



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 28.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

W.P. (MD) No.5330 of 2016

and

W.M.P (MD) .No.4783 of 2016

K.Periyanayagam

... Petitioner

Vs

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

2.The Sub Registrar,
(in the cadre of District Registrar)
Thallakulam,
Integrated Complex of Registration Department,
TNAU Nagar,
Rajakampeeram,
Y.Othakadai, Madurai 625 107.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the second respondent to register the certified copy of the decree dated 12.08.2015 passed in O.S.No.24 of 2005 on the file of the Family Court, Madurai on payment of registration charges alone without insisting for payment of any stamp duty.

For Petitioner : Mr.J.Barathan

For Respondents : Mr.M.Murugan
Government Advocate

ORDER

Heard the learned counsel on either side.

2. The petitioner herein purchased the property that is shown in the suit schedule of O.S.No.24 of 2005 on the file of the Family Court, Madurai in the name of his wife Revathi. The marital relationship between the two came under strain. That led to filing of a divorce original Petition by the wife. HMOP.No.580 of 2015 filed by wife/Revathi against the writ petitioner herein was allowed on 13.07.2015 by the Family Court, Madurai. Likewise, O.S.No.24 of 2005 has been filed by the writ petitioner herein seeking a declaration that the said property was purchased by him under the registered sale deed dated 28.01.2002 in the name of



Revathi as benami and that it absolutely belongs to him. Consequential injunction was also sought. The relief of injunction and direction was sought. The said suit was decreed on 12.08.2015. The petitioner wanted the said decree to be registered with the second respondent.

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3. The learned counsel appearing for the petitioner states that the decree was presented within four months from the date of obtaining the certified copy of the judgment and decree. The stand of the petitioner is that the second respondent declined to receive the certified copy of the decree presented by the writ petitioner. The second respondent appears to have taken the stand that unless the petitioner is willing to remit the stamp duty on the value of the property, the decree would not be registered. That necessitated filing of this writ petition.

4. The learned counsel appearing for the writ petitioner placed reliance on the Circular bearing No.56710/C2/2001 dated 26.10.2002 issued by the first respondent. This Court wanted to know from the learned Government Advocate as to whether the said Circular is still holding good. The learned Government Advocate stated that the Circular has not been rescinded or modified till date. The said Circular states that the Court decree is not an instrument chargeable to duty under the Stamp Act. That apart, as rightly pointed out by the learned counsel appearing for the petitioner, the relief granted by the civil Court was only declaratory in nature declaring that the property was purchased by the petitioner in the name of his wife /his benami. Therefore, by virtue of the declaratory decree, there is no transfer of interest also.

5. A learned Judge of this Court in W.P.No.18805 of 2013 (**Lakshmi Vs. The Sub Registrar**) dated 28.11.2016 had held that the time limit prescribed under Section 23 of the Registration Act is not mandatory in nature, but it is only directory. The check slip issued by the registering authority was set aside on that ground.

6. Respectfully, following the said decision, I direct the second respondent to register the certified copy of the decree dated 12.08.2015 made in O.S.No.24 of 2005 on the file of the Family Court, Madurai on payment of the registration charges alone.

7. The Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (T & P)

// True Copy //



To

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

2.The Sub Registrar,
(in the cadre of District Registrar)
Thallakulam,
Integrated Complex of Registration Department,
TNAU Nagar,
Rajakampeeram,
Y.Othakadai, Madurai 625 107.

+1CC TO MR.T.R.JEYAPALAM, Advocate Sr. No.50857
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No.50940

W.P. (MD) No.5330 of 2016
28.02.2019

DKS (CO)
TR (09.05.2019) 3P 5C