



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 06.11.2019	Pronounced on: 11.11.2019
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Coram::

The Honourable Dr.Justice G.Jayachandran

Writ Petition No.30293 of 2019

Vellaiammal,
W/o.Govindarasu,
2A, Katcharayanur, Kattukottaigal,
Thethigiripatti Village (PO),
Mettur Taluk.

... Petitioner

/versus/

The Sub-Registrar,
Sub Registrar's Office,
Mecheri, Mettur Taluk,
Salem District.

..... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue Writ of Certiorarified Mandamus, to call for the records pertaining to the proceedings in CHEQUE SLIP No.11/2019, dated 27.08.2019 issued by the respondent, quash the same and direct the respondent to register the Decree dated 31.01.2008 in O.S.No. 89 of 2004, before District Munsif Court, Mettur.

For Petitioner : Mr.B.Ravi

for R.Subramanian

For Respondent : Mr.M.Thamizharasan

Government Advocate

O R D E R

Heard the Learned Counsel for the Petitioner and the Learned Government Advocate for the Respondent.

2. The petitioner herein has presented the decree passed by the District Munsif court, Mettur in O.S.No.89/2004, dated 31.01.2008 for registration before the Sub-Registrar, Mecheri, Salem District on 27.08.2019. The Sub Registrar, Mecheri, has issued check slip on 27.08.2019, intimating his refusal to registrar the document in view of long delay. Citing Section 23 of the Indian Registration Act, 1908, the Sub-Registrar, has stated that under Sections 23 and 25 of the Act, any document for registration should be presented within 4 months from the date of its execution. The said time lime is extendable by another 4 months only. Whereas, the document presented by the petitioner is beyond the time prescribed

(totally 8 months), hence cannot be taken up for registration. The said communication of the respondent, dated 27.08.2019 is under challenge in this writ petition.

3. The petitioner claims that she is the owner of the property bearing S.No.222/2, Thethigiripatti, Katcharayanur, Mecheri Taluk, Salem District. She along with one Arumugam filed suit against Chinnu, Manickam and the District Collector for declaration and injunction in O.S.No.89 of 2004 on the file of District Munsif Court, Mettur. The suit ended in her favour and decree was passed on 31.01.2008. The defendants did not file any appeal. So, the decree has reached finality. When she applied for Patta, the Revenue Authorities insisted for registered copy of the decree. Hence, she presented certified copy of the decree to the respondent for registration on 27.08.2019. The respondent has returned the document along with check slip on the same day, citing Sections 23 and 25 of the Indian Registration Act, 1908.

4. According to the petitioner, the said Sections are not applicable to the decree passed by the Civil Court. The legal position on this point has already settled by the Division Bench of this Court in W.A.No.336/2019 in re S.Sarvothaman Vs. Sub-Registrar, Oulgaret, Puducherry and followed by Single Judge in W.P(MD).No.13896 of 2019 in re K.Krishnan Vs. Inspector General of Registration and another (order dated 20.06.2019) reported in 2019 (6) MLJ 523. Hence, the reasoning assigned by the respondent for returning the document without registration is illegal and ultra vires.

Sections 23 & 25 of the Registration Act, reads as below:-

23. Time for 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 [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.

5. The scope of the above said sections came for consideration before this Court on earlier occasion. In S.Sarvothaman Vs. Sub-Registrar, Oulgaret, Puducherry, division bench of this Court after referring A.K.Gnanasekar Vs. Joint Registrar, Cuddalore reported in (2007 (2) TCJ 68) held that,

"14. Therefore, it has been made clear by the said Division Bench judgment that, the limitation prescribed under the Act ie., under the proviso to Section 23 of the Act cannot stand attracted, insofar as the limitation is concerned for registration of Court decree, since it is not compulsorily registrable document. In other words, as any other document, which are to be registered compulsorily under the Registration Act, the Court decree and orders need not be registered compulsorily. Therefore, it is only optional, by exercising such option, if the parties desire to register any decree or order of the Court, the same can be treated only as an optional registration, for which, the limitation prescribed under Section 23 of the Act cannot be strictly construed as a mandatory requirement. Therefore, it can only be treated as directory and therefore, the mandatory requirement of registration of document within four months as contemplated under Section 23 of the Act cannot be put against any party, who wants to register the Court decree or order."

6. Under Section 23 of the Registration Act, 1908, it is made clear without any ambiguity that no documents other than a will shall be accepted for registration unless presented for that purpose within 4 months from the date of execution. Court decree is a document which speaks about the formal expression of an adjudication which determines the rights of the parties conclusively.

7. Section 25 of the Registration Act, 1908, specifically for a Court decree, owing to urgent necessity or unavoidable accident an additional four months time is granted, on payment of fine not exceeding ten times of the amount of the Registration fees.

8. Section 23 of the Registration Act, 1908, has to be read along with the succeeding Sections 24, 25 & 26. Therefore, it may not be proper to hold that Sections 23 or 25 are totally inapplicable to Court decree presented for registration. At the same time, presentation of decree belatedly beyond the time prescribed cannot be rejected forthwith, without considering the reasons submitted by the parties and if necessary, (emphasis added) the Registrar shall verify whether owing to delay, the decree has become non-executable or the decree has been appealed further. On such verification and being satisfied that the decree is an executable decree and not barred by law of limitation or any other law in force, accept the document and register the same, on collecting fine as contemplated under Section 25 of the Registration Act.

9. With the above observation, the Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Sub-Registrar, Sub Registrar's Office,
Mecheri, Mettur Taluk, Salem District.

+1cc to M/s.R.Subramanian, Advocate SR.No.93532
+1cc to The Government Pleader SR.No.93761

AKM/16.12.19/4P-4C/

order in
Writ Petition No.30293 of 2019