

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.02.2016
Date of verdict : 11.03.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.743 of 2016

Rangammal

... Petitioner

Vs.

The Sub Registrar,
O/o.The Sub Registrar,
Mettupalayam,
Coimbatore District.

.... Respondent

Writ Petition filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus to call for the records relating to the impugned order dated in Check Memo No. 1/2015 dated 16.11.2015 passed by the respondent, quash the same and consequently direct the respondent to carry out the corrections in his records as per the decree dated 19.9.2002 made in O.S.No.161 of 2001 passed by the learned District Munsif of Mettupalayam relating to the registration of the unilateral cancellation of the settlement deed dated 4.1.1995 (Doc.No.40/1995) in compliance with Sec. 31 (2) of the Specific Relief Act, 1963 by considering the petitioner's representation dated 16.11.2015.

For Petitioner : Mr.N.Manoharan

For Respondent : Mr.S.Pattabiraman,
Government Advocate

WEB COPY
ORDER

The petitioner has come up with the present writ petition, challenging the impugned order in Check Memo No.1/2015 dated 16.11.2015 passed by the respondent and consequently, to direct the respondent to carry out the corrections in his records as per the decree dated 19.9.2002 made in O.S.No.161 of 2001 passed by the learned District Munsif of Mettupalayam

relating to the registration of the unilateral cancellation of the settlement deed dated 4.1.1995 (Doc.No.40/1995) in compliance with Section 31(2) of the Specific Relief Act, 1963 by considering her representation dated 16.11.2015.

2. The case of the petitioner, in brief, is as follows:-

(a) The petitioner's father Ranga Navidan had executed a settlement deed dated 30.11.1992 vide document No.3646/1992 in the name of her son Rathinasamy in respect of the property measuring to an extent of 3.00 acres bearing S.F.No.365, Karamadai Village. Subsequently, her father unilaterally cancelled the said settlement deed vide document No.40/1995 dated 4.1.1995. The petitioner's son Rathinasamy died on 18.7.2000 leaving behind him, his father Velappan, his mother, the petitioner herein, his wife Kanmani and their children Akilandeswari and Sivasamy. Subsequently, the petitioner's daughter in law Kanmani also died on 9.4.2006.

(b) The petitioner came to know about the deed of cancellation dated 4.1.1995 only after the death of her son on 18.7.2000. Immediately, she filed a suit in O.S.No.161 of 2001 before the learned District Munsif, Mettupalayam for declaration, declaring that the cancellation of the settlement deed under document No.40/1995 dated 4.1.1995 is null and void and for consequential permanent injunction restraining her father from in any manner alienating or creating encumbrance over the property in question. The said suit was filed on 3.9.2001 and decreed on 19.9.2002 as prayed for.

(c) The respondent herein was added as second defendant in the said suit and therefore, the respondent was fully aware of the decree passed in the said suit. But the respondent has not taken any steps to cancel the entries relating to the registration of the deed of cancellation dated 4.1.1995. In view of the failure on the part of the respondent to carry out necessary corrections in the records available in the office of the registration department, some third parties have made an attempt to create the records in the name of her deceased son Rathinasamy. Since an unilateral cancellation of the settlement deed dated 4.1.1995 vide document No.40/1995 had been declared as null and void, the petitioner submitted the decree for registration on 16.11.2015. But, the respondent has refused to receive and register the decree dated 19.9.2002 under Check Memo No.1/2015 dated 16.11.2015 on the ground of limitation. Hence, challenging the same, the petitioner has come up with the present writ petition.

3. Learned counsel appearing for the petitioner submitted that the petitioner's father had executed a settlement deed in favour of the petitioner's son Rathinasamy in respect of the property measuring to an extent of 3.00 acres bearing S.F.No.365, Karamadai Village. Subsequently, without the knowledge of the petitioner, her father unilaterally cancelled the said settlement deed vide document No.40/1995 dated 4.1.1995. Hence, the petitioner filed a suit in O.S.No.161 of 2001, showing her father Ranga Navidan as first defendant and the respondent herein as the second defendant. The said suit was decreed on 19.9.2002 as prayed for. Since the respondent herein was a party to the said suit, he ought to have carried out the necessary corrections in the records available in the office of the registration department as per the decree dated 19.9.2002 made in O.S.No.161 of 2001 wherein the cancellation of the settlement deed unilaterally executed by her father was declared as null and void. In this regard, learned counsel appearing for the petitioner invited the attention of this Court to Section 31 (2) of the Specific Relief Act, 1963, which reads as follows:-

" 31. When cancellation may be ordered:

(1) ...

