

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2016

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.16569 of 2016 and

W.M.P.No.14306 of 2016

Arun Kumar

...Petitioner

-Vs-

1. The Inspector General of
Registration No.100 Santhome High Road
Chennai 28

2 The Sub-Registrar
Suramangalam Salem District

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the entire records which culminated in the order bearing reference No. 171 of 2016 dt 15.4.2016 on the file of the 2nd respondent quash the same and consequently direct the 2nd respondent to forthwith register the decree and judgment dt 17.11.2014 passed in O.S. No. 715 of 2014 in favour of the petitioner passed by the Learned Principal District Munsif Salem without insisting the period of limitation enumerated in Section 23 of the Tamil Nadu Registration Act in the light of the decision rendered by the Division Bench of this Court in (A. K. Gnana Sekar vs. Joint II Sub Registrar Cuddalore) 2007 (2) TCJ 68 (Mad-DB).

For Petitioner : Mr.T.Chellapandian
for Mr.S.Mani

For Respondents : Mr.S.Pattabiraman, Govt. Advocate

O R D E R

By consent, this Writ Petition is taken up for final disposal.

2. The petitioner in the affidavit filed in support of the writ petition would aver among other things that he is one of the beneficiaries of the settlement deed dated 01.03.2010 (document No.1538 of 2010) on the file of the Sub-Registrar, Suramangalam, Salem District executed by Mr.M.Govindasamy, son of Mr.Muthusamy, settlor, who is none other than his grand father. As per the said settlement deed, the properties morefully described as items A (3 items), B and C Schedule were settled in favour of the beneficiaries of the settlement deed which includes the petitioner. The terms of the settlement also indicate that the settlor did not reserve his right to cancel the settlement deed in future. The claim of the petitioner is that from the date of execution of the settlement deed, the settlees including the petitioner were in absolute, peaceful and uninterrupted possession of the properties. However, the settlor has executed a deed of cancellation dated 31.01.2014 which was registered as document No. 569 of 2014 on the file of the Sub-Registrar, Suramangalam, Salem District cancelling the deed of settlement dated 01.03.2010. The petitioner aggrieved by the said act of the settlor along with other beneficiaries filed O.S.No.715 of 2014 on the file of the learned Principal District Munsif, Salem praying for declaration to declare that the deed of cancellation dated 31.01.2014 executed by Mr.M.Govindasamy, as null and void and for other consequential reliefs. The suit came to be decreed on 17.11.2014 and the copies of the same were applied and made ready and delivered to the petitioner on 24.04.2015. The petitioner waited for sometime to find out as to whether the aggrieved parties would prefer an appeal and having waited till January 2016, he found that no appeal has been made challenging the Judgment and Decree. Therefore, he approached the 2nd respondent to register the said Judgment and Decree and vide impugned order dated 15.04.2016, it was rejected on the ground that it is barred by time.

3. The learned counsel for the petitioner has drawn the attention of this Court to the order dated 07.03.2016 made in W.P.No.8247 of 2016 which inturn places reliance on the Judgment of this Court reported in 2007 (2) TCJ 68 (Mad-DB)-A.K.Gnanasankar Vs. The Joint II Sub Registrar, Cuddalore-2 wherein this Court had directed the 2nd respondent, who is also the 2nd respondent in this writ petition to give an opportunity of personal hearing to the petitioner and other parties and pass orders accordingly and prays for appropriate orders.

4. Per contra, Mr.S.Pattabiraman, learned Government Advocate, who accepts notice on behalf of the respondents 1 and 2 would submit that in view of the factual aspect as well as the legal position, the second respondent has rightly rejected the

request of the petitioner and his representation on the ground that the registration of the said Judgment and Decree is barred by time and prays for dismissal of the writ petition.

5. This Court has carefully considered the rival submissions and also perused the materials on record.

6. A perusal of the Judgment dated 17.11.2014 made in O.S.No.715 of 2014 on the file of the Court of Principal District Munsif, Salem would disclose that the copy application was made on 20.11.2014, stamps were collected on 13.04.2015 and it was made ready and delivered on 24.4.2015 and therefore, the petitioner having waited for one month to register the Decree and Judgment. However, he presented it during February 2016 and it is submitted by the learned counsel for the petitioner that since the parties are none other than the petitioner's son, grand son and grand father, the petitioner was waiting whether the appeal was likely to be filed. Since no steps have been taken, he has presented the said Judgment and Decree for registration during the first week of February 2016. It is relevant to extract Section 25 of the Registration Act which reads as follows:

"25. Provision where delay in presentation is unavoidable:-

(i) If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in India is not presented for registration till after the expiration of the time herein before prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration fee, such document shall be accepted for registration."

7. The scope of Section 25 of the Registration Act came up for consideration in 2011(2) MLJ 57-Rasammal Vs. Pauline Edwin and others and it is relevant to extract paragraph No.93:

"93. In this connection, it is to be stated that Section 25 of the Registration Act provides a exception, viz., that if owing to urgent necessity or unavoidable accident, a document has not presented till after the period of four months the Registrar, in cases where the delay in presentation does not exceed four months, may direct that such document shall be

accepted for registration. In a case, the document on which the Defendant claims that it has been presented for Registration beyond four months from the date of his execution, the burden, therefore, heavily lies on the defendant to establish that the requirement of law has been fulfilled, before it can be assumed by any Court that the document has been registered within the meaning of Section 25 of the Indian Registration Act. One cannot say that a presumption must be raised in favour of the defendant under Section 114 of the Indian Evidence Act, in view of the Registration Act shows that the District Registrar has the power to condone the delay in the presentation of a document for registration, for a period of four months after the lapse of the period of four months from the date of execution of the said document and he is competent and authorised to exercise his discretion in this matter by levying a appropriate fine thereto. There is nothing in the Registration Act to prevent a party from applying to the Registrar to excuse the delay, if the Registrar condones the delay, then in the words of Section 25 he may direct that such document may be accepted for registration. In short, the Registrar has given the discretion under Section 25 of the Act to decide whether there has been an urgent necessity or unavoidable delay which led to the delay in presentation of the document for registration. Certainly, it is not the domain of the Civil Court in a suit filed under Section 77 of the Act to sit an Appeal over its decision in such discretionary matter, when no such appeal is allowed by the provisions of the Act as per decision in Abdul Ghafoor v. Ganga Bux Singh (1950) 5 D.L.R. (AII) 340."

8. As per the ratio laid down in the said decision, the District Registrar has power to condone the delay of presentation of the document for registration for a period of four months from the date of execution of the said document and he is competent and authorised to exercise his discretion and there is nothing in the Registration Act to prevent a party from applying to the Registrar to excuse the delay even after the period of four months.

9. In the light of the above facts and circumstances, this Court permits the petitioner to approach the District Registrar for condoning the delay in presenting the Judgment and Decree dated 17.11.2014 on the file of learned Principal District Munsif, Salem for condonation of delay by submitting an application within two weeks, from the date of receipt of a copy

of this order. The District Registrar, Salem on receipt of the application shall entertain the same, if the papers are otherwise in order and pass orders in accordance with law and in the light of the observations made in the above Judgment within a further period of six weeks, thereafter and communicate the decision taken, to the petitioner.

10. This Writ Petition is disposed of accordingly. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Inspector General of Registration,
No.100 Santhome High Road,
Chennai 28.
- 2 The Sub Registrar
Suramangalam Salem District
- 3 District Registrar,
Suramangalam,
Salem.

+1cc to the Government Pleader sr.30200
+1cc to M/S.S.Mani, Advocate Sr.29968

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W.P.No.16569 of 2016

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