

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2015

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

W.P.No.31703 of 2015

Dr.Sulochana

... Petitioner

vs.

- 1 The Inspector General of
Registration 100 Santhome High Road
Santhome Chennai
- 2 The District Registrar
O/o.District Registrar Department of
Registration Cuddalore
- 3 The Joint Registrar I
O/o.Joint Registrar Cuddalore 1 ... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the impugned order passed by the 3rd respondent herein in his proceedings in Aa. Thi. Mu. No. 5195/2015/AaPaBi dt 2.9.2015 and quash the same and consequently directing the respondents herein to register the Decree Copy dt 8.2.2011 amended vide Order dt 8.12.2014 in I.A. No.216 of 2014 in O.S. No.135 of 2010 on the file of 1st Additional Sub Ordinate Judge Cuddalore without reference to any time stipulation as provided under Section 23 & 25 of the Registration Act 1908

For Petitioner

... Mr.D.Ravichander

For Respondents

.. Mr.M.Dig Vijay Pandian
Addl. Govt. Pleader

ORDER

The petitioner obtained a decree on 08.2.2011 in O.S.No.42 of 2010 on the file of the Principal District Judge, Cuddalore. The said decree was one for declaration and permanent injunction. In the description of the property, schedule has been wrongly shown as 'B' instead of 'A'. With the above said mistake as shown in the decree, the petitioner got the same registered within the time prescribed in Registration

No.24/2011. After finding that there is a mistake committed in the schedule, an application was filed by the petitioner in I.A.No.216/2014. The said application was ordered on 08.12.2014 by amending the decree as prayed for. Thereafter, the petitioner sought to file another application seeking to register the decree once again. The document was returned on the ground that it is belated. Challenging the same, the present writ petition has been filed.

2. The learned counsel for the petitioner submitted that admittedly, the original decree has been presented and registered within the time prescribed. Therefore, the amended decree will have to be taken as a consequential one. Decree once amended will relate back to the original one. Even otherwise, it is only a procedural act as done by the Court and to be followed by the respondents. Reliance has been made on the decision of the High Court of Karnataka in Anjinamma and Another vs. Puttahariyappa and others reported in AIR 2003 KARNATAKA 24 wherein it is held as follows:

"6. Further, in view of law laid down by the Patna High Court in the aforesaid case and by careful reading of S.77 of the Act, it is clear that, prescription of 30 days time in the above provision for presenting the document for its registration after obtaining the decree before the Civil Court is a procedural aspect which has to be viewed leniently to see that justice shall not suffer. The Apex Court in the case reported in (1998) 4 SCC 543 : (AIR 1998 SC 1827) in the case of Shreenath v. Rajesh at Paragraph 3 after interpreting Order 21, Rules 97(1) and (2), 101, 99, 100 and 103 as they stood prior to 1976 Amendment and also Rules 35 and 36 of the Rules, has succinctly laid down the law which reads thus:

" In interpreting any procedural law, where more than one interpretation is possible, the one which curtails the procedure without eluding justice is to be adopted. The procedural law is always subservient to and is in aid of justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed."

7. In view of the law laid down by the Supreme Court in the aforesaid case, the presentation of document within 30 days time

under S.77 of the Act is procedural aspect which is required to be viewed very leniently to see that justice is done to the parties. For the aforesaid reason, issuance of impugned endorsement by the 7th respondent is bad in law. Though the reason assigned in the endorsement that the document could not be presented within 30 days is correct, 7th respondent should have considered the reasons for non-presentation of documents by the petitioners for registration of the same as directed in the decree obtained by the petitioners keeping in view the law laid down by the Apex Court and Patna High Court in the cases referred to supra. Therefore, the petitioners must succeed.

Accordingly, the Writ Petition is allowed. Impugned endorsement dated 18.3.2002 vide Annexure-C is hereby quashed. Issue Rule. Petitioners are permitted to present the document for registration within two weeks from today and respondents 7 and 8 are hereby directed that they shall register the same by following the procedure provided under the provisions of the Registration Act, 1908 and the relevant Registration Rules applicable to the case within six weeks thereafter."

3. The learned Government Pleader based upon the draft counter affidavit submitted that admittedly, there is a delay. The presentation was much after the time limit prescribed. Therefore, no interference is required.

4. The facts narrated are not in dispute. What the petitioner seeks is by way of a rectification of the earlier one which was presented and registered within the time. Once, the decree is modified, it will relate back to the original date of decree granted by the civil court. Therefore, the objections raised that the delay has to be reckoned from the date of the amended decree cannot be sustained. The ratio laid down by the High Court of Karnataka would be applicable to the case on hand. The registration is only a part of procedural law. Though the statute is a fiscal, the doctrine of purposive and reasonable interpretation, thus, have application. It is not as if the petitioner is not willing to pay the requisite fees for the subsequent registration also. The question is as to whether the petitioner is bound to pay for the alleged belated presentation.

5. For the reasons stated, the order impugned cannot be sustained, moreso, when the petitioner is ready and willing to pay the requisite fees, treating the document as a fresh one.

6. Accordingly, the order impugned is set aside and the respondent No.3 is directed to register the document presented subject to the condition that the petitioner pays requisite payment as if the said document is presented afresh. The said exercise will have to be done within a period of four weeks thereafter. The writ petition is disposed of accordingly. No costs.

kua

s/d-
Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

To

- 1 The Inspector General of
Registration 100 Santhome High Road
Santhome Chennai
- 2 The District Registrar
O/o.District Registrar Department of
Registration Cuddalore
- 3 The Joint Registrar I
O/o.Joint Registrar Cuddalore 1

+ 1 cc to Mr.D.Ravichander, Advocate SR 55494

+ 1 cc to Govt.Pleader SR 58794

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