

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2019

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P. No.18593 of 2018

S.Sarvothaman

.. Petitioner

Vs.

The Sub Registrar,
Oulgaret,
Pondicherry 605-010

... Respondent

PRAYER : 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 05.07.2018 in No.2/SRO/Oulgaret/Refusal/2018 and quash the same and consequently direct the respondent to register the compromise decree dated 29.04.1970 in O.S.No.6 of 1968 on the file of the Principal District Court, Pondicherry.

For Petitioner : Mr.K.Selvaraj

For Respondent : Mr.A.Gandhi Raj,
Government Pleader (Puducherry)
Assisted by Mr.D.Ravichander,
Assistant Government Pleader
(Puducherry)

सत्यमेव जयते

O R D E R

The Writ Petition has been filed challenging the order passed by the respondent dated 05.07.2018 in No.2/SRO/Oulgaret/Refusal/2018 and seeking a direction to the respondent to register the Compromise Decree dated 29.04.1970 in O.S.No.6 of 1968 on the file of the Principal District Court, Pondicherry.

2. The order passed by the respondent is refusing to register the Judgment and Decree made in O.S.No.6 of 1968

dated 29.04.1970. It is the case of the petitioner that he hails from the family of N.Selvaradjalou Chettiar of French India, who is a philanthropist. The petitioner claims to be the adopted son of Somasundaram Chettiar and Jayalakshmiammal, who is the sister of N.Selvaradjalou Chettiar. With respect to 92 items of properties in Pondicherry, a suit was pending before the Principal District Court at Pondicherry in O.S.No.6 of 1968, filed by the adoptive mother of the petitioner against one Padminichandrasekaran, who is the only daughter of the said N.Selvaradjalou Chettiar and others. After the death of the said Jayalakshmiammal, pending suit, there was a compromise between the parties and accordingly, a Compromise Decree was passed on 29.04.1970 in O.S.No.6 of 1968, as per which, Schedule "B" was allotted to the petitioner. The said Compromise Decree was challenged by the petitioner's son, namely, Vinodh Babu, before this Court in C.S.No.149 of 1980 and in O.S.A.No.299 of 1996, by judgment dated 20.03.2002, the Compromise Decree was upheld. Against the said judgment in O.S.A, the said Vinodh Babu had filed a Special Leave Petition (Civil) No.82668 of 2002 before the Hon'ble Supreme Court and the same was dismissed on 01.11.2002.

3. While so, a Trust which was created by Padminichandrasekaran, in the name of N.Selvaradjalou Chetty Trust, filed a suit a Civil Suit No.504 of 1998 before this Court in respect of one of his Chennai property. In the said suit also, a Judgment was passed on 18.09.2006, against which, O.S.A.No.230 of 2007 was preferred before this Court. The Division Bench of this Court dismissed the said O.S.A on 08.09.2017 confirming the decree passed in C.S.No.504 of 1998. After all the above proceedings, the petitioner attempted to register the Compromise Decree dated 29.04.1970 passed in O.S.No.6 of 1968 before the respondent on 04.07.2018. The respondent had refused to register the Compromise Decree by passing the impugned order on 05.07.2018 on the ground that the documents are presented for registration beyond the period of Limitation (i.e) after a lapse of 48 years. The order of refusal by the respondent is without application of mind and in violation of the principles of natural justice.

4. The petitioner had not furnished any reasons for the delay except quoting various proceedings pending before the Courts. The petition was resisted by the respondent contending that the petitioner herein was not a beneficiary under the Compromise Decree dated 29.04.1970 in O.S.No.6 of 1968, as he was only a third party stranger. The first defendant in the suit was directed to pay a sum of Rs.7

lakhs to the petitioner and on failure, it would carry the interest. Therefore, the petitioner never had any right or interest in the Compromise Decree in any of the immovable properties.

5. It is further stated that the said Compromise Decree was not acted upon. It is also contended that the presentation of the Judgment and Decree, after a lapse of 48 years, is hopelessly barred by limitation under Section 23 of the Registration Act. Admittedly, the petitioner had also not filed any petition for condoning the delay in presenting the judgment and decree before the respondent under Section 25 of the Registration Act, 1908. Even otherwise, the Registrar can exercise his discretion, if the delay is only four months as contemplated under Section 25 of the Registration Act and he has got no powers to condone the delay of 48 years.

