>2</sup> (2016) 10 SCC 767

**Himalaya Distilleries vs. State of Sikkim & Others**

person executing it or by the person claiming under it after which the Registering Authority ought to take needful steps in terms thereof. Neither the presence of the executants nor the person claiming under the said document are required thereafter. That, the Registration Rules do not indicate that the copies of such deeds should bear the serial number, book number or date of registration as averred by the Respondents. The issuance of a copy coupled with the clear admission on the part of the Registering Authority in the impugned Memo that the deed of sale after execution was presented for registration, indicates that the Sale Deed was duly registered. That, Rule 28 of the Registration Rules provide that documents other than Wills remaining unclaimed in any Register for a period extending three years may be destroyed but in the instant case, the original deed in question was pending registration therefore the document being unclaimed does not arise. That, application of the provisions of Rule 28 requires compliance of procedure envisaged in Rule 32 to Rule 34 of the Registration Rules. It was further contended that the Respondent No.2 failed to exercise its lawful authority under law by not setting aside the impugned Memo and directing the Respondent No.3 to comply with the process of registration if it had not already been done. The question of executing a new Sale Deed between Respondent No.10, Sinora Pradhan and the Petitioner does not arise as the original of Annexure P-1 is with the Respondent No.3. Thus, the Registering Authority

**Himalaya Distilleries vs. State of Sikkim & Others**

ought to have viewed the claim of the Petitioner based on Annexure P-1 filed on the date of execution of the document and not on a document created subsequently. That, inconsistencies in the impugned Memo and Order of the Respondent Authorities provide reasons to believe that the loss/misplacement of Sale Deed was deliberate to deny and frustrate the Petitioner's claim over the land in question. Relying on Rule 8 of the Registration Rules, it was contended that the registration proceedings ought to have been reconstructed and registration process completed, failure thereof calls for interference by this Court and the actions of the Respondent Authorities violates the mandate of Article 300A of the Constitution of India. Calling attention to Rule 7 of the Registration Rules, it was put forth that in compliance thereof it is the duty of the Registering Authority after completing registration to hand back the original document to the Appellant, which admittedly has not been done thereby constituting dereliction of duties. Strength was also drawn from Rule 26 of the Registration Rules and contended that when the Registrar finds that the document has been duly executed, the applicants are entitled to registration and the document shall be ordered to be registered compulsorily. While Rule 20 of the said Rules is not applicable to the instant facts. Claiming that there was no wilful delay or laches in presenting the instant Petition and hence, the reliefs as prayed

**Himalaya Distilleries vs. State of Sikkim & Others**

be granted. Succour was also garnered from the decision in ***Commissioner of Police, Bombay vs. Gordhandas Bhanji***<sup>3</sup>.

**10.** Learned Senior Government Advocate for the State-Respondents No. 1 to 4, while also relying on the averments made in the pleadings would contend the purported Sale Deed suggests that the property has not been transferred to the Petitioner neither has consideration amount been paid thereby proving that the Petitioner's prayer is not valid. That, due procedure prescribed for registration not having been followed at the relevant time, it cannot be done now and the only possibility for registration is on a new deed being executed between the registered owners and the Petitioner. It was also contended that the Petitioner has raised disputed questions of fact which cannot be adjudicated in a petition under Article 226 of the Constitution.

**11.** Learned Counsel for the Respondents No. 5, 6 and 7, would submit that a response has been filed by the Respondents in Title Suit No. 11 of 2017, wherein they have stated that they were given to understand that the suit property had subsequently been sold but they have no further knowledge as to the manner, extent and circumstance in which such sale was carried out. Consequently, he has no further submissions to make in this matter.

