

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.12.2020

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.NO.17396 of 2020

S. Mallikajaan

..Petitioner

Vs

The Sub Registrar,
Joint-I,
Office of the Sub Registrar,
Thiruchengode Road,
(Near Collector Office),
Namakkal.

...Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India praying for issuance of Writ of Mandamus directing the respondent to register the Judgment and Decree dated 17.06.2020 passed in O.S.No.259 of 2018 on the file of the Principal Subordinate Court, Namakkal .

For petitioner : I. Abrar Mohamed Abdulla

For Respondents: Mr.T.M.Pappiah, Spl. Govt. Pleader

ORDER

This Writ Petition has been filed for the issue of Writ of Mandamus directing the respondent to register the decree passed in O.S.No.259 of 2018 dated 17.06.2020.

2.The grievance expressed by the petitioner is that when the decree was presented for registration before the respondent, the same was refused to be received on the ground that it has been filed beyond the period of limitation provided under the Registration Act.

3.Heard Mr.Abrar Mohamed Abdulla, learned counsel for the petitioner and Mr.T.M.Pappiah, learned Special Government Pleader accepting notice on behalf of the respondent.

4.The issue involved in the present writ petition is covered by the earlier Order passed by this Court in W.P.No.9686 of 2020 dt.24.07.2020. The relevant portions of the order are extracted here under:

5. The issue that is involved in the present writ petition is squarely covered by the Division Bench judgment in S.Sarvothaman Vs.Sub Registrar in W.A.No.336 of 2019 dated 07.02.2019. The relevant portions in the judgment is extracted hereunder:

"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 decree, as it is a permanent record of the court and 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].

21. By applying the decision in the case of Padala Satyanarayana Murthy 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."

5.The above judgment will squarely apply to the facts of the present case. This Court in uncertain terms has held that the law of limitation prescribed under Section 23 and 25 of the Act will not apply to a Court decree, since it is not compulsory registrable.

6. In view of the settled position of law, the respondent is directed to register the final decree submitted by the petitioner, if it is otherwise in order and subject to payment of necessary Stamp duty and Registration fees.

7.This writ petition is accordingly allowed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Msr
To

The Sub Registrar,
Joint-I,
Office of the Sub Registrar,
Thiruchengode Road,
(Near Collector Office),
Namakkal.

+1 cc to Government Pleader Sr.No. 39815

W.P.NO.17396 of 2020

A.SK(20.01.2021)

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