

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2020

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.NO.29680 OF 2013

S.Arivazhagan

...Petitioner

Vs.

The Sub Registrar,
Registration Department,
Attur Town, Salem District.

... Respondent

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order passed by the respondent in his proceedings No.302/2012 dated 05.04.2012 and quash the same and consequently direct the respondent to receive and register the same.

For Petitioner : Mr.C.Prakasam

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

ORDER

The petitioner seeks for issuance of a writ of Certiorarified Mandamus to quash the proceedings of the respondent dated 05.04.2012, by which the respondent refused to register the judgment and decree passed in O.S.No.298 of 2010 dated 05.01.2011 on the file of the District Munsif Court, Attur on the ground that it has been filed after 120 days from the date of the judgment.

2.The Court decreed the suit on 05.01.2011, the petitioner applied for the copy of the judgment and decree on 11.01.2011, copies were furnished on 01.08.2011 and the petitioner presented the judgment and decree before the Sub-Registrar on 29.09.2011. The respondent has computed the limitation from 05.01.2011 which is incorrect. The petitioner cannot be expected to file the certified copy of the judgment and decree before the Sub-Registrar before obtaining the same. Therefore, only from 02.08.2011, the limitation would start running and if the same

is computed in such a manner, the respondent could not have refused registration. That apart, the question as to whether Law of Limitation as prescribed under Section 23 of the Limitation Act would apply to a Court decree came up for consideration before the Division Bench in the case of A.K.Gnanasankar vs. Joint-II Sub-Registrar, Cuddalore-2 [(2007) 2 TCJ 68].

3. In the said decision, it was held that the limitation prescribed for presenting a document does not apply to a decree [Court decree] as it is a permanent record of the Court and to register the same, no limitation is prescribed. This decision was taken note of by the Division Bench to which I was a part in the case of S.Sarvothaman vs. Sub-Registrar, Outgaret [(2019) 3 MLJ 517]. In the said decision, other decisions of this Court were also taken into consideration and the operative portion of the judgment reads as follows:

"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.

14. This question is no longer res integra and this Court has consistently held that the law of limitation will not apply when a court decree is presented for registration. Earliest of the decisions, which has been followed consistently by a Division Bench of this Court is in the case of A.K. Gnanasankar Vs Joint-II Sub-Registrar, Cuddalore-2 [reported in 2007 (2) TCJ 68]. In the said decision, this Court held that the limitation prescribed for presenting a document does not apply to a decree, as it is a permanent record of the court and to register the same, no limitation is prescribed.

15. This decision was followed by one of us (TSSJ) in W.P.No.9352 of 2015 dated 31.3.2015 [B.Vijayan Vs. District Registrar & another]. Subsequently, a similar view had been taken by this Court in W.P.No.8247 of 2016 dated 07.3.2016 [G.Mudiyarasan & another Vs. Inspector General of Registration], which once again relied upon the decision in the case of A.K.Gnanasankar. Further, in the case of Arun Kumar Vs. Inspector General of Registration [W.P.No.16569 of 2016 dated 06.6.2016], this Court directed registration of a judgment and decree passed by the Principal District Munsif Court,

Salem by condoning the delay on an application filed by the person presenting the document and in that decision, this Court referred to the decision in the case of Rasammal Vs. Pauline Edwin & others [reported in 2011 (2) MLJ 57] wherein the Court considered the scope of Section 25 of the Act.

16. Again, in the case of P.A.Duraisamy Vs. Registrar, Registration Department, Coimbatore & another [W.P.No.2824 of 2013 dated 26.10.2016], an identical view had been taken following the decision in the case of A.K.Gnanasankar. A similar view was taken in the case of Lakshmi Vs. Sub-Registrar, Valapady, Salem District [reported in 2017 (1) LW 721] wherein it was pointed out that the Proviso to Section 23 of the Act states that a copy of the decree may be presented within four months from the date, on which, the decree or order was made or where it is appealable, within four months from the day, on which, it becomes final, that the limitation prescribed under Section 23 of the Act should be read with in consonance with Section 25 of the Act and that since they were only directory in nature, the check slip issued by the respondent therein was held to be bad in law.

17. In the case of A1362 Meenakshi Cooperative Building Society Ltd. Vs. District Registrar & Others [WP (MD) No.5108 of 2018 dated 12.4.2018], this Court followed the decision in the case of A.K. Gnanasankar and directed registration of the court decree. In yet another decision in the case of Dr.Sulochana Vs. Inspector General of Registration [reported in 2017 (2) CWC 489], this Court held that registration is only a part of procedural law and that though the Statute is fiscal, the doctrine of purposive and reasonable interpretation has application. This Court took note of the decision of the Karnataka High Court in the case of Anjinamma Vs. Puttahariyappa [reported in AIR 2003 Karnataka 24].

18. The Hon'ble Supreme Court in the case of Shreenath Vs. Rajesh [reported in 1998 (4) SCC 543], held that in interpreting any procedural law, when more than one interpretation is possible, the one, which curtails the procedure without eluding justice, is to be adopted, that the procedural law is always subservient to and is in aid of justice and that any interpretation, which eludes or frustrates the recipient of justice, is not to be followed.

19. A Full Bench of the Andhra Pradesh High Court in the case of Padala Satyanarayana Murthy Vs. Padala Gangamma [reported in AIR 1959 AP 626] answered a reference as to whether Section 77 of the Indian Registration Act bars a suit on the basis of an unregistered Will, when the Sub-Registrar refused to admit it for registration. It was held that Section 17 of the Act enumerates the documents, which require registration and the effect of failure to observe it is stated in Section 47 and that under Section 18(c) of the Act, the registration of a Will is purely optional and that being so, the Full Bench expressed that they did not think that the consequences contemplated by Section 49 would flow from not having recourse to Section 77 of the Act. It was further held that a party cannot be compelled to get document registered if such an obligation is not cast by the provisions of the Registration Act, that the necessity for registration arises only in regard to document set out in Section 17, that no penalty can attach to the omission to get a document registered when it is excepted by Section 17 and that therefore, the Full Bench felt that Section 77 can have relation only to instrument falling within the ambit of Section 17.

20. The decision in the case of Padala Satyanarayana Murthy was followed by the Allahabad High Court in the decision in the case of Rama Pati Tiwari Vs. District Registrar, Allahabad [reported in AIR 2009 Allahabad 102]."

4. In the light of the above settled legal position and also the factual position, the respondent could not have refused registration of the Court decree. For the above reasons, the writ petition is allowed, the impugned order is quashed and the petitioner is directed to re-present the judgment and decree passed by the Court before the Sub-Registrar, who shall receive the same and register the decree within a period of three days from the date of re-presentation. No costs.

Sd/-
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

cse

To

The Sub Registrar,
Registration Department,
Attur Town, Salem District.

+1cc to Mr.C.Prakasam, Advocate, S.R.No.697
+1cc to the Government Pleader, S.R.No.1305

W.P.No.29680 of 2013

VSNII (CO)
CS/06/02/2020



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