---

<sup>3</sup> AIR 1952 SC 16

**Himalaya Distilleries vs. State of Sikkim & Others**

**12.** Learned Counsel for the Respondent No. 9 submitted that if the Petitioner was of the belief that the certified copy was proof of registration then its rights are secured and it is incomprehensible as to why the Petitioner is before this Court. To the contrary, a perusal of Annexure P-1 would reveal that although consideration value has been reflected therein, no date of payment of the consideration value issues therein and neither is there indication of payment of money. The date of execution of the deed is blank, as also the names of the witnesses and hence, cannot be said to be a registered deed. The Petitioner is therefore required to prove the document. Reliance was placed on ***K. Nanjappa (dead) by Legal Representatives vs. R.A. Hameed alias Ameersab (dead) by Legal Representatives and Another***<sup>4</sup>. It is his contention that Rule 38 and Rule 43 of the Registration Rules have not been complied with. Besides, the Petition suffers from delay and laches as the purported sale was of 1983 and the registration is being sought in 2009. That, the Writ Petition deserves a dismissal.

**13.** Learned Counsel for the Respondents No.8 and 10 would point to Rule 7, Rule 22, Rule 38 and Rule 43 of the Registration Rules and argue that none of the Rules have been complied with by the Petitioner. Over and above this was the fact that the Petitioner is before the Court after a period of

---

<sup>4</sup> (2016) 1 SCC 762

**Himalaya Distilleries vs. State of Sikkim & Others**

26(twenty-six) years and hence being guilty of delay and laches, the Petition ought to be dismissed. To fortify his submissions, reliance was placed on ***Shankara Cooperative Housing Society Limited vs. M. Prabhakar and Others***<sup>5</sup>, ***State of Maharashtra vs. Digambar***<sup>6</sup>. That, the Respondents No.2 and 3 have issued correct orders and this Court exercising powers under Article 226 of the Constitution ought not to sit as a Court of Appeal to substitute its own judgment for that of the Statutory Authorities. In this context, reliance was placed on ***Beant Singh vs. Union of India and Others***<sup>7</sup>.

**14.** The rival contentions of learned Counsel for all parties were heard *in extenso* and the pleadings and documents carefully perused as also citations made at the Bar. The relevant Registration Rules relied on by the parties have also been carefully examined by me.

**15.** It is now to be determined whether the Petitioner is entitled to the reliefs claimed.

**16.** While addressing the grievances and arguments of the Petitioner, it would be apposite to first refer to the "Sikkim State Rules Registration of Document Rules, 1930" to have an understanding thereof. The said Rules, *inter alia*, provides for

---

<sup>5</sup> 2011) 5 SCC 607

<sup>6</sup> (1995) 4 SCC 683

<sup>7</sup> AIR 1977 SC 388

**Himalaya Distilleries vs. State of Sikkim & Others**

the head registry Office in Sikkim at Gangtok where the registering Officer shall be known as Registrar. Sub-offices of the registry of deeds were established in 12(twelve) places in the erstwhile Kingdom of Sikkim and the registering Officers at the said places were to be known as Sub-Registrars. Rule 2 makes provisions for maintaining registers for absolute transfer of property, other transfer of immovable property i.e. mortgage, etc., register of decrees and orders of court and award of arbitrators and a general register. Rules 3 and 4 enumerate details of other registers to be maintained. Rule 5 requires the Sub-Registrar to perform his duties under the superintendence and control of the Gangtok Registrar. Rule 6 empowers the Registrar to revise or alter any order of any Sub-Registrar refusing to admit a document if an appeal against such orders was presented to the Registrar within a month from the date of order. The procedure to be observed in the "Registry of Deeds" is enumerated in Rule 7 to Rule 54 of the said Rules.

