

In the High Court of Judicature at Madras

Dated : 07.2.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Writ Appeal No.336 of 2019

S.Sarvothaman ...Appellant

Vs

The Sub-Registrar, Oulgaret,
Pondicherry-605010. ...Respondent

APPEAL under Clause 15 of the Letters Patent against the order dated 23.1.2019 in W.P.No.18593 of 2018.

Writ Petition filed under Article 226 of the constitution of India praying to issue a Writ of Certiorarified Mandamus Calling for the records relating to the order of the respondent dated 5.7.2018 in No. 2/ SRO/ Oulgaret/ Refusal/ 2018 and quash the same and consequently direct the respondent to register the Compromised Decree dated 29.04.1970 in O.S. No. 6/ 1968 on the file of the Principal district Court Pondicherry.

For Appellant : Mr.K.Selvaraj

For Respondent : Mr.D.Ravichander, AGP (P)

Judgment was delivered by T.S.SIVAGNANAM, J

We have elaborately heard Mr.K.Selvaraj, learned counsel for the appellant and Mr.D.Ravichander, Additional Government Pleader (Puducherry) accepting notice for the respondent.

2. This appeal is directed against the order passed in W.P.No.18593 of 2018 dated 23.1.2019.

3. The said writ petition was filed by the appellant praying for the issuance of a Writ of Certiorarified Mandamus to quash the order passed by the respondent dated 05.7.2018, by which, the respondent refused to register the decree dated 29.4.1970 passed in O.S.No.6 of 1968 on the file file of the Principal District Court, Puducherry. The reasons assigned in the impugned order in the said writ petition were that the date of decree is 29.4.1970, that the said decree was presented belatedly after a period of 48 years and that this is beyond the time limit prescribed under Sections 23 and 25 of the Registration Act, 1908 (for brevity, the Act). Accordingly, the order of refusal to register the said decree was passed under Section 71 of the Act.

counsel for the appellant would submit that the said order passed by the respondent dated 05.7.2018 suffers from lack of jurisdiction, that it is arbitrary, unreasonable and against the legal position as settled by this Court in several decisions and that therefore, the appellant is entitled to approach the learned Single Judge seeking to quash the said order dated 05.7.2018.

6. The legal question involved in the instant case is as to whether the respondent could have refused registration of the said decree passed in O.S. No.6 of 1968 dated 29.4.1970 on the ground that it was presented beyond the time limit prescribed under Section 23 of the Act. Since the legal question is no longer res integra and the respondent having not taken note of the legal issue, this Court is of the view that said the writ petition is maintainable and the appellant need not be driven to avail the alternate remedy available under the Act. Accordingly, the preliminary objection raised by the learned Additional Government Pleader stands rejected.

7. Next, we proceed to examine as to whether the said writ petition should have been rejected on the ground that the said decree dated 29.4.1970 was presented beyond the time limit prescribed under Section 23 of the Act and whether the respondent had no power to condone the delay beyond the period of eight months (i.e. 4 months + 4 months).

8. Before the learned Single Judge, an argument was advanced by the respondent stating that the appellant - writ petitioner never got any right or interest in the compromise decree in any of the immovable properties. This argument made on behalf of the respondent by the learned Government Pleader (Puducherry) was recorded by the learned Single Judge in paragraph 4 of the impugned order in the said writ petition. The learned Additional Government Pleader would submit that the said contention is factually incorrect and that under the said compromise decree dated 29.4.1970, the appellant gets a right over the immovable properties.

9. The learned Single Judge denied the relief as sought for in the said writ petition on the ground that admittedly, the said decree was passed on 29.4.1970, that the challenge to the same was in the year 1980 and that when C.S.No.149 of 1980 was filed, there was no explanation offered for not registering the document within the period of eight months as contemplated under the Statute. It was also observed that as against the decree passed in C.S.No.149 of 1980, an appeal in O.S.A.No.299 of 1996 was filed, in which, the compromise decree passed by the learned Single Judge was upheld vide judgment and decree dated 20.3.2002, that as against the judgment in O.S.A.No.299 of 1996, a special leave petition was filed in S.L.P.(C) No.8268 of 2002, which was dismissed on 01.11.2002 and that from the year 2002, the appellant had not taken any steps to register and that there was no explanation forthcoming. The learned Single Judge further pointed out that the remedy under Section 77 of the Act is filing of the civil suit in case of order of refusal by the Registrar, which would enable the Court to go into the question of facts based upon the evidence and that the scope of the said suit is restricted only to the relief of direction for registering the document alone and no other relief can be asked for in the suit.

the event of the appellant filing an application seeking condonation of delay and that the appellant having not filed any such application, the reliance placed on Section 25(2) of the Act was rejected.

