

No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			<p>C-528 No. 2059 of 2025 <u>Hon'ble Alok Mahra, J.</u></p> <p>Mr. Jitendra Chaudhary, learned counsel for the applicant.</p> <p>2. Mr. Jai Prakash, learned Brief Holder for the State.</p> <p>3. Mr. H.C. Pathak, learned counsel for respondent no. 2.</p> <p>4. Mr. Vijay Bhatt and Mr. Harshit Sanwal, learned counsel for respondent nos. 3, 4 and 5.</p> <p>5. The present criminal misc. application has been filed by the applicants challenging the order dated 21.05.2025 passed by ACJM, Nainital in Criminal Case No. 3264 of 2019, State Vs. Santosh Kumar Joshi, whereby, the application moved by the applicant under Section 319 Cr.P.C. for summoning the respondent nos. 2 to 5 has been rejected and also the order dated 28.10.2025 passed by Session Judge, Nainital in Criminal Revision No. 14 of 2025.</p> <p>6. Learned counsel for the applicants would submit that since it has come in evidence that the power of attorney was executed by the applicant in favour of Santosh Kumar Joshi in respect of their bhumidhari land situated in Dhungsil Talla, but, on the basis of this power of attorney Santosh Kumar Joshi has executed the sale deed in favour of all above private respondents in respect of the land situated in Dhungsil Malla. It is further submitted that both the Dhungsil Talla and Dhungsil Malla are separate villages and as such the private respondent no. 2 was the then Sub-Registrar,</p>

at the time of which, the said sale deed was registered, therefore, she ought to have perused the revenue records before permitting the said sale deed to be registered.

7. Learned counsel for the respondent nos. 3, 4 and 5 would further submit that respondents are bonafide purchasers and the sale deed was executed after putting due consideration. Thus, the orders passed by the learned Magistrate concerned and Sessions Judge concerned does not warrant any interference. Learned counsel appearing for respondent nos. 3, 4 and 5 have relied upon a judgment passed by Hon'ble Supreme Court in the case of S. Anand Vs. State of Tamil Nadu and Another, 2026 SCC OnLine SC 702. For ready reference, paragraph no. 24 of the aforesaid judgment is extracted hereinbelow: -

"24. As a matter of fact, even if the allegation of the respondent No.2-complainant, that the Will was forged, is found to be substantiated, the purchasers of the property would be the persons aggrieved because in such circumstances, their title over the property in question would land in dispute, having CrI. Appeal@ SLP (CrI.) No (s). 12177 of 2022 being acquired from the vendor who used the so- called fabricated will to execute the registered sale deeds. The situation at hand is squarely covered by the judgment in the case of Mohammed Ibrahim and Others v. State of Bihar and Another.4, wherein this Court held as below: -

"20. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused.

21. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do

or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds.

Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner.

.....

23. When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is, the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint."

8. Mr. H.C. Pathak, learned counsel for respondent no. 2 would submit that the Registry Officer is not responsible for the title and he/she is not empowered to go into the question of the title of the person executing the document for transferring the property. He has no adjudicatory power to decide whether the executants have any title. Learned counsel has relied upon a judgment passed by Hon'ble Supreme Court in the case of K. Gopi Vs. Sub-Registrar and Others, 2025 SCC OnLine SC 740. For ready reference, Paragraph no. 15 of the aforesaid judgment is extracted hereinbelow: -

"15. The registering officer is not concerned with the title held by the executant. He has no adjudicatory power to decide whether the executant has any title. Even if an executant executes a sale deed or a lease in respect of a land in respect of which he has no title, the registering officer cannot refuse to register the document if all the procedural compliances are made and the necessary stamp duty as well as registration charges/fee are paid. We may note here that under the scheme of the 1908 Act, it is not the function of the Sub-Registrar or Registering

Authority to ascertain whether the vendor has title to the property which he is seeking to transfer. Once the registering authority is satisfied that the parties to the document are present before him and the parties admit execution thereof before him, subject to making procedural compliances as narrated above, the document must be registered. The execution and registration of a document have the effect of transferring only those rights, if any, that the executant possesses. If the executant has no right, title, or interest in the property, the registered document cannot effect any transfer."

9. Heard learned counsel for the parties and perused the record.

10. Perusal of the impugned order dated 21.05.2025 reveals that the evidence collected was placed before the learned court below, which, after applying its judicial mind, has rightly rejected the application of the applicant under Section 311 of Cr.P.C.

11. The court concerned has considered & discussed all relevant aspects. Thus, the view taken by the learned Judicial Magistrate concerned cannot be faulted. This Court does not find any infirmity or illegality in the impugned order dated 21.05.2025 passed by ACJM, Nainital in Criminal Case No. 3264 of 2019, State Vs. Santosh Kumar Joshi and also the order dated 28.10.2025 passed by Session Judge, Nainital in Criminal Revision No. 14 of 2025. Hence, this Court does not find any reason to interfere with the impugned orders.

12. Accordingly, the criminal misc. application fails and is hereby dismissed.

(Alok Mahra J.)

05.05.2026

Ujjwal