

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :25.11.2019

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Writ Petition No.11861 of 2018

1.Smt.V.Vijayalakshmi
2.Smt.V.Thirumagal
3.Smt.V.Parimala
4.Smt.V.Lilly
5.Smt.V.Aruna

.. Petitioners

/versus/

1.Inspector General of Registration,
Registrar Office,
No.100, Santhome High Road,
Santhome, Mylapore,
Chennai 600 004.

2.The Sub Registrar,
Sub Registrar Office,
2, Gopal Swamy Street,
Lenin Nagar, Ramnagar,
Ambattur,
Tamil Nadu 600 053.

.. 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 of the 2nd respondent in his proceedings Na.Ka.No.62/3028 dated 07.02.2018 and quash the same and further directing the respondents to cancel the registered sale deed dated 24.04.1990 in

Document No.2968 of 1990 and sale deed dated 14.02.1991 in Document No.931/1991 in respect of property in S.No.600, Krishnapuram, Door No.75, Ramadoss Street, Venkatapuram (West), Ambattur Village and consequently remove the entires made in respect of the sale deed dated 24.04.1990 in Document No.2968 of 1990 and Sale deed dated 14.02.1991 in Document No.931 of 1991 in respect of property in S.No.600, Krishnapuram, Door No.75, Ramadoss Street, Venkatapuram (West), Ambattur Village.

For Petitioner : Ms.N.Mala

For Respondents : Mr.T.M.Pappiah,
Special Government Pleader

ORDER

The petitioners herein, who succeeded in the suit in O.S.No.162 of 1992 on the file of the Sub Court, Poonamallee to declare the sale deed dated 24.04.1990, registered as Doc.No.2968/1990 and the sale deed dated 14.02.1991 registered as Doc.No.931/1991, are before this Court seeking Certiorarified Mandamus, to call for the records of the 2nd respondent/Sub Registrar, Ambattur, in his proceedings Na.Ka.No.62/3028 dated 07.02.2018 and quash the same and to direct the respondents to cancel the registered sale deed dated 24.04.1990 in Document No.2968 of 1990 and sale deed dated 14.02.1991 in Document No.931/1991 in respect of the property in S.No.600, Krishnapuram, Door No.75, Ramadoss Street,

Venkatapuram (West), Ambattur Village and consequently, to remove the entires made in respect of those two sale deeds.

2.The petitioners herein, aggrieved by the two transactions referred above, have filed O.S.No.612 of 1992 on the file of the Subordinate Court, Poonamallee for declaration that those two sale deeds are null and void and not binding on the respondents. Consequently, Mandatory Injunction directing the defendants (Lashmi Narasimhan and Meyyappan) to remove the superstructure put on the suit schedule property and to deliver the vacant portion.

3.The petitioners succeeded in the said suit and the trial Court has decreed the suit on 20.02.2003 as prayed. Aggrieved by the judgment and decree of the trial Court, the 2nd defendant of that suit (Meyyappan) has preferred an appeal in A.S.No.138 of 2004 on the file of the Principal District Court, Chengalpattu. The first appellant Court dismissed the appeal on 28.06.2005 confirmed the judgment and decree of the trial Court. The defendant (Meyyappan) has preferred a second appeal in S.A.No.1376 of 2007 before this Court.

4.Pending second appeal, the parties have entered into a

compromise and based on the memo of compromise, the second appeal was disposed of on 07.12.2007 and passed a decree in terms of the memo of compromise. Thereafter, the petitioners herein, who have taken the possession of the property have sought for deletion of the entries made in the records of the Sub Registrar Office in respect of the subject property. This request has been declined by the 2nd respondent by his proceedings dated 07.02.2018, wherein the Sub Registrar has directing the one of the petitioners herein viz., V.Thirumagal, to get appropriate order from the Court and resubmit the representation.

5. Aggrieved by the said order, the present writ petition is filed on the ground that the order of the 2nd respondent directing the petitioners to approach the civil Court is contrary to law and amounts to non-application of mind. The 2nd respondent has failed to note that the Civil Court has already passed the decree declaring those two documents as null and void and the civil litigation has reached finality after passing of the compromise decree by the High Court in S.A.No.1376 of 2007. Therefore, there is no necessity for the parties to approach the civil Court once again to delete the wrong entry made

in respect of the sale deeds dated 24.04.1990 and 14.02.1991.

6.In the counter, the 2nd respondent has stated that the official respondents are not the parties to the suit referred by the writ petitioners. There is no direction to the 2nd respondent by the Court to make appropriate entries in the records to nullify those two sale deeds. Therefore, the 2nd respondent is not bound to comply with the request of the petitioners. There is no provision in the Indian Registration Act, 1908 or Rules made under the Act to discredit any entry based on the civil Court decree, without explicit direction to the registering authority to delete the entries. Further, if the petitioners are inclined to register the copy of the decree or order passed by the Court, they should have been done within four months from the date of the decree or order, as contemplated under Section 23 of the Registration Act 1908 or within further four months time with condonation fee as contemplated under Section 25 of the Registration Act, 1908. The petitioners have not taken any steps to get the copy of the decree of the civil Court to register within the time prescribed under Sections 23 and 25 of the Registration Act, 1908 and the registration of the civil Court decree is now time barred for presentation and registration.

7. In the counter, the 2nd respondent has referred Rule 89 of the Civil Rules of Practice and Circular, which reads as under:

89. Where any instrument affecting immovable property registered under the Indian Registration Act, 1908 is set aside, discharged or cancelled by an order or decree of a civil Court, the court shall forthwith cause a copy of the decree or order drawn up on plain paper to be forwarded to the registering officer, provided where such order or decree is modified, set aside or reversed, copy of further orders and decrees shall also be forwarded to the registering officer."

