



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.06.2019

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.13896 of 2019

K.Krishnan

...Petitioner

-Vs-

1.The Inspector General of Registration,
No.100, Santhome High Road,
Foreshore Estate,
Pattinapakkam,
Chennai-600028/

2.The Joint Sub Registrar No.1,
Madurai North,
Integrated Complex of Registration Department,
TNAU Nagar,
Rajakampeeram, Y.Othakadai,
Madurai-625 107.

...Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing the second respondent to register the certified copy of the decree dated 04.07.2018 passed in the suit in O.S.No.686 of 2004 on the file of the District Munsif Court, Madurai Taluk on payment of registration charges alone without insisting for payment of any stamp duty and without insisting on the period of limitation under Section 23 of the Registration Act, 1908.

For Petitioner : Mr.T.R.Jeyapalam

For Respondents : Mr.M.Murugan

Government Advocate

ORDER

The prayer in this writ petition is for a Writ of Mandamus, directing the second respondent to register the certified copy of the decree dated 04.07.2018 passed in the suit in O.S.No.686 of 2004 on the file of the District Munsif Court, Madurai Taluk on payment of registration charges alone without insisting for



payment of any stamp duty and without insisting on the period of limitation under Section 23 of the Registration Act, 1908.

2. Heard Ms.T.R.Jeyapalam, learned counsel appearing for the petitioner and Mr.M.Murugan, learned Government Advocate, appearing for the respondents.

3. With the consent of both sides, this writ petition is disposed of at the admission stage itself.

4. The grievance of the petitioner is that, the petitioner's property in Resurvey No.1/2 situated in Ramankulam Village, Avaniyapuram Firka, Madurai South Taluk, Madurai District, to the extent of 8 acres 73 cents, absolutely belongs to him and in respect of which, since there has been some dispute, the petitioner along with other co-owners filed a suit in O.S.No.686 of 2004 against some third parties and the suit has ultimately been decreed by the competent civil Court on 04.07.2018 declaring that the petitioner and other co-owners are the owners of the subject property. In that circumstances, all that the petitioner wants to register the copy of the decree passed by the civil Court in O.S.No.686 of 2004, by the Registrar ie., the second respondent herein and accordingly, he made a request to the second respondent to register the decree. However, the same has been refused by the respondent, especially, the second respondent on the ground that, the decree has not been submitted for registration within the time of limitation stipulated under Section 23 of the Registration Act and also the necessary fee/stamp duty has not been paid. Only in that circumstances, the petitioner has approached this Court with the aforesaid prayer.

5. Heard Mr.T.R.Jeyapalam, learned counsel appearing for the petitioner, who submits that, since the limitation of four months prescribed under Section 23 of the Registration Act (hereinafter referred to as "the Act") is not mandatory and it is only directory, moreover, the same can very well be condoned in cases, where Court decrees and orders were sought to be registered. In support of this, the learned counsel appearing for the petitioner has relied upon a Division Bench judgment of this Court reported in (2019) 3 MLJ 517 in the matter of *S.Sarvothaman Vs. Sub-Registrar, Oulgaret, Pondicherry*.

6. The learned counsel appearing for the petitioner also relied upon the circular issued by the Inspector General of Registration, Chennai, ie., the first respondent herein, in Circular No.56710/C2/2001 dated 26.10.2002.

7. By relying upon this circular, the learned counsel submitted <https://hcservices.ecourts.gov.in/hcservices/> any charge to be made for registering the Court decree and order, only the registration charge has to be collected and no other stamp duty can be demanded. Therefore, the learned



counsel would submit that, in view of the said law that have been settled under Section 23 of the Act and also on the basis of the circular referred to above dated 26.10.2002, the second respondent can not refuse to register the decree as desired by the petitioner and therefore, the petitioner seeks indulgence of this Court by issuing a mandamus as prayed for.

8. Heard Mr.M.Murugan, learned Government Advocate appearing for the respondents, who would submit that, no doubt under Section 23 of the Act, limitation of four months time has been prescribed. But, at the same time, insofar as the decree and order is concerned, proviso to Section 23 of the Act makes it clear that, the four months limitation shall start from the date the order of decree if is appealable becomes final. Therefore, in case of the decree and order, under proviso to Section 23 of the Act, there is limitation. The learned Government Advocate would further submit that, insofar as the stamp duty is concerned, for the purpose of registering the Court decree or order, party need not pay the stamp duty *advalorem*. But, at the same time, registration charges for the value of the entire suit as per decree has to be paid and this has been specifically mentioned at clause 4 of the said circular of the first respondent dated 26.10.2002 and therefore, the learned Government Advocate would submit that, subject to the limitation under Section 23 of the Act and the payment of one percent registration charges, certainly, the Court decree sought to be registered by the petitioner, can be considered and registered.

