

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 30353 of 2019

D. Shivanandhan

... Petitioner

-vs-

1. The Inspector General of Registration,
Santhome High Road,
Mylapore, Chennai - 600 004.
 2. The Temporary Joint Sub-Registrar,
Avinashi S.R.O.,
Avinashi, Tiruppur District.
- ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the Return Slip dated 18.09.2019 issued by the Second Respondent and quash the same and consequently direct the Second Respondent to register the Judgment and Decree dated 30.08.2013 passed in O.S. No. 193 of 2011 on the file of the II Additional District and Session Court, Tiruppur.

For Petitioner : Mr. M. Murugan

For Respondents : Mr. T.M. Pappiah,
Special Government Pleader

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O R D E R

Heard Mr. M. Murugan, Learned Counsel for the Petitioner, Mr. T.M. Pappiah, Learned Special Government Pleader appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner had instituted the suit bearing O.S. No. 193 of 2011 before II Additional District and Sessions Court, Tirupur, against one Samiyathal for specific performance of an agreement for sale dated 28.04.2010 entered between them and judgment and decree dated 30.08.2013 was passed in favour of the

Petitioner in that suit. When the Petitioner presented that judgment and decree for registration before the Second Respondent, it was returned with check slip dated 18.09.2019 stating that it was beyond the period of limitation prescribed under Sections 23 and 25 of the Registration Act, 1908. Aggrieved thereby, the Petitioner has challenged that refusal by the Registering Authority contending that the said legal provisions relating to limitation would not apply to registration of court decree, relying on the decision of the Division Bench of this Court in S.Sarvothaman -vs- The Sub-Registrar, Oulgaret, Pondicherry [(2019 (3) MLJ 517], in that regard.

3. At the outset, it has to be highlighted that unlike decrees passed in other suits, the passing of a decree in a suit for specific performance of an agreement for sale does not culminate the proceedings at that stage. In terms of clause (3) of Section 28 of the Specific Relief Act, 1963, a purchaser, who has obtained a decree for specific performance of the agreement for sale, after paying the purchase money and other sums, which he has been ordered to pay within the period allowed by that decree or such further period as the Court may allow, would have to make an application in that suit in which the decree is passed for granting further relief which he may be entitled to, such as, execution of proper conveyance by the vendor, delivery of possession of property, etc., and the Court would have to pass orders in that regard. Conversely, as per clauses (1) and (2) of Section 28 of the Specific Relief Act, 1963, if the purchaser fails to pay the purchase money or other sums as ordered by the Court within the period allowed by the decree or such further period as the Court may allow, the vendor is entitled to make an application in that suit in which the decree is made, to have contract rescinded and the Court shall direct the purchaser to return possession of the property to the vendor and may direct refund of any sum paid by the purchaser as earnest money or deposit in connection with that contract, which implies that the possibility of nullifying that decree also exists if the purchaser does not pay the entire amount required within time. The legal position emerges therefrom that on the mere passing of the decree for specific performance of an agreement for sale, no right or title or interest gets automatically transferred in favour of the purchaser in the property, and the enforceability of that decree lies in an inchoate state till further orders are passed on the application to be made either by the purchaser or the vendor for the respective reliefs that they would be entitled as mentioned supra. This would mean that the purchaser cannot seek for registering a decree passed for specific performance of an agreement for sale, and as such, the question of applicability of limitation under Sections 23 and 25 of the Registration Act, 1908, for registration of such decree, does

not arise. When the purchaser succeeds in obtaining an order from the Court which passed that decree for execution of a conveyance in his favour, it is that instrument of conveyance that would have to be presented for registration, which would be the Sale-Deed, if executed by the vendor, and in the event of failure of the vendor to execute the same, the Certificate of Sale would have to be granted by the Civil Court.

4. It is in this context that Section 89(2) of the Registration Act, 1908, provides the manner in which entries of such Certificate of Sale granted by the Civil Court have to be made in the records of the Registering Authority, as extracted below:-

"89. Copies of certain orders, certificates and instruments to be sent to Registering Officers and filed. --

..

(2) Every Court granting a certificate of sale of immovable property under the Code of Civil Procedure, 1908, shall send a copy of such certificate to the Registering Officer within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in such certificate is situate and such officer shall file the copy in his Book No.1.

This Court in *Mukanchand Bothra vs. Inspector General of Registration* (Order dated 22.02.2012 in W.P. No. 18489 of 2011) has explained this facet of the legal issue as follows:-

"15. That leaves us with sub-section (2). Under sub-section (2), every Court granting a certificate of sale of immovable property under the Code of Civil Procedure shall send a copy of such certificate to the Registering Officer within whose jurisdiction, whole or any part of the immovable property comprised in such certificate is situate. Immediately thereafter the Registering Officer should file the copy in his Book No.1. It is this sub-section (2) of Section 89 that may cover an Arbitration Award.

...

17. A careful reading of Section 89(2) would show that every decree of a Civil Court, cannot be entered or filed in Book No.1. It is only a certificate of sale of immovable property issued by a Court under the Civil Procedure Code, that is capable of being filed in Book No.1.

18. As pointed out earlier, the petitioner has obtained an award for the specific performance of an Agreement of sale. Assuming for a minute that the Petitioner had gone to the Civil Court and obtained a decree for specific performance, the same would not also fall within the Section 89(2). In other words, the

petitioner cannot seek the registration of a mere decree for specific performance. He must file execution proceedings, deposit the balance of sale consideration into Court, get a sale executed through the Court itself and have the same registered or have the same filed under Section 89(2). That stage has not been reached. The Petitioner has already filed an execution petition. But for whatever reasons, he is yet to have either a Sale Deed or a certificate of sale executed through the Civil Court. In such circumstances, the appropriate remedy open to the petitioner is only to have a Sale Deed executed by the Executing Court and have the same registered as a document or filed in