**17.** In this milieu, while addressing the contention of the Petitioner that the Rules do not provide that the Sale Deed document should bear serial number, book number or date of registration, we may usefully refer to Rule 7 which is reproduced herein below;

**"7.** The person or persons executing the deed or his or their authorised representative with one or more witnesses to the execution of it, shall attend at the Registrar's office and prove by solemn affirmation before the Registrar the due

**Himalaya Distilleries vs. State of Sikkim & Others**

execution of deeds upon which the Registrar shall cause an exact copy of the deed to be entered in the proper register and after having caused it to be carefully compared with the original shall attest the copy with his signature and shall also cause the parties or their authorised representative in attendance to subscribe their signatures to the copy and shall then return the original with a certificate under his signature endorsed thereto specifying the date on which such deed was so registered with REFERENCE to the book containing the registry thereof and the page and number under which the same shall have been entered therein."

**18.** The Rule may be elucidated thus;

- (1) On execution of deeds, the person or persons executing the deed or his or their authorised representative with one or more witnesses to the execution of the deed is to attend the Registrar's Office.
- (2) **These persons are required to prove by solemn affirmation before the Registrar the due execution of the deed.**
- (3) Upon such affirmation the Registrar shall cause an exact copy of the deed to be entered in the proper register, viz., registers as detailed at Rule 2 *supra*.
- (4) **After the copy is carefully compared with the original, the Registrar shall attest the copy with his signature.**
- (5) **He shall also cause the parties or their representatives in attendance to subscribe their signatures to the copy.**
- (6) The Registrar shall then return the original with a certificate under his signature endorsed therein specifying the date on which such deed was so registered.
- (7) For this purpose reference has to be made to the book containing the registration thereof, and the page and number under which the same shall have been entered therein.

**Himalaya Distilleries vs. State of Sikkim & Others**

**19.** Rule 7 of the Registration Rules is fortified by Rule 21, which provides that;

**“21.** A document required to be registered shall be presented either by the person executing it or by the person claiming under it.”

**20.** It has to be agreed, as pointed out by the Petitioner that Rule 7 nowhere prescribes that the copies of the deed shall contain the aforestated details, viz., serial number, book number or date of registration, those details are to be entered in the original Deed. At the same time, it is relevant to consider the other aspect of Rule 7, which mandates that the copy is to be attested by the Registrar with his signature. He is required to cause the parties or representatives to subscribe their signatures on the copy. On the touchstone of these requirements, we may usefully refer to Annexure P-1 which is admittedly a ‘certified to be true copy’ of the original Sale Deed. The original is allegedly untraceable. The reverse of the document records “CERTIFIED TO BE TRUE COPY”, below which an illegible signature appears and bears the stamp of the “Registration Clerk” and the date 5.12.84. The specific requirement of Rule 7 pertaining to copies of deeds is that the Registrar shall attest the copy with his signature and not that of the “Registration Clerk” as appears to have been done in the instant matter. In absence of the Registrar’s signature, a niggling doubt ensues as to the authenticity of the document. The document also ought to bear the signature of the parties or their authorised

**Himalaya Distilleries vs. State of Sikkim & Others**

representative(s) which are non-existent on Annexure P-1. It is evident that Annexure P-1 does not fulfil any of the requirements as envisaged by Rule 7 of the Registration Rules.

**21.** We may now relevantly look to the decision of the Hon'ble Supreme Court in **Satya Pal Anand** (*supra*), wherein it was, *inter alia*, held that;

"**41.** Section 35 of the Act does not confer a quasi-judicial power on the Registering Authority. The Registering Officer is expected to reassure that the document to be registered is accompanied by supporting documents. He is not expected to evaluate the title or irregularity in the document as such. The examination to be done by him is incidental, to ascertain that there is no violation of provisions of the Act of 1908. In the case of Park View Enterprises (*supra*) it has been observed that the function of the Registering Officer is purely administrative and not quasi-judicial. He cannot decide as to whether a document presented for registration is executed by person having title, as mentioned in the instrument. We agree with that exposition."