6. Heard Mr.K.Selvaraj, learned counsel for the petitioner and Mr.A.Gandhi Raj, learned Government Pleader (Pondicherry) assisted by Mr.D.Ravichander, learned Assistant Government Pleader (Pondicherry) appearing for the respondent and perused the materials available on record.

7. The learned Government Pleader (Pondicherry) appearing for the respondent contended that the respondent is only performing his administrative functions of registering the documents subject to terms envisaged under the Registration Act and he is not bound to go into the executability of the decree or otherwise.

8. As the question involves the Limitation in registering a document, it is useful to extract Sections 23 and 25 of the Registration Act.

23. Time of presenting documents:-

Subject to the provisions contained in Sections 24, 25 and 26, no document other than a Will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution.

Provided that a copy of a decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final.

25. Provision where delay in presentation is

unavoidable.

(1) If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in ²[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.

(2) Any application for such direction may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

9. A bare perusal of the above provisions would make it abundantly clear that the petitioner has to approach the respondent within a period of four months from the date of receipt of the decree for registration, which is the time prescribed as per Section 23 of the Registration Act. In the event of unavoidable delay, the petitioner can approach the respondent within another four months time. Thus, the statute stipulates only a maximum period of eight months for the purpose of registering a document. The learned counsel for the petitioner would stress his contention that the suit questioning the decree in O.S.No.6 of 1968 came to an end only in the year 2016 and the petitioner approached the respondent within a reasonable time.

10. Admittedly, the decree was passed on 29.04.1970 and challenge to the same was in the year 1980. When C.S.No.149 of 1980 was filed, there was no explanation offered for not registering the document within a period of eight months as contemplated in the statute. Besides the suit in C.S.No.149 of 1980, appeal in O.S.A.No.299 of 1996 was filed, in which, the Compromise Decree passed by the learned Single Judge was upheld, against which S.L.P was filed in S.L.P.(C).No.82668 of 2002, which was disposed of on 01.11.2002. From the year 2002, the petitioner had not taken any steps to register the same and no explanation is coming forthwith.

11. The learned Government Pleader (Pondicherry) pointed out that O.S.No.6 of 1968 was never put to challenge and the subsequent suits were only on the

collateral issue of binding nature of decree on the plaintiff therein. Therefore, even assuming that the validity of the decree was put to challenge, the embargo is removed on the date of the order passed in the S.L.P. The copy of the plaint in C.S was also not furnished. Yet another objection raised by the respondent is that once the Registrar refuses to register and pass an order under Section 76 of the Registration Act, it is open to the petitioner to file a suit under Section 77 of the said Act. When the alternative remedy is available, without exhausting the same, the petitioner has moved this Court under Article 226 of the Constitution of India, which is an abuse of process of law.

12. The remedy under Section 77 of the Registration Act is filing of a 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 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 said suit.

13. The next contention raised by the petitioner is that the respondent erred in passing the impugned order without referring the case to the District Registrar under Section 25(2) of the Registration Act.

14. A perusal of Section 25(2) of the Registration Act would go to show that the said exercise of power could be pressed into service, if the petitioner pleads unavoidable delay and seeks for condonation of delay within a period not exceeding four months. That apart, exercise of such jurisdiction would arise only in the event of the petitioner filing an application seeking condonation of delay. In the case on hand, admittedly, the petitioner had not filed any such application, leaving no scope for the Sub Registrar to refer the matter to the District Registrar. Hence, the said objection of the petitioner is also to be overruled.

15. The learned Government Pleader (Pondicherry) appearing for the respondent placed his reliance on a decision of the Hon'ble Supreme Court reported in 2013 (10) SCC 765 (Popat Bahiru Govardhane and Others Vs. Special Land Acquisition Officer and Another) and in para 16, the Hon'ble Supreme Court held as follows:-

16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied

with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."

16. In the conspectus of the above facts, this Court is of the candid view that all the submissions advanced by the petitioner are untenable, as the facts are squarely covered under Sections 23 and 25 of the Registration Act. Hence, the petitioner cannot have any indulgence from this Court and the order passed by the respondent does not warrant any interference by this Court.

17. In the result, the Writ Petition is dismissed.
No costs.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

Srn
To

The Sub Registrar,
Oulgaret,
Pondicherry 605 010

+1cc to Mr.K.Selvaraj , Advocate SR.No. 5015
+1 CC TO GOVERNMENT PLEADER SR.NO. 5247

W.P. No.18593 of 2018

A.SK(28/01/2019)