

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.12308 of 2016

Esaivani

... Petitioner

Vs.

1.The Sub Registrar,
Office of Registration Department,
Aval Poondurai,
Erode District.

2.Jeyabal

3.Thiyagarajan

4.Minor Naveen,
rep. by his guardian and
father Govindadamy

... Respondents

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of certiorarified mandamus to call for the records relating to the impugned order dated 18.3.2016 passed by the first respondent returning the final decree passed in I.A.No.71 of 2007 in O.S.No.590 of 1996 on the file of the II Additional District Munsif Court, Erode, presented by the petitioner for registration and quash the same and consequently, direct the first respondent to register the same within the time fixed by this Court.

For Petitioner : Mr.I.C.Vasudevan

For Respondents : Mr.R.A.S.Senthil Vel,
Addl. Govt. Pleader,
for R.1

ORDER

The petitioner has come up with the present writ petition, challenging the order of the first respondent dated 18.3.2016 in returning the final decree passed in I.A.No.71 of 2007 in O.S.No.590 of 1996 on the file of the II Additional District Munsif Court, Erode, presented by her for registration

and consequently, to direct the first respondent to register the same within the time fixed by this Court.

2. It is the case of the petitioner that she filed a suit in O.S.No.590 of 1996 as against the respondents 2 to 4 before the II Additional District Munsif Court, Erode, for partition and separate possession. In the said suit, though a final decree was passed in I.A.No.71 of 2007 on 4.8.2008, the same was engrossed in the stamp paper only on 21.12.2015 and the petitioner got the certified copy of the same on 29.1.2016. Thereafter, she presented the same before the first respondent on 18.3.2016 i.e., within four months from the date of enforceability of the order. But, the first respondent, by his order dated 18.3.2016, returned the said decree without registering the same, on the ground that since the final decree was passed on 4.8.2008, it was barred by limitation. As per the proviso to Section 23 of the Indian Registration Act, the petitioner should present the final decree within four months from the date of receipt of the order and hence, the order passed by the first respondent is highly arbitrary, against law and against the principles of natural justice. Therefore, challenging the same, the present writ petition has been filed.

3. Today, when the matter was taken up for hearing, learned counsel appearing for the petitioner submitted that in an identical issue, the Madurai Bench of this Court in W.P (MD) No.10456 of 2014 - M/s.Laxmi Selvaraj Tex v. The Inspector General of Registration, following the decision of the Division Bench of this Court dated 23.3.2007 made in W.A.No.2395 of 2003 in the case of A.K.Gnanasankar v. The Joint II Sub Registrar, Cuddalore- 2, quashed the order passed by the third respondent therein and gave a direction to register the decree. The relevant portion of the said order is usefully extracted hereunder:-

" 15. ... the proviso appended to section 23 makes it clear that a copy of decree or order may be presented within four months from the day on which it was made or whether it is appealable within four months from the date on which it becomes final. It is not in dispute that unless the parties to the proceedings deposit the required stamps, final decree cannot be drafted. Taking into consideration the difficulties expressed, ultimately the court concerned accepted the case of the appellant / petitioner / first defendant and extended the time for depositing the required stamps. In view of the said order, which we have already adverted to, we are of the view that the appellant / petitioner has satisfied the condition prescribed in Section 23 of the Registration Act and we are unable to accept the

contrary conclusion arrived at by the learned Judge. When there is no dispute that the certified copy of the final decree will not be issued unless it is engrossed on the required stamp papers and in view of the fact that after getting certified copy of the decree duly engrossed on the stamps the petitioner presented the same before the respondent within the period prescribed in section 23 of the Registration Act, we are of the view that the respondent ought to have registered the document, if the same is otherwise in order."

Even in this case also, I find that the certified copy of the decree was made ready only on 21.12.2015 and the petitioner got the same on 29.1.2016 and thereafter, on 18.3.2016, i.e., within four months from the date of receipt of the certified copy of the decree, the petitioner approached the first respondent for registering the same. Therefore, I am of the opinion that there is no justification in the order passed by the first respondent dated 18.3.2016 in returning the final decree passed in I.A.No.71 of 2007 in O.S.No.590 of 1996 on the file of the II Additional District Munsif Court, Erode, presented by the petitioner for registration and the same is liable to be set aside.

4. Accordingly, the order of the first respondent dated 18.3.2016 is set aside and the writ petition is allowed. The first respondent is directed to accept the certified copy of the final decree dated 4.8.2008 made in I.A.No.71 of 2007 in O.S.No.590 of 1996 and register the same, if it is otherwise in order, within a period of two weeks from the date of receipt of a copy of this order. No costs.

sbi

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Sub Registrar,
Office of Registration Department,
Aval Poondurai, Erode District.

+ 1 cc to Mr.I.C.Vasudevan, Advocate Sr 21054
+ 1 cc to The Govt.Pleader, Sr 20980

KR/22/4/16

W.P.No.12308 of 2016