9. I have considered the said submission made by the learned counsel appearing for the parties.

10. There is no dispute with regard to the civil Court decree, which declared the title/right of the parties, ie., the petitioner and others in respect of the subject land and the civil Court decree has also been sought to be registered by the second respondent, for which, the petitioner approached the second respondent.

11. As far as the first reason for alleged refusal of registration is concerned, to have a clarification, Section 23 of the Act is extracted hereunder, which reads thus:-

"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 order was made, or, where it is appealable, within four months from the day on which it becomes final."



12. By relying upon the proviso to Section 23 of the Act, the learned Government Advocate submits that, the limitation has been prescribed for the registration of Court decree and orders also. In this context, some light has been thrown by this Court through the Division Bench judgment cited supra in the matter of *Sanbadevan Vs. Sub Registrar*, where the Division Bench has decided the following question:-

"13. As pointed out by us earlier, we need to first address the legal issue, which arises for consideration as to whether at all the law of limitation as prescribed under Section 23 of the Act would apply to a Court decree."

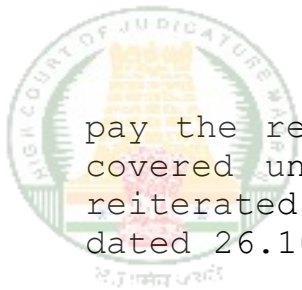
13. After having relied upon the decision in *Padala Satyanarayana Murthy V. Padala Gangamma* (AIR 1959 AP 626), the Division Bench has held as follows:-

"21. By applying the decision in the case *Padala Satyanarayana Murthy V. Padala Gangamma* (supra) to the facts of the case, the only conclusion that could be arrived at is that a Court decree is not compulsorily registrable and that the option lies with the party. In such circumstances, the law laid down by this Court clearly states that the limitation prescribed under the Act would not stand attracted."

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.

15. Therefore, the first reason claimed to have been stated for not registering the petitioner's decree is unsustainable.

16. Insofar as the second reason of making the payment of the stamp duty or registration charge is concerned, it is the stand of the learned Government Advocate that, no doubt insofar as the registering the Court decree or order is concerned, party need not pay stamp duty *advalorem*, but, for registration, the parties will have to



pay the registration charges applicable to the property concerned covered under the Court decree or order and this has also been reiterated in the said circular issued by the first respondent dated 26.10.2002.

17. In order to appreciate the same, the relevant portion of the said circular dated 26.10.2002 is hereby extracted:-

"4. The registration fee shall be levied only on the total value of the suit and not on the value of the property as per the guidelines or on separated shares as the document is only a copy of decree and not a partition."

18. The very same circular has also been heavily relied upon by the learned counsel appearing for the petitioner and he would submit that, the prayer sought for in this writ petition is only to give a mandamus by way of direction to the registering authority to register the Court decree, after collecting necessary registration charges. Therefore, the learned counsel appearing for the petitioner also agreed that, the petitioner has to pay necessary registration charges as contemplated under Clause 4 of the circular dated 26.10.2002 extracted herein above.

19. Therefore, insofar as the second issue is concerned, it is easily resolved, as the petitioner has also agreed upon the legal position and he is ready and willing to pay the registration charges.

20. Therefore, the two reasons, since have been cleared as discussed above, there can be no further impediment for the registering authority to register the Court decree as desired by the writ petitioner.

21. In the result, this Writ Petition is ordered with the following directions:-

"that the second respondent/registering authority is directed to register the civil Court decree in O.S.No.686 of 2004 on the file of the learned District Munsif, Madurai Taluk at Madurai by judgment and decree dated 04.07.2018 without insisting any limitation under Section 23 of the Registration Act, however, by collecting the necessary registration charges for the value of the suit covered under the decree, but not as per the guideline value of the property. The needful as indicated above shall be completed within a period of four weeks



from the date of receipt of the document as well as the registration charges from the petitioner. Hence, it is open to the petitioner to resubmit the document ie., civil Court decree with necessary registration charges and any other relevant documents required by the second respondent, immediately.

The first respondent i.e., the Inspector General of Registration shall issue necessary clarification to Circular dated 26.10.2002, where the first respondent shall specify that on the two reasons cited in this case no Court decree or order shall be refused/rejected by the registering authority and the charges to be levied as registration charges shall only be for the value of the suit and not the guideline value of the property concerned and such circular shall be issued to all Registrars'/ Sub Registrars' offices throughout the State."

No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Inspector General of Registration,
No.100, Santhome High Road, Foreshore Estate, Pattinapakam,
Chennai-600028
 2. The Joint Sub Registrar No.1, Madurai North, Integrated Complex
of Registration Department, TNAU Nagar, Rajakampeeram,
Y.Othakadai, Madurai-625 107.
- +1cc to the Spl.Govt.Pleader, Madurai Bench of Madras High Court
Madurai SR.No.70467
- +1cc to Mr.T.R.Jeyapalam, Advocate, SR.No.70223

rmk

Order made in

W.P. (MD) No.13896 of 2019

20.06.2019