



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 27.07.2016
CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

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W.P (MD) No.5955 OF 2014

S.Kannan

.. Petitioner

.vs.

The Sub-Registrar,
Joint No.II Sub-Registrar Office,
Tirunelveli Town.

.. Respondent.

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the respondent to register the Document namely the decree dated 30.03.2011 passed by the First Additional District Munsif's Court, Tirunelveli, in O.S.No.714 of 2010 and pass such further orders as this Court may deem fit and proper.

For Petitioner	:Mr.P.T.Ramesh Raja
For Respondent	:Mr.Aayiram K Selvakumar Govt.Advocate.

ORDER

The petitioner has filed this Writ Petition for a Writ of Mandamus to direct the respondent to register the Document namely the decree dated 30.03.2011 passed by the First Additional District Munsif's Court, Tirunelveli, in O.S.No.714 of 2010 and pass such further orders as this Court may deem fit and proper.

2. Heard the learned Counsel appearing for the petitioner and the learned Government Advocate appearing for the respondent.

3. The learned Counsel appearing for the petitioner submits that the petitioner is the owner of certain lands in Survey Nos.314/1, 315/1A, 328/2A, 324/2B, 325/1, 325/1C, 326./1A and 326/1C and that he is in possession and enjoyment of the same. According to the petitioner one Murugan, S/o.Kumarasamy, made an attempt to disturb his possession and the petitioner was therefore constrained to file a suit in O.S.No.714 of 2010 on the file of the First Additional District Munsif Court, Tirunelveli, seeking the relief of declaration and permanent injunction. It is further submitted that the said suit was decreed on 30.03.2011 and that it has become final. He further submits that he produced the decree after obtaining the certified copy to the respondent for registering the same under Section 18 of the Registration Act.

Since, the respondent has refused to register the same, the petitioner is before this Court.

4. The respondent filed a counter inter-alia contending that the petitioner did not present the document for registration within the time limit stipulated under Section 23 of the Registration Act. Decree of a Civil Court is not required to be registered under Section 17 of Registration Act. This Court for obvious reasons entertained a doubt and wanted to rule out the possibility of collusion in getting a decree especially having regard to the fact that the decree is an *ex parte* decree. Hence, this Court earlier, has directed the learned Government Advocate appearing for the respondent to verify whether the revenue records relating to the properties mentioned in the suit and in this writ petition stand either in the name of petitioner or in the name of the defendant in the suit against whom the petitioner had obtained the *ex parte* decree in O.S.No.714 of 2010.

5. The learned Government Advocate on the basis of records made a statement before this Court that the revenue records for the properties referred to in the suit and which are also the subject matter of the writ petition do not stand either in the name of the petitioner or in the name of the defendant in the suit filed by the petitioner in O.S.No.714 of 2010.

6. Section 23 of the Registration Act prescribes the time limit of four months to present the document for registration. Proviso to Section 23 of the Registration Act stipulates that in the case of the decree, the four months period shall be calculated from the date on which the decree becomes final. In other words, the proviso excludes the period which is prescribed for filing the appeal as against the decree. In the present case, the *ex parte* decree is dated 30.03.2011. The petitioner has not given the date on which the copy application was made and the date on which the certified copy of the decree was delivered. The petitioner has given a representation on 27.03.2014 wherein he has requested the Sub Registrar to register the document. Though the representation dated 27.03.2014 refers to the fact that the petitioner had earlier made an attempt to register the document and the respondent refused to register the sale deed without assigning any reason, the relevant facts are not disclosed either in the representation or in the affidavit filed in support of the writ petition. In the counter affidavit filed by the respondent, the case of the petitioner that the decree was presented for registration earlier has been specifically denied. In such circumstances, I am in full agreement with the contention of the respondent that the document cannot be registered on account of the limitation prescribed under Section 23 of the Act.

7. It was argued by the learned counsel for the petitioner that the decree is merely a declaration of status and it is a permanent record of Court. This contention has no merit in view of the specific provision under Section 23 of the Registration



Act. Further, there is no logic in the argument if the same is tested with reference to various other documents. Secondly, this Court is conscious of the serious implications by the registration of decree or order of Civil Court which is either appealable or has not attained finality. It is also possible for any one to get a decree from Civil Court either by adopting fraud or collusion. Hence, it is always necessary and important that the person who seeks to register a decree of Civil Court may be asked to prove that the decree has become final and that it is not collusive. In the instant case, it is brought to the notice of this Court that neither the petitioner nor the defendant in the suit has got patta in respect of the suit properties. But nevertheless registration of such decree will lead to further complication as the same will be shown as an encumbrance in respect of the properties which are the subject matter of the suit. The registration of a decree, as in the present case, will cause serious inconvenience / injury to the real owner who is really a third party to the suit, when he wants to deal with the property. Taking advantage of the registration of a collusive and fraudulent decree, the person who has obtained the decree, may also persuade the revenue officials for mutation of revenue records and grant of patta in his favour by resorting to proviso to Section 14 of the Tamil Nadu Patta Passbook Act. In order to protect the interest of true owners, it is necessary for the registering authority to hold an enquiry in the case of presentation of a decree or order of Civil Court to ensure that the decree or order has reached finality and that the decree is not obtained by fraud or collusion. Though the registering authority has no jurisdiction to conduct an enquiry as to the real character of the decree, it is possible for him to require, production of minimum documents and affidavit from the concerned party so as to enable the registering authority to proceed further for the cancellation, when it is brought to his notice that the statements on oath made by the party concerned in the affidavit and presented before the registration officer, at the time of presentation of the decree or order of Court is false.

8.As it is found in this case that the registration of the decree is not permissible beyond the period of limitation, the writ petition filed by the petitioner is liable to be dismissed. The copy of the judgment may also be sent to the Inspector General of Registration for issuance of suitable instructions to his subordinates to deal with the situation about the registration of decree or order of Civil Court.

9. This writ petition is dismissed. No costs.

Sd/-

Assistant Registrar(Records)

/TRUE COPY/



1. The Inspector General of Registration,
No.100, Senthome High Road,
Pattinapakkam,
Chennai -28

2. The Sub-Registrar,
Joint No.II Sub-Registrar Office,
Tirunelveli Town.

+1cc to MR.P.T.Ramesh Raja,Advocate in SR.No. 40252
+1CC THE SPECIAL GOVERNMENT PLEADER, IN SR.NO. 40073

JAM/11.08.2016/KP/ 4P-5C

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