

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2018

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.P.No.10681 of 2007

1.K.Soukath Ali
2.K.Shah Newaz
3.S.Fathima Shamim
4.S.Regana Parveen

... Petitioners

Vs

1.The Sub Registrar,
Office of the Sub Registrar,
Sooramangalam,
Salem.

2.K.Raju
3.M.Ambujam
4.K.A.Palanisamy
5.A.Duraisamy

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of mandamus, directing the 1st respondent namely the Sub-Registrar, Sooramangalam, Salem to register the decree in O.S.No.1033 of 1998, dated 06.10.2005.

For Petitioners : Mrs.P.V.Rajeswari

For Respondents : Mr.P.P.Purushotham

Government Advocate for R1
No appearance for R2 to R5

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O R D E R

The petitioners have come up with this writ petition to direct the first respondent to register the decree dated 06.10.2005, passed by the II Additional District Munsif, Salem in O.S.No.1033 of 1998.

2. The case of the petitioners is that the property in S.No.51/30 and Patta No.45 measuring to an extent of 47189 sq.ft originally belonged to one C.Subramanian and C.Krishnaswamy.

After the death of C.Subramanian, his two sons namely Shanmugam and Sengottuvelu are entitled to their father's half share in the property. After the demise of Shanmugam, in the year 1997, Sengottuvelu sold the property to the petitioners under 13 sale deeds. When the matter stood thus, the respondents 2 to 5 filed a suit in O.S.No.1033 of 1998 on the file of the II Additional District Munsif, Salem and the same was decreed exparte. Thereafter, the respondents 2 to 5 registered the said exparte decree with the respondent as Doc.No.4662/2002. In the meantime, the petitioners filed an application for setting aside the exparte decree, which was allowed. Subsequently, the trial Court dismissed the aforesaid Suit vide judgment and decree dated 06.10.2005. After obtaining the certified copy of the judgment and decree, the petitioners submitted a representation dated 09.01.2007 before the first respondent, for registration, but, the same has not been considered so far. Aggrieved over the same, the petitioners have approached this Court with this writ petition.

3. The learned counsel for the petitioners has drawn the attention of this Court to the order dated 07.03.2016 made in W.P.No.8247 of 2016, wherein, this Court, placing 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, under similar circumstances, had directed the 2nd respondent therein, to give an opportunity of personal hearing to the petitioner and other parties therein. Hence, the learned counsel prayed for a similar order in this writ petition as well.

4. On the other hand, the learned Government Advocate appearing for the first respondent, on instructions, submitted that the petitioners have not approached or submitted any representation to the first respondent, for registration of the judgment and decree made in the suit. Hence, he sought to dismiss this writ petition.

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

6. The scope of Section 25 of the Registration Act came up for consideration in 2011(2) MLJ 57-Rasammal Vs. Pauline Edwin and others wherein, at paragraph No.93, it has been held as follows :

"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."

7. 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; 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.

8. In the light of the above discussion, this Court deems it fit to give appropriate direction in this writ petition. Accordingly, this Court directs the petitioners to approach the District Registrar, Salem, for condoning the delay in registering the Judgment and Decree dated 06.10.2005 passed by the II Additional District Munsif, Salem in O.S.No.1033 of 1998, 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 appropriate orders in accordance with law and also in the light of the observations made in the above Judgment within a period of six weeks thereafter and communicate the decision taken, to the petitioners.

9. This Writ Petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

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To

1. The Sub Registrar,
Sub Registrar Office, सत्यमेव जयते
Sooramangalam, Salem.

2. The District Registrar, Salem.

+1cc to Mr.Vedavallikumar, Advocate SR.No.82862

+1cc to Government Pleader, High Court, Madras SR.No.82892

W.P.No.10681 of 2007

MR (CO)
GMY (24/01/2019)