

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.03.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.9352 of 2015

B.Vijayan

... Petitioner

Vs

1. The District Registrar
Office of the District Registrar
of Chennai South, Jeans Road,
Saidapet, Chennai - 600 015
2. The Sub Registrar,
Office of the Sub-Registrar
of Neelangari, Neelangarai
Chennai - 600 041

... Respondents

Prayer : Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to register the Decree dated 28.03.2014 passed in O.S.No.573 of 2013 by the Principal District Munsif Court at Alandur on payment of necessary registration fee based on the petitioner's representation dated 26.02.2015.

For Petitioner : Mr.A.Ramu

For Respondents : Mr.D.Suriya Narayanan
Government advocate

O R D E R

Heard Mr.A.Ramu, learned counsel appearing for the petitioner and Mr.D.Suriya Narayanan, learned Government advocate appearing for the respondents. With the consent of either side the Writ Petition itself is taken up for final disposal at the admission stage.

2.The Petitioner has filed this Writ Petition praying for a issuance of Writ of Mandamus to direct the respondents to register the decree in O.S.No.573 of 2012 dated 28.03.2014 passed by the Principal District Judge, Alandur by taking into consideration his representation. The petitioner obtained decree as against his father T.Balan in O.S.No.573 of 2013 dated 28.03.2014, by which the court declared the revocation of settlement dated 29.04.2008 registered as document no.1865 of 2008 as null and void and directed the Sub Registrar, Nellangarai, 2nd respondent herein to delete the entries made in Book No.1 in the encumbrance certificate no.5 and for permanent injunction to restrain his father from interfering with the petitioner's peaceful possession and enjoyment of the suit property. After decree was passed, the petitioner's father died, the petitioner was inclined to register decree before the Sub Registrar's office. However, the same was not entertained and therefore filed a Writ petition in W.P.No.34989 of 2014. In the said writ petition, the petitioner was directed to implead his father, who was the 1st defendant in the suit. Therefore, the petitioner filed M.P.No.1 of 2015. When the case was heard by this Court on 28.01.2015, since the petitioner's father had died on 30.12.2014, M.P.No.1 of 2015 was dismissed as infructuous and the Writ Petition was disposed of by order dated 28.01.2015 issuing the following direction:-

"....5. In the light of the above, without going into the merits of the petitioner's contention, there will be a direction to the 2nd respondent to consider the petitioner's representation dated 11.06.2014 after issuing notice to the petitioner as well as to all other parties who are likely to be aggrieved and after conducting an enquiry and pass a reasoned order on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order....."

3.Pursuant thereto, the petitioner made representation to the 2nd respondent on 26.02.2015 and requested for registration of the decree. However, the 2nd respondent refused to entertain the decree for registration and issued check-slip on 26.02.2015 stating that decree has been presented belatedly and therefore, cannot be accepted for registration. In this regard reference has been made to Sections 23 and 34 of the Registration Act, 2008.

4.In the background of these facts, the petitioner is once again before this Court by way of this Writ Petition.

5. After hearing the learned counsel for the parties and perusing the materials available on record, it is noted that though check-slip is not put to challenge in this Writ Petition, nevertheless, the petitioner seeks for issuance of mandamus to direct the 2nd respondent to register the Sub Court's decree, therefore, the correctness of the check-slip issued by the 2nd respondent dated 26.02.2015 is considered in this Writ petition.

6. Section 23 of the Registration Act deals with Time for Presenting Documents. The said Provision states that subject to the provision contained in Sections 24, 25 and 26, no document other than the Will would be accepted for registration unless presented for that purpose to the proper officer within four months from the date of this execution. Proviso to Section 23 also provides that a copy of a decree or order may be presented within four months from the date on which the decree or order was made, or, where it is appealable, within from the day on which it becomes final. Section 34 of the Act deals with enquiry to be conducted by the Sub-Registrar before registration pursuant to which a Registrar can refuse to register a document.

7. It is to be pointed that there is nothing on record to show that enquiry was conducted by the 2nd respondent before issuing check-slip. Therefore, the reference made by the 2nd respondent to Section 34 in the check-slip is in-correct as there was no enquiry as regards to time limit prescribed under Section 23 of the Act.

8. It is note worthy to point out that in the case of A.K.Ganesan reported in 2007 (2) TCJ Page 68 (Madras), wherein this Court has held that Limitation prescribed for presenting documents does not apply to decree, as decree is a permanent record to Court and to register the case, no limitation can be prescribed.

9. Be that as it may, in the instant case, the following facts would be relevant to consider as to whether the check-slip issued by the 2nd respondent was valid.

