

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2019

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.8906 of 2019
and
W.M.P.No.9453 of 2019

Kavitha

...Petitioner

Vs.

1. The District Registrar,
Tiruppur District.
2. The Sub Registrar,
Thottipalayam,
Tiruppur District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order made in Na.Ka.No.188 of 2018 dated 21.08.2018 by 2nd respondent pursuant to the impugned order made in No.5179/A1/2018 dated 21.08.2018 by the 1st respondent quash the same and consequently direct the respondents to register the final decree in I.A.No.410 of 2016 in O.S.No.380 of 2013 dated 31.08.2017 passed by District Munsif Court, Tiruppur.

For Petitioner : Mr.Prabakar R

For Respondents : Mr.P.P Purushothaman
Government Advocate

O R D E R

Mr.P.P Purushothaman, learned Government Advocate takes notice for the respondents. By consent of the parties, the main writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the order of the 1st respondent dated 21.08.2018, wherein and whereby, a final decree passed in I.A.No.410 of 2016 in O.S.No.380 of 2013 dated 31.08.2017 by the District Munsif Court, Tiruppur, arising out of the partition suit, was refused to be registered only on the

reason that the same was presented with delay of 37 days. Consequently, the petitioner seeks for a direction to the respondent to register the said final decree.

3. It is stated that the petitioner's minor daughter namely, Janasweha filed a suit for partition and separate possession in O.S.No.380 of 2013 on the file of the District Munsif Court, Tiruppur and the said suit was decreed on 25.06.2015 by passing a preliminary decree and allotting one share to the minor plaintiff. It is further stated that I.A.No.410 of 2016 was filed for passing final decree and the Civil Court has also passed such final decree on 31.08.2017. When the final decree was presented before the 2nd respondent for registration, the same was refused only on the reason that it was presented with a delay of 37 days from the date of the decree. Therefore, the present writ petition is filed challenging the said rejection.

4. The learned counsel appearing for the petitioner by relying on an order passed in W.P.No.9352 of 2015 dated 31.03.2015 submitted that the limitation prescribed for presenting the documents cannot be applied to a decree and therefore, the respondents are totally erred in refusing to register, by applying the limitation period.

5. The learned Government Advocate appearing for the respondents submitted that since the document was presented with delay of 37 days, the respondents have passed the impugned order. However, he is not disputing the fact that the said issue is already decided in the above said writ petition.

6. Perusal of the said order passed in W.P.No.9352 of 2015 dated 31.03.2015 would show that this Court has found that a decree passed by the Civil Court is a permanent record of the Court and therefore, no limitation can be prescribed. For arriving at such conclusion, the learned Judge relied on a decision rendered in the case of A.K.Ganesan reported in 2007 (2) TCJ Page 68 (Madras).

7. It is further seen that in W.P.No.2824 of 2013 dated 26.10.2016, this Court has once again found that the limitation prescribed under Section 23 of the Limitation Act is not mandatory in nature but only directory, by following the decision made in 2007 (2) TCJ Page 68 (Madras).

8. Considering the above stated facts and circumstances, this Court finds that the reason stated by the respondents in refusing to register the document, namely the decree cannot be sustained. Accordingly, the writ petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the respondents to consider the claim of the

petitioner for registering the final decree passed in I.A.No.410 of 2016 in O.S.No.380 of 2013 dated 31.08.2017 by the District Munsif Court, Tiruppur and pass appropriate orders on the same within a period of four weeks from the date of receipt of a copy of this order without reference to the period of limitation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

sni/mk

To

1. The District Registrar,
Tiruppur District.
2. The Sub Registrar,
Thottipalayam,
Tiruppur District.

+1 cc to M/s.R.Prabakar, Advocate, S.R.No.30343

+1 cc to the Government Pleader, S.R.No.31013

W.P.No.8906 of 2019

RSI (CO)
SSM(04/06/2019)



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