

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.8247 of 2016

1. G.Mudiyarasan
2. J.Arun Kumar

.. Petitioners

Vs.

1. The Inspector General of Registration,
No.100, Santhome High Road,
Chennai-600 028.
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 Mandamus to direct the second respondent to register the decree and judgment, dated 17.11.2014 passed in O.S.No.715 of 2014 in favour of the petitioners, by the learned Principal District Munsif, Salem, order copy made ready on 24.04.2015, without insisting on the period of limitation enumerated in Section 23 of the Registration Act, in the light of the order dated 31.03.2015 passed by this Court in W.P.No.9352 of 2015 (B.Vijayan Vs. The District Registrar, Office of the District Registrar of Chennai South, Jeans Road, Saidapet, Chennai-600 015 and another) and by considering the representation, dated 08.02.2016 of the petitioners, within a specified period.

For Petitioners : Mr.S.Mani

For Respondents : Mr.V.Jayaprakash Narayanan,
Spl.G.P.

ORDER

The petitioners have filed this Writ Petition praying for issuance of a Writ of Mandamus to direct the second respondent to register the judgment and decree, dated 17.11.2014 passed in O.S.No.715 of 2014 in favour of the petitioners, by the learned Principal District Munsif, Salem, order copy made ready on 24.04.2015, without insisting on the period of limitation enumerated in Section 23 of the Registration Act, in the light

of the order dated 31.03.2015 passed by this Court in W.P.No.9352 of 2015 (B.Vijayan Vs. The District Registrar, Office of the District Registrar of Chennai South, Jeans Road, Saidapet, Chennai-600 015 and another) and by considering the representation, dated 08.02.2016 of the petitioners, within a specified period.

2. It is the case of the petitioners that they are the settlees in respect of the settlement deed, dated 01.03.2010 executed in their favour by the settlor, i.e. the father of the first petitioner and grandfather of the second petitioner, i.e. M.Govindasamy, which was registered as Document No.1538 of 2010 on the file of the second respondent. Out of love and affection the settlor had towards the petitioners, he executed the said settlement deed, whereby he settled the properties covered in item A (3 items) and B and C schedule in favour of the petitioners. The recitals in the settlement deed clearly indicates that the settlor, settlees, grants, permits and transfers the properties covered therein by way of absolute irrevocable settlement, which means that the settlor did not reserve his right to cancel the settlement deed in future. From the date of execution of the said settlement deed, the petitioners/settlees are in absolute, peaceful and uninterrupted possession of the properties covered in the said settlement deed. It is the grievance of the petitioners that without notice to the petitioners, the settlor executed a Deed of Cancellation, dated 31.01.2014, registered as Document No.569 of 2014 on the file of the second respondent, thereby he cancelled the settlement deed, dated 01.03.2010 executed in favour of the petitioners. Since the unilateral cancellation deed is invalid and impermissible as per law, the petitioners filed O.S.No.715 of 2014 before the Principal District Munsif, Salem, for declaration that the Deed of Cancellation, dated 31.01.2014 executed by the settlor-M.Govindasamy (defendant therein) is not valid and not binding on the plaintiffs and also for a consequential permanent injunction restraining the defendant therein (settlor-Govindasamy) from alienating or encumbering the suit properties. The defendant-settlor was set ex-parte and the said suit in O.S.No.715 of 2014 was decreed as prayed for, by judgment and decree, dated 17.11.2014. The petitioners got the copy of the said judgment and decree only on 24.04.2015. It is the case of the petitioners that neither the said ex-parte was set aside by filing application before the trial Court, nor appeal was filed before the appellate Court, thereby, the said judgment and decree had become final.

3. It is the further case of the petitioners that they have approached the second respondent in the first week of February 2016 to register the said judgment and decree so as to negate the encumbrance shown over the properties in question by the said cancellation deed. The second respondent refused to

register the same on the ground that they ought to have presented the said judgment and decree within a period of four months as contemplated under Section 23 of the Registration Act, i.e. on or before 23.08.2015 based on calculation of four months from 24.04.2015 being the date of receipt of the copy of the said judgment and decree. This refusal is only oral and not written by the second respondent. Though the petitioner relies on various provisions of the Registration Act and the Tamil Nadu Registration Rules, it is the case of the petitioners that no payment of registration fee is required and there is no limitation for registration of the said judgment and decree. Since the said judgment and decree are record of Court, it can be registered at any time. In spite of the petitioners' representation, dated 08.02.2016 to the second respondent, with a copy marked to the first respondent, the same was not considered. Hence, the petitioners have filed this Writ Petition for the above relief.

4. Heard both sides.

5. When the Writ Petition is taken up for consideration, learned counsel for the petitioners relied on a judgment of this Court in W.P.No.9352 of 2015 (B.Vijayan Vs. The District Registrar, Office of the District Registrar, Chennai South, Jeans Road, Saidapet, Chennai-600 015 and another), dated 31.03.2015, wherein, this Court observed as under in paragraph 8:

"8. It is noteworthy to point out that in the case of A.K.Gnanasekar (A.K.Gananasekar Vs. The Joint-2 Sub-Registrar, Cuddalore-2), reported in 2007 (2) TCJ 68, wherein, this Court has held that limitation prescribed for presenting documents does not apply to decree, as decree is a permanent record of Court and to register the case, no limitation can be prescribed."

6. The dictum laid down by this Court in the order, dated 31.03.2015 in W.P.No.9352 of 2015, based on the judgment of the Division Bench of this Court, reported in 2007 (2) TCJ 68 (cited supra), is squarely applicable to the facts of the present case. In my considered view, since there is an ex-parte decree and having waited for some time for filing of any appeal preferred till the period of expiry of the period to file appeal, the petitioners have approached the second respondent to register the said judgment and decree, dated 17.11.2014 passed in O.S.No.715 of 2014 and therefore, the respondents cannot deny to register the said judgment and decree.

7. At this stage, the learned Special Government Pleader appearing for the respondents submitted that since the decree is an ex-parte decree, whether the defendant-settlor has filed an

application to set aside the said ex-parte decree and whether the said ex-parte decree was already set aside or not, is not known to the respondents, and therefore, it would lead to problem if the said ex-parte is registered before the Registrar. Hence, he submitted that the mandamus as prayed for by the petitioners may not be issued.

8. In view of the above submissions made on either side, this Court is not inclined to give any positive direction, but directs the second respondent to consider the said representation, dated 08.02.2016 preferred by the petitioners, by conducting enquiry and after giving an opportunity of personal hearing to the petitioners and other necessary parties including the settlor, the second respondent is directed to pass appropriate orders and dispose of the said representation, on merits and in accordance with law, within a period of two weeks from the date of receipt of a copy of this order, in the light of the order of this Court, dated 31.03.2015 in W.P.No.9352 of 2015 (cited supra) and the judgment of the Division Bench of this Court, reported in 2007 (2) TCJ 68 (cited supra).

9. With the above observations and directions, the Writ Petition is disposed of. No costs.

cs

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

TO

1. The Inspector General of Registration,
No.100, Santhome High Road,
Chennai-600 028.

2. The Sub-Registrar,
Suramangalam, Salem District.

+ 1 CC TO MR.S.MANI, ADVOCATE SR 14519

+ 1 CC TO THE GOVT.PLEADER, SR 14661

KR/16/3/16

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