10. The Sub Court passed a decree on 28.03.2014 and the petitioner filed copy application on 10.04.2014 and the same was delivered to the petitioner on 04.06.2014, immediately, within a six days, the petitioner approached the Registrar to register the decree and also made request by registered post and the said representation dated 11.06.2014 was received by the 2nd respondent on 13.06.2014. Therefore, the said date should be taken to be the date of first presentation of the decree for Registration, though the

representation was made by registered post. The learned counsel for the petitioner submitted that the necessity to send the representation by registered post arose, since the 2nd respondent did not entertain the document when he approached the 2nd respondent in-person. After the representation was received by the 2nd respondent, the 2nd respondent did not pass any orders either accepting the stand taken by the petitioner or rejecting the same. Therefore, the petitioner filed a Writ Petition before this Court in W.P.No.34989 of 2014 on 07.12.2014 and the said writ petition was disposed of on 28.01.2015, after which the check-slip dated 26.02.2015 has been issued. Therefore, for all purposes limitation has to be computed from 11.06.2014, when the petitioner approached the respondent for registering the civil court's decree. Therefore, the petitioner's case is not barred by the period of limitation prescribed under Section 23 of the Act.

11.Thus, taking note of the decision rendered by this Court as well as the factual position as narrated above, this Court is of the view that the reasons assigned by the respondent in the check-slip dated 26.02.2015 is un-sustainable in law. As already pointed out, the 2nd respondent could not have referred to Section 34 of the Act, as the 2nd respondent did not conduct any enquiry in the matter. Therefore, the reference to Section 34 appears to be only to mislead the party.

12.Hence for all the above reasons, the Writ petition is allowed and the check-slip dated 26.02.2015 is set aside and the 2nd respondent is directed to accept the decree for registration and complete the registration process effecting necessary and consequential entries in the Book No.1 by deleting the encumbrance as requested by the petitioner and as ordered by the Civil Court within a period of three weeks from the date of receipt of copy of this order. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssd

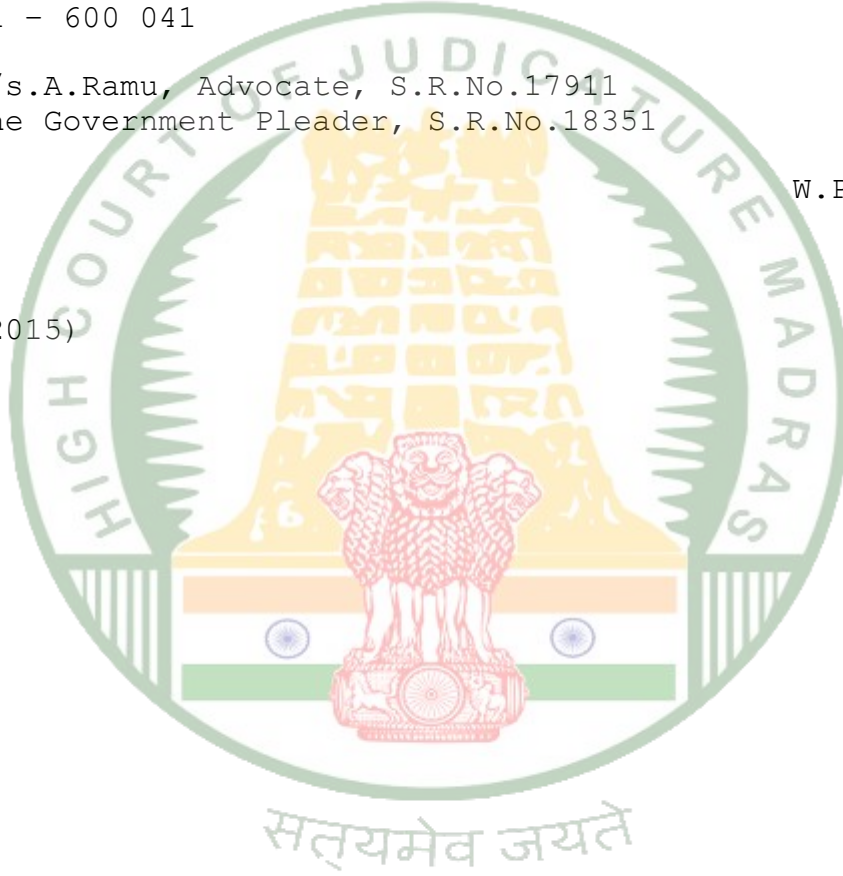
To

1. The District Registrar
Office of the District Registrar
of Chennai South, Jeans Road,
Saidapet, Chennai - 600 015
2. The Sub Registrar,
Office of the Sub-Registrar
of Neelangari, Neelangarai
Chennai - 600 041

+1cc to M/s.A.Ramu, Advocate, S.R.No.17911
+1cc to the Government Pleader, S.R.No.18351

W.P.No.9352 of 2015

SAI (CO)
CA(15/04/2015)



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