8. It is submitted that the petitioners have not taken any steps to forward the copy of the decree in question from the Sub Court at Poonamallee to the respondents. Therefore, what they could not achieve directly, it can not be achieved by way of the present writ petition. Hence, the prayer of the writ petition has to be dismissed.

9. The learned counsel appearing for the petitioners as a reply to the above contentions of the 2nd respondent has filed an additional affidavit wherein, it is stated that under Section 31(1) of the Specific Relief Act, aggrieved party can seek indulgence of the Court to declare any registered instrument as null and void and if the Court passes a decree declaring such document as null and void, under Sub Section 2 of Section 31, the Court shall send a copy of the decree to

the officer in whose office, such instrument has been registered and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation. Therefore, the order of the appellate Court in A.S.No.138 of 2004 on the file of the District Judge, Chengalpattu confirming the judgment and decree dated 20.02.2003 passed by the Sub Court, Poonamallee in O.S.No.162 of 1992 declaring that the sale deeds dated 24.04.1990 and 14.02.1991 are null and void, ought to have been forwarded by the Court to the Sub Registrar Office under Section 31(2) of the Specific Relief Act r/w Rule 89 of the Civil Rules of Practice and the same should have been recorded and noted in the books maintained by the Sub Registrar, as mentioned under Section 31(2) of the Specific Relief Act. Having failed to do so, the Sub Registrar, without harping of Sections 23 and 25 of the Indian Registration Act, 1908, should note on the copy of the instrument contained in his books the fact of cancellation of those sale deeds by the Civil Court.

10. Section 31 of the Specific Relief Act as reads under:

Section 31 When cancellation may be ordered:(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding, may cause him serious

injury, may sue to have it adjudged void or voidable; and the Court may, in its discretion, so adjudged it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908) the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation."

11. Any decree declaring the registered instrument as null and void, the duty is cast upon the Court to forward the copy of the decree to the concerned Registering Officer for noting the fact of the decree. Rule 89 of the Civil Rules of Practice reads as below:

"89. Where any instrument affecting immovable property registered under the Indian Registration Act, 1908 is set aside, discharged or cancelled by an order or decree of a civil court, the court shall forthwith cause a copy of the decree or order drawn up on plain paper to be forwarded to the registering officer, provided where such order or decree is modified, set aside or reversed, copy of further orders and decrees shall also be forwarded to the registering officer."

12. Dehors of these two provisions, which cast upon the

responsibility on the Court, the parties concerned also have right independently to present any decree of the Court for registration under Section 23 of the Indian Registration Act, 1908. The time limit prescribed for presenting any document is four months from the date of its execution. Whereas, under Section 25 of the Indian Registration Act, 1908, further period of four months is granted, insofar as the Court decree are concerned. If the parties satisfies with reason for delay and pay the condonation fee, this privilege or concession under Section 25 of the Indian Registration Act, 1908 can be availed.

13. Peculiarly, in this case, after confirming the decree of the trial Court by the first appellate Court, aggrieved party has approached the High Court by filing S.A.No.1376 of 2007. So, at that time, since the matter has not reached finality, probably both the trial Court as well as the first appellate Court have not followed the decree copy annulling the documents as mandate under Civil Rules of Practice, which is extracted above. Later, the parties have entered into the compromise and based on the memo of compromise, the decree has been passed by the High Court. This compromise decree supersedes the decree passed by the first appellate Court confirming

the trial Court decree.

14. For all practice purpose, it is necessary for the petitioners herein to register the second appeal decree, which is a composite as well as the decree which has reached finality to the litigation. This decree ought to have been registered within a period of four months as contemplated under Section 23 of the Indian Registration Act, 1908 or within further period of four months on payment of condonation fee, under Section 25 of the Indian Registration Act, 1908. The petitioners have failed to do so. However, this Court has held on various occasions that the limitation prescribed under Sections 23 and 25 of the Indian Registration Act, 1908 is condonable. If the parties are able to satisfy the registration authority regarding the reason for delay and being the document not compulsorily registrable and when Statute does not prohibit condonation of delay, Section 5 of the Limitation Act is applicable. If the parties could satisfy with sufficient reason for delay, the court decree can be taken up for registration.

15. In the light of the above legal position, the request of

the petitioners herein to delete the earlier two entries could not be done, but the decree declaring those two documents as null and void can be registered. The compromise decree is registered, the fact of nullifying those two documents get satisfied. If there is a delay in presenting the decree copy, as pointed out earlier, the said delay is condonable. The Sub Registrar satisfy about the reason for delay can register the Court decree after collecting the registration fees and condonation charges.

16. This Court, on perusing the records and the averments made in the affidavit as well as the counter affidavits, finds that there is a reasonable cause for delay in presenting the second appeal decree for registration. Hence, the second respondent is directed to accept the decree passed by this Court in S.A.No.1376 of 2007, dated 07.12.2007 and register the same, after collecting the requisite condonation fee and registration charges from the petitioners herein.

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17. With the above directions, this Writ Petition is disposed

of. No costs.

25.11.2019

Index:yes/no
Speaking order/non speaking order
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To

1.Inspector General of Registration,
Registrar Office,
No.100, Santhome High Road,
Santhome, Mylapore,
Chennai 600 004.

2.The Sub Registrar,
Sub Registrar Office,
2, Gopal Swamy Street,
Lenin Nagar, Ramnagar,
Ambattur,
Tamil Nadu 600 053.



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DR.G.JAYACHANDRAN, J.

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