11. The learned Single Judge referred to the decision of the Hon'ble Supreme Court in the case of Popat Bahiru Govarthane & Others Vs. Special Land Acquisition Officer [reported in 2013 (10) SCC 765] for the proposition that the law of limitation may harshly affect a particular party, but it has to be applied with all its rigour when the Statute so prescribes. On these reasons, the said writ petition was dismissed.

12. We have carefully considered the contentions made on either side.

13. As pointed out by us earlier, we need to first address the legal issue, which arises for consideration as to whether at all the law of limitation as prescribed under Section 23 of the Act would apply to a court decree.

14. This question is no longer res integra and this Court has consistently held that the law of limitation will not apply when a court decree is presented for registration. Earliest of the decisions, which has been followed consistently by a Division Bench of this Court is in the case of A.K. Gnanasankar Vs Joint-II Sub-Registrar, Cuddalore-2 [reported in 2007 (2) TCJ 68]. In the said decision, this Court held that the limitation prescribed for presenting a document does not apply to a decree, as it is a permanent record of the court and to register the same, no limitation is prescribed.

15. This decision was followed by one of us (TSSJ) in W.P.No.9352 of 2015 dated 31.3.2015 [B.Vijayan Vs. District Registrar & another]. Subsequently, a similar view had been taken by this Court in W.P.No.8247 of 2016 dated 07.3.2016 [G.Mudiyarasan & another Vs. Inspector General of Registration], which once again relied upon the decision in the case of A.K.Gnanasankar. Further, in the case of Arun Kumar Vs. Inspector General of Registration [W.P.No.16569 of 2016 dated 06.6.2016], this Court directed registration of a judgment and decree passed by the Principal District Munsif Court, Salem by condoning the delay on an application filed by the person presenting the document and in that decision, this Court referred to the decision in the case of Rasammal Vs. Pauline Edwin & others [reported in 2011 (2) MLJ 57] wherein the Court considered the scope of Section 25 of the Act.

16. Again, in the case of P.A.Duraisamy Vs. Registrar, Registration Department, Coimbatore & another [W.P.No.2824 of 2013 dated 26.10.2016], an identical view had been taken following the decision in the case of A.K.Gnanasankar. A similar view was taken in the case of Lakshmi Vs. Sub-Registrar, Valapady, Salem District [reported in 2017 (1) LW 721] wherein it was pointed out that the Proviso to Section 23 of the Act states that a copy of the decree may be presented within four months from the date, on which, the decree or order was made or where it is appealable, within four months from the day, on which, it becomes final, that the limitation prescribed under Section 23 of the Act should be read with in consonance with Section 25 of the Act and that since they were only directory in

decree. In yet another decision in the case of Dr.Sulochana Vs. Inspector General of Registration [reported in 2017 (2) CWC 489], this Court held that registration is only a part of procedural law and that though the Statute is fiscal, the doctrine of purposive and reasonable interpretation has application. This Court took note of the decision of the Karnataka High Court in the case of Anjinamma Vs. Puttahariyappa [reported in AIR 2003 Karnataka 24].

18. The Hon'ble Supreme Court in the case of Shreenath Vs. Rajesh [reported in 1998 (4) SCC 543], held that in interpreting any procedural law, when more than one interpretation is possible, the one, which curtails the procedure without eluding justice, is to be adopted, that the procedural law is always subservient to and is in aid of justice and that any interpretation, which eludes or frustrates the recipient of justice, is not to be followed.

