

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2019

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.12330 of 2019
and
W.M.P.no.12626 pf 2019

Kuppayammal

..Petitioner

Vs.

The Sub Registrar Joint-I
Erode,
Erode District

..Respondent

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/ Refusal Check Slip dated 28.03.2019 made in RFL/1 Joint Sub Registrar, Erode/26/2019 issued by the respondent and quash the same and consequently direct the respondent to register the judgment and decree dated 30.11.2018 made in O.S.No.202 of 2013 on the file of the I Additional Subordinate Court, Erode, Erode District.

For Petitioner : Mr.R.Prabakar

For Respondent : Mr.P.P.Purushothaman,
Government Advocate

O R D E R

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

2. The petitioner is aggrieved against the refusal of check slip dated 28.03.2019 issued by the respondent in refusing to register the preliminary decree for partition made in O.S.No.202/2013 dated 30.11.2018 on the file of the I Additional Sub Court, Erode. The reason assigned for refusal is that only the final decree for partition can be registered and not the preliminary decree.

3. Learned counsel for the petitioner submitted that the said suit was filed by one M.Arunvadivel, who is the sister of the petitioner's father for partition of his half share in the suit property. The said suit was decreed on 30.11.2018 by granting the preliminary decree for partition in favour of the plaintiff, granting half share to the plaintiff and half share to the defendant therein, who is the petitioner before this Court. Even though the final decree has not been passed so far, owing to the old age of the petitioner, she wants to get the said preliminary decree registered before the respondent.

4. The respondent contended that only the final decree can be registered and not the preliminary decree.

5. I do not think that such contention of the respondent can be sustained in view of the provisions made under Section 18 of the Registration Act, 1908, which deals with the documents of which registration is optional. Clause (cc) of Section 18 of the Registration Act, 1908, only states that a decree or order or award purports or operates to create declare, assign, limit or extinguish any right, title or interest may be registered. When such Clause contemplates only decree, the respondent Registering Authority is not entitled to say that such decree means only the final decree in a suit for partition. Needless to say that in the preliminary decree, rights and shares of the respective parties are decided and only the metes and bounds of such share have to be worked out in the final decree proceedings. Therefore, once the right of the parties in the preliminary decree is declared by the Court which issued the decree and when such decree is not stayed or set aside, such decree is also entitled to be registered, if the parties wish to do so.

6. Therefore, I find that the respondent is not justified in refusing to register the said document, namely, Preliminary Decree. Accordingly, the Writ Petition is allowed and the impugned order is set aside. The respondent is directed to register the Preliminary Decree dated 30.11.2018 made in O.S.No.202 of 2013 on the file of the I Additional Subordinate Court, Erode, Erode District, if the petitioner has complied with other requirements for registering such document. Such exercise shall be done by the respondent within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

vsi

Sub Assistant Registrar

To

The Sub Registrar Joint-I
Erode,
Erode District.

copy to: The I Additional Sub.Judge,
Erode.

+1 cc to M/s.R.Prabakar, Advocate, S.R.No.41430

W.P.No.12330 of 2019

RGN(CO)
SSM(29/04/2019).



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