

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2016

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.25061/2016

1.K.Saroja
2.R.Kalaivani
3.K.Kannan
4.K.Sekar

Petitioners

Versus

1.The Inspector General of Registration
No.100, Santhome High Road,
Chennai 600028.

2.The Sub Registrar,
Adyar Sub-Registrar Office
Chennai 600 020.

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for a writ of certiorarified mandamus calling for the records on the file of the 2nd respondent vide proceedings No.197/2016 dated 08.04.2016 and to quash the same as illegal and further for a direction to direct the respondents to register the decree in OS.No.5005/2013 on the file of the II Assistant City Civil Court, Chennai, dated 03.02.2014 presented before the 2nd respondent on 16.07.2014.

For Petitioners: Mr.J.Ashok

For R1 & R2 : Mr.R.Vijayakumar, AGP

ORDER

By consent, the writ petition is taken up for final disposal.

2 The petitioners came to be in possession and enjoyment of the property bearing Door No.27, New No.52, First Street Extension, Parameshwari Nagar, Urur Village, in RS.Nos.72 and 73, part of TS.No.22, Adyar, Chennai-20, and since there was a rival claim, the petitioners filed OS.No.5005/2013 on the file of the Court of II Assistant City Civil Court Judge, Chennai, against Thiru M.A.Narasimhan, to declare that they have got prescriptive right by way of

adverse possession of the suit property and the suit was decreed as ex parte on 03.02.2014 and according to the petitioners, no steps have been taken either to set aside the ex-parte decree or to file an appeal challenging the same and it has become final. The application for getting the certified copy of the judgment and decree was made on 05.02.2014 and it was made ready and delivered on 03.03.2014 and it was presented for registration on 16.07.2014 before the 2nd respondent and vide impugned proceedings dated 08.04.2016, it was rejected by placing reliance upon the order of this Court dated 11.03.2016 in WP.No.743/2016 [Rangammal V. The Sub Registrar, Mettupalayam].

3 The learned counsel for the petitioners has drawn the attention of this Court to sections 23 and 25 of the Registration Act, 1908 and would submit that as per section 23, a document should be presented within four months from the date of execution and as per section 25, if the delay in presentation does not exceed four months, the Registrar is having power to condone the same if it is owing to urgent necessity or unavoidable accident. The learned counsel for the petitioners has also drawn the attention of this Court to paragraphs 5, 8 and 9 of the affidavit filed in support of this writ petition and would submit that due to financial crunch and ill-health of the petitioners' mother and also on account of the fact that at the time of white washing, the judgment and decree got misplaced and the documents in question could not be presented on time. The learned counsel has further invited the attention of this Court to the order dated 31.03.2015 made in WP.No.9352/2015 [P.Vijayan Vs. District Registrar, Chennai South, Chennai-15 and another] and would submit that in the above said judgment, reliance was placed on the decision reported in 2007 [2] TCJ 68 [Madras] [A.K.Gnanasekar Vs. The Joint II Sub Registrar, Cuddalore-2], wherein it has been held that the limitation prescribed for presenting the document does not apply to a decree coupled with the settled legal position and in the case on hand, considering the fact that the petitioners have given proper explanation and reasons for the delay, there may not be any impediment on the part of the 2nd respondent to register the said document and return the same and therefore, prays for appropriate orders.

4 Per contra, Mr.R.Vijayakumar, learned Additional Government Pleader who accepts notice on behalf of the respondents would submit that since the petitioners have not given adequate and proper explanation for the delay, the reasons assigned in the impugned order are sustainable and prays for dismissal of the writ petition.

5 This Court considered the rival submissions and also perused the materials placed before it.

6 The judgment and decree in OS.No.5005/2013 were made ready and delivered on 03.03.2014 and according to the petitioners, it could not be presented on time on account of the fact of ill-health of their mother coupled with the fact that at the time of white washing and repairing the premises, the judgment and decree was misplaced and after the said documents have been traced out, it was presented for registration on 16.07.2014.