(2) If the instrument has been registered under the Indian Registration Act, 1908, the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation."

As per Section 31(2) of the Specific Relief Act, 1963, if an instrument has been registered under the Indian Registration Act, 1908, the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation. In the instant case, in spite of the fact that the respondent herein has been arrayed as second respondent in the said suit, he has not chosen to comply with Section 31(2) of the Specific Relief Act.

4. That apart, learned counsel appearing for the petitioner has also invited the attention of this Court to Rule 89 of the Civil Rules of Practice, which reads as follows:-

(89) Where any instrument affecting immovable property registered under the Indian Registration Act, 1908, is set aside, discharged or cancelled by an order or decree of a civil suit, the court shall forthwith cause a copy of the decree or order drawn up

on plainpaper to be forwarded to the registering officer; provided where such order or decree is modified, set aside or reversed, copies of further orders and decrees shall also be forwarded to the registering officer.

By relying on the said rule, learned counsel appearing for the petitioner submitted that this Court may direct the Registrar to comply with Section 31(2) of the Specific Relief Act or in alternative to direct the learned District Munsif, Mettupalayam, to send a copy of the decree as per Rule 89 of the Civil Rules of Practice to the respondent herein.

5. I have heard the learned Government Advocate appearing for the respondent.

6. Keeping the submissions made on either side, I have carefully gone through the entire materials available on record.

7. On a perusal of the materials available on record, I find that the impugned order has been passed only on the ground of limitation. A decree was passed in the year 2002 itself i.e., on 19.9.2002. Now, the petitioner has approached the respondent to register the decree after a lapse of 13 years. As per Section 23 of the Indian Registration Act, 1908, subject to the provisions contained in Sections 24, 25 and 26, no document other than a Will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution. Thus, Section 23 of the Indian Registration Act, 1908, mandates that a decree should be registered within four months from the date of decree. Now, at this length of time, I do not find any justification in the submission made by the learned counsel appearing for the petitioner that a direction should be given to the respondent herein to cancel the entries relating to the registration of the deed of cancellation dated 4.1.1995. Further more, Section 31(2) of the Specific Relief Act, 1963 says that the Court shall send a copy of the decree to the officer in whose office the instrument has been so registered. In the instant case, the District Munsif Court, Mettupalayam has failed to send the same. The petitioner herein has also not taken any steps to send the decree copy to the second defendant in that suit / the respondent herein from the Court. Only in the event of the Courts send a copy of the decree, the officer in whose office the instrument has been registered, could note on the copy of the instrument contained in his books about the fact of cancellation. In the instant case, the decree has not been sent by the Court. Therefore, now, the petitioner cannot say that the respondent has not at all complied with Section 31(2) of the

Specific Relief Act, 1963. Similarly, I am not inclined to accept the submission made by the learned counsel appearing for the petitioner based on Rule 89 of the Civil Rules of Practice, stating that if any instrument affecting immovable property registered under the Indian Registration Act, 1908, is set aside, discharged or cancelled by an order or decree of a civil suit, the court shall forthwith send a copy of the decree to the registering officer. Even on this ground also, I am of the opinion, since the limitation period for executing the decree itself had expired, now, no direction could be given as prayed for.

8. Thus, for all the reasons stated above, I am of the opinion that the petitioner is not entitled to the relief as prayed for in this writ petition.

9. In fine, the present writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

sbi

To

The Sub Registrar,
O/o.The Sub Registrar,
Mettupalayam,
Coimbatore District.

+1cc to Mr.N.Manoharan, Advocate, S.R.No.15958
+1cc to the Government Pleader, S.R.No.16046

W.P.No.743 of 2016

ALA(CO)
CA(31/03/2016)

WEB COPY