**22.** The ratio explains the role assigned to the Registering Authority as provided under the Registration Act 1908. It expositis that Authority cannot decide whether a document presented for registration is executed by person having title as mentioned in the instrument. For the purposes of the matter at hand, the Registration of Document Rules, 1930 are relevant which make express provisions for registration of documents in the State of Sikkim. Here too, the Registering Authority is debarred from making an enquiry into title, this falls in the domain of the Civil Courts. Respondent No.3 has not refused registration on the basis of Title but as

**Himalaya Distilleries vs. State of Sikkim & Others**

evident from the impugned Memo has invoked Rule 28 of the Registration Rules, which provides that Documents (other than wills) remaining unclaimed in any registration office for a period exceeding three years may be destroyed. In other words, it can be culled out that the assumption of Respondent No.3 was that considering the lapse of 26 years since the alleged initial process, the document in all probability was destroyed/untraceable. It is but trite to mention that the Registering Authority does require to satisfy himself that the persons before him are the persons to have executed the deed. Rule 7 of the Registration Rules demands much the same along with Rule 21 already extracted hereinabove for reference. It is thereafter that the process of registration commences. In the instant matter, the Petitioner who sought registration of Annexure P-1 in 2009 has 'sent' the document to the Respondent No.3 and not appeared before the Respondent No.3 as would be evident from the impugned Memo dated 01.02.2013. Secondly, even assuming that a personal appearance was made before the Respondent No.3 with Annexure P-1, it is no one's case that the presenter was the party to the execution of Annexure P-1 or the person claiming under it. The identity of the person who presented Annexure P-1 in 2009 has not been disclosed by the Petitioner while on the other hand the executant of the purported Sale Deed has since passed away and the execution of the document, if at all was done 26(twenty-six) years ago.

**Himalaya Distilleries vs. State of Sikkim & Others**

**23.** The Hon'ble Supreme Court in the matter of **Satya Pal Anand** (*supra*) referring to the decision in **Thota Ganga Laxmi vs. State of A.P**<sup>8</sup>, held as follows;

"46. In our considered view, the decision in the case of Thota Ganga Laxmi (supra) was dealing with an express provision, as applicable to the State of Andhra Pradesh and in particular with regard to the registration of an Extinguishment Deed. In absence of such an express provision, in other State legislations, the Registering Officer would be governed by the provisions in the Act of 1908. Going by the said provisions, there is nothing to indicate that the Registering Officer is required to undertake a quasi judicial enquiry regarding the veracity of the factual position stated in the document presented for registration or its legality, if the tenor of the document suggests that it requires to be registered. The validity of such registered document can, indeed, be put in issue before a Court of competent jurisdiction."

The above ratio would indicate that where express provision is made for registration of a particular deed, the provisions have necessarily to be adhered to. The Registration Rules in the instant matter are to be duly complied with. As already discussed, the document Annexure P-1 is lacking in material details under the specific provision of the Rules referred to.

**24.** Rule 8 of the Registration Rules provides that the Registrar shall on application being made to him, allow all persons to inspect the Register books as well as grant copies of all deeds registered by him to persons whom they may concern and such copies in the event of original being lost,

---

<sup>8</sup> (2010) 15 SCC 207

**Himalaya Distilleries vs. State of Sikkim & Others**

destroyed or not forthcoming, shall be received as sufficient evidence of such deeds. Pausing here for a moment, no prayer appears to have been made by the Petitioner for inspection of the Registers in the Office of the Respondent No.3 as provided by the Rule. While considering the argument of learned Counsel for the Petitioner that Annexure P-1 ought to have been received as sufficient evidence of execution of the Sale Deed as the original as well as its records have evidently been lost or are untraceable in the concerned Office, it may be essential once more to revisit Rule 7 of the Registration Rules and reiterate that Annexure P-1 is lacking in material particulars in terms of the requirements thereof. In such a circumstance, it stands to reason that the contents therein cannot be relied upon.

**25.** Although, Rule 22 of the Registration Rules was alluded to by the Respondents No.8 and 10, it evidently has no bearing to the matter at hand as it provides that the registration Officer after satisfying himself that the contents of the document do not conflict with the existing land laws and rules regarding the holding of immovable property in Sikkim shall proceed with the registering of the document in accordance with procedure specified in Paragraph (7) of the Rules.