7 The 2nd respondent has placed reliance upon the order dated 11.03.2016 made in WP.No.743/2016 to deny the relief sought for by the petitioners. In the considered opinion of this Court, the facts of the said case would disclose that the time limit prescribed for execution of the decree is 12 years and admittedly, the decree was presented for registration after the expiry of 12 years and in the light of the said fact, it has been held that the delay has not been properly explained. In the case on hand, the delay is about four months and off and since the delay has been properly explained, the 2nd respondent ought to have exercised his discretion u/s.25 of the Registration Act, 1908.

8 In the result, the writ petition is partly allowed and the impugned order of the 2nd respondent vide proceedings No.197/2016 dated 08.04.2016 is set aside and the petitioners are at liberty to produce the judgment and decree dated 03.02.2014 in OS.No.5005/2014 on the file of the Court of II Assistant City Civil Court, Chennai, within a period of two weeks from the date of receipt of a copy of this order and the 2nd respondent, on receipt of the same, shall entertain the same, if the papers are otherwise in order and pass orders in accordance with law, in the light of the observations made in this writ petition within a further period of two weeks thereafter and communicate the decision taken, to the petitioners. No costs. सत्यमेव जयते

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

AP

To

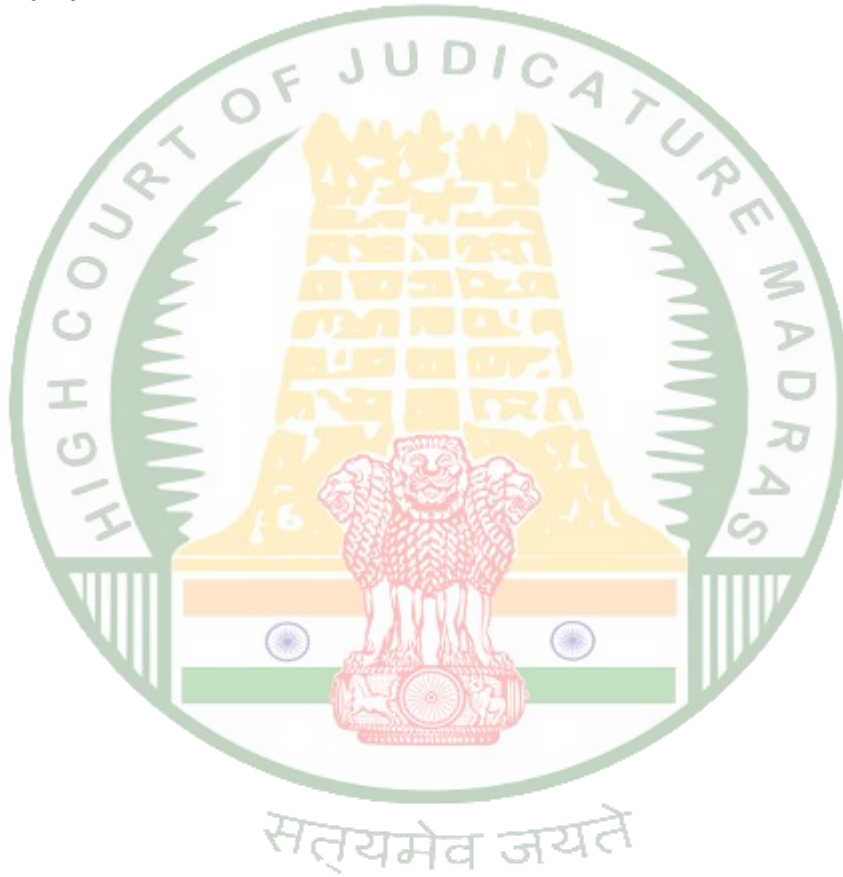
1.The Inspector General of Registration
No.100, Santhome High Road,
Chennai-600028.

2.The Sub Registrar,
Adyar Sub Registrar Office
Chennai 600 020.

1 cc to M/s.J.Ashok, Advocate, sr.41456
1 cc to Government Pleader, sr.41514

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ad co
kra 04.08.2016



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