

In the High Court of Judicature at Madras

Dated: 01.12.2015

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The Honourable Mr.JUSTICE M.M.SUNDRESH

Writ Petition No.22410 of 2013

S.Rajeswari

.. Petitioner

Vs.

1. The District Registrar,
Indira Gandhi Salai,
Kanchipuram Town and Taluk.

2. The Sub Registrar, Damal,
Kancheepuram Taluk and District.

.. Respondents

PRAYER: PETITION is filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the orders dated 22.01.2012 of the 2nd respondent to quash the same and direct the respondents to refund the sum of Rs.4,67,500/- collected as excess registration fees vide Receipt No.2013142 dated 24.01.2013.

For Petitioner : Mr.Y.Jyothish Chander

For Respondents : Mr.R.A.S.Senthilvel,
Additional Government Pleader

ORDER

Admittedly, even as per the counter affidavit filed by the respondents, the properties, which are subject matter of the decree for partition, are originally belonged to the parents of the petitioner and her siblings. A suit was filed in O.S.No.95 of 2010 on the file of the District Court at Kanchipuram by the petitioner and her sister for ½ share of the property, wherein a preliminary decree was passed on 22.03.2012. Thereafter, pursuant to compromise, a final decree was passed in I.A.No.252 of 2012 on 07.11.2012. The petitioner has presented the said decree for registration on 14.12.2012 and has paid a sum of Rs.2,000/- as registration fees. Not accepting the same, a demand was made for payment of Rs.4,67,500/- towards the registration fees as per the order of the Registrar General of Registration Department dated 04.02.1998, which was passed

under Sections 23 and 25 of the Indian Registration Act. The petitioner, after paying the same, has challenged the said order before this Court.

2. As rightly submitted by the learned counsel appearing for the petitioner, a perusal of the order dated 04.02.1998 would show that there are three issues, which have been framed. They are (1) whether the document is filed beyond the period of limitation; (2) whether the demand of 10% penalty is justified and (3) whether there is any provision to reduce the said amount fixed. Thus, neither the issues involved therein nor the discussion made are germane to the case on hand. Admittedly, even as per the counter affidavit filed, the petitioner has come before this Court within the time limit. Therefore, the order impugned passed basing reliance upon the order dated 04.02.1998 cannot be sustained. Similar is the case on application of Sections 23 and 25 of the Indian Registration Act. These two provisions deal with time of presenting the documents and the consequential delay. As stated above, the petitioner has come within the time, which is not in dispute. It is settled position of law that mere payment made will not take the right of the petitioner to challenge the order.

3. In view of the foregoing reasons, the order impugned is hereby set aside and the writ petition is allowed. Consequently, the respondents are directed to return the sum of Rs.4,67,500/- (Rupees four lakhs sixty seven thousand and five hundred only) to the petitioner, which was collected as excess registration fees, within a period of four weeks from the date of receipt of a copy of this order. However, in view of the facts and circumstances of the case, the petitioner is not entitled for any interest on the said amount. No costs.

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-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

To

1. The District Registrar,
Indira Gandhi Salai,
Kanchipuram Town and Taluk.

2. The Sub Registrar, Damal,
Kancheepuram Taluk and District.

+ 1 cc to M/s.Jyothish Chander, Advocate SR 65340

rsk(co)
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