**Himalaya Distilleries vs. State of Sikkim & Others**

**26.** As per the Petitioner, the application of Rule 28 is contingent upon compliance of Rule 32, Rule 33 and Rule 34 of the Registration Rules. The said Rules read as follows;

**32.** The following records shall be permanently preserved in the Registrar's Office whether they are already there or whether they are transferred thereto from the sub-Registering Office.

- (i) Register of documents and their indexes.
- (ii) Register of power of attorney.
- (iii) Reports of destruction of records and lists of papers destroyed.

**33.** Every Registering Officer shall be responsible for the preservation and safe custody of all registration records, including those of previous years which have accumulated in or been transferred to his office.

**34.** No documents, books or papers whatever shall be destroyed at any registration office within the previous sanction of the Darbar.

Before any document is destroyed, an endeavour must always be made by the Registering Officer in whose Office the document is kept to induce the presentant thereof to take it back."

**27.** A reading of the Rules do not indicate what punitive action the erring official would be subjected to, this of course is a rhetorical statement. Rule 28 of the Registration Rules have already been discussed. The Petitioner was before the Registering Authority after a substantial lapse of time not three years as anticipated in Rule 28. The Rules extracted above do not lack lucidity. There is, thus, legitimate reason to believe that if the original document existed the Registry was not in folly for its misplacement or destruction. It is not the

**Himalaya Distilleries vs. State of Sikkim & Others**

Petitioner's case that no endeavour was made by the Registering Officer requesting the presentant to take back the original. In fact, no light can be shed on this facet in the nebulous circumstances of who went to present Annexure P-1 to Respondent No.3. Besides, the Respondent No.3 has categorically stated in the impugned Memo dated 01.02.2013 that;

“.....

You had submitted a copy of sale deed executed with a request to register the same in the year 1983. The said documents have been examined as follows;

- 1) That the sale deed was submitted to the office in the year 1983.
- 2) The deed could not be registered then for the reason best known to them.
- 3) The sale deed was executed by 1) Kashi Raj Pradhan, S/o Lt. Kalu Ram Pradhan, 2) Bhim Raj Pradhan, S/o Kashi Raj Pradhan, 3) Master Swarup Raj Pradhan, S/o Chet Raj Pradhan, 4) Master Kishor Raj Pradhan, S/o Lt. Khagendra Raj Pradhan.

As per record, the land has already been transferred and mutated in the name of Sinora Pradhan & Urmila Pradhan. Since the land in question has been recorded in the name of Sinora Pradhan, W/o Lt. Chet Raj Pradhan and Urmila Pradhan, W/o Lt. Khagendra Raj Pradhan as per the records, you are requested to execute a fresh set of sale deed for taking necessary action as per standing Government norms.

.....”

**28.** The Memo hereinabove does not indicate that the document was destroyed and it appears to be an assumption drawn by the Petitioner. The assumption of the official that the

**Himalaya Distilleries vs. State of Sikkim & Others**

Sale Deed was submitted for registration is based on details entered in Annexure P-1. There is no other document for Respondent No.3 to draw such conclusions from. It may be pointed out that Rule 20 of the Registration Rules is germane to the issue contrary to the submissions of the Petitioner and reads as follows;

"20. All instruments required to be registered (Excepting a will) shall be produced within four months from the date of execution thereof, but if any instrument owing to unavoidable for the Registrar in cases where the delay in presentation has not exceeded six months to direct that on payment of a penalty not exceeding ten times the amount of the proper registration fee such instrument may be accepted for registration."