19. A Full Bench of the Andhra Pradesh High Court in the case of Padala Satyanarayana Murthy Vs. Padala Gangamma [reported in AIR 1959 AP 626] answered a reference as to whether Section 77 of the Indian Registration Act bars a suit on the basis of an unregistered Will, when the Sub-Registrar refused to admit it for registration. It was held that Section 17 of the Act enumerates the documents, which require registration and the effect of failure to observe it is stated in Section 47 and that under Section 18(c) of the Act, the registration of a Will is purely optional and that being so, the Full Bench expressed that they did not think that the consequences contemplated by Section 49 would flow from not having recourse to Section 77 of the Act. It was further held that a party cannot be compelled to get document registered if such an obligation is not cast by the provisions of the Registration Act, that the necessity for registration arises only in regard to document set out in Section 17, that no penalty can attach to the omission to get a document registered when it is excepted by Section 17 and that therefore, the Full Bench felt that Section 77 can have relation only to instrument falling within the ambit of Section 17.

20. The decision in the case of Padala Satyanarayana Murthy was followed by the Allahabad High Court in the decision in the case of Rama Pati Tiwari Vs. District Registrar, Allahabad [reported in AIR 2009 Allahabad 102].

21. By applying the decision in the case of Padala Satyanarayana Murthy to the facts of the case, the only conclusion that could be arrived at is that a court decree is not compulsorily registerable and that the option lies with the party. In such circumstances, the law laid down by this Court clearly states that the limitation prescribed under the Act would not stand attracted.

22. Having set out the legal position in the above terms in favour of the appellant, now we proceed to examine as to whether there was any delay in presentation of the decree and in other words, whether the court decree was presented beyond the period of four months.

23. The decree in O.S.No.6 of 1968 was passed on 29.4.1970.

29.4.1970 passed in O.S.No.6 of 1968 on the file of the Principal District Court, Puducherry, is not binding on the plaintiff's share. The Division Bench dismissed the appeal by judgment and decree dated 20.3.2002. Challenging the said judgment and decree dated 20.3.2002, a special leave petition in SLP.(C).No.8268 of 2002 was filed and it was dismissed vide order dated 01.11.2002.

24. The matter did not rest there and a parallel litigation commenced before this Court by filing C.S.No.504 of 1998, in which, the appellant in this appeal was the first defendant and in that suit, the correctness of the compromise decree was also put in question and the suit was partly decreed on 18.9.2006. As against the decree dated 18.9.2006, defendants 3 to 6 in C.S.No.504 of 1998 filed an appeal in O.S.A.No.230 of 2007 before the Division Bench of this Court and it was dismissed on 08.9.2016.

25. After the matter attained finality, the appellant applied for a certified copy of the decree in O.S.No.6 of 1968 dated 29.4.1970 and it was furnished to the appellant on 08.3.2018 as could be seen from the date seal affixed by the Central Copyist Establishment of the District Court, Puducherry. The appellant presented the decree for registration before the respondent on 04.7.2018 as noted in the order impugned in the writ petition. Thus, presentation of the decree from the date of obtaining certified copy on 08.3.2018 is well within the period of limitation prescribed under Section 23 of the Act even assuming that the said provision would apply to the case on hand.

26. As pointed out by us earlier, the time limit stipulated under Section 23 of the Act will have no application to a court decree. For the above reasons, we are of the considered view that the reasons assigned by the respondent for refusing to register the decree dated 29.4.1970 vide order dated 05.7.2018 is unsustainable in law.

27. In the result, the writ appeal is allowed, the order dated 23.1.2019 passed in W.P.No.18593 of 2018 is set aside, W.P.No.18593 of 2018 is allowed and the order passed by the respondent dated 05.7.2018 is set aside. The respondent is directed to register the decree dated 29.4.1970 in O.S.No.6 of 1968 on the file of the Principal District Court, Puducherry within a period of one week from the date of receipt of a copy of this judgment. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

<https://hcservices.ecourts.gov.in/hcservices/>

To

The Sub-Registrar,
Oulgaret, Pondicherry-605010.

+1cc to Mr. K.Selvarai. Advocate. S.R.No. 10581