**29.** The above extracted Rule specifically lays down that the period of limitation within which the document is to be produced for registration is four months from the date of execution thereof and six months at the maximum, this too subject to deposit of penalty as prescribed in the Rules. The original document is alleged to have been presented in 1983, sans proof. The Petitioner has approached the Sub-Divisional Magistrate/Sub-Registrar in the year 2009, no reasons have been given for the delay in approaching the Registering Authority. No explanation issues on what transpired between 1983 to 2009 and why necessary steps as envisaged by Rule 20 were not taken up by the Petitioner. The argument that the Petitioner learnt of the transfer of land to other persons in 2009 when they went to pay land taxes is rather frail apart

**Himalaya Distilleries vs. State of Sikkim & Others**

from the argument of payment of taxes being non-existent in the pleadings. One would thereby mull over whether land tax was not paid for the other years.

**30.** The Appellate Authority in its impugned Order would observe as follows;

**"25/07/2017**

.....

Taken up for hearing on 21.07.2017

.....

6. Since the original copy of the Sale Deed dated 17/01/1983 and the relevant file(s) pertaining to the registration proceedings are missing and not traceable in the Office of the Sub-Registrar and in the interim period the executants of the Sale Deed is also deceased and in view of the fact that more than 26 years have lapsed since the Sale deed in question was submitted for registration, I find that there is insufficient material evidence before me to further investigate into the matter and to question the findings of the Sub-Registrar as per his Order No 1013/DCE dated 01/02/2013 at this very late stage.
7. Furthermore, the Sale Deed dated 17/01/1983 that is sought to be registered is no longer in existence and hence there is no question of its registration in any case.
8. Consequently, for the reasons stated hereinabove, the Appeal stands dismissed.

Sd/-  
25/7/2017  
(Tsegyal Tashi), IAS  
Appellate Authority  
Land Revenue & D.M. Department"

**31.** The Order succinctly spells out reasons for refusal to register Annexure P-1, which on examination would also reveal that details in the dotted lines are blank thereby rendering the document speculative and incomplete. At this

**Himalaya Distilleries vs. State of Sikkim & Others**

junction relevant reference may be made to Rule 44 of the Registration Rules which reads as follows;

**"44.** When a document occupies more than one sheet of paper, the seal and signature of the Registering Officer shall be attached to every sheet."

This Rule has to be read in conjunction with Rule 7 and the requirements of which, as evident, are devoid in Annexure P-1.

**32.** That having been stated, it would be apposite to consider the pleadings of the Petitioner at Paragraph 5, which reads as follows;

**"5.** That the Petitioner states that on 05.12.1984 a certified copy of the Deed of Sale dated 17.01.1983 was furnished to the Petitioner Company. It may be relevant herein to mention that a perusal of the Registration of Documents Rules, 1930 (hereinafter for short referred to as the 'Registration Rules') would go to show that copies of Deeds which are registered can only be furnished by the Registrar on an Application being made to him and in the event of the original being destroyed/lost or not forthcoming, the said copies of the Deeds shall be received as sufficient evidence of such Deeds. The furnishing of the certified copy presupposes that the Registration process was duly completed. ..."

The Petitioner seeks to exposit by this pleading that Annexure P-1 indicates that the registration process was duly completed. If that be so, it is indeed unfathomable as to why the Petitioner would be before this Court or before the Respondent No.2 and the Respondent No.3 seeking registration of Annexure P-1.

**Himalaya Distilleries vs. State of Sikkim & Others**

**33.** Hence, in view of the shortcomings in Annexure P-1 discussed above which flies in the face of the Registration Rules, the question of application of Rule 8, I am afraid does not arise, as Annexure P-1 cannot be received as evidence. On the anvil of the discussions that have ensued hereinabove, it is evident that the reliefs as prayed for cannot be granted.

**34.** The Writ Petition fails and is accordingly dismissed.

**35.** No order as to costs.

**36.** Records of the Respondent No.2 be transmitted forthwith.

Sd/-  
( **Meenakshi Madan Rai** )  
**Acting Chief Justice**  
26.09.2018

Approved for reporting : **Yes**

Internet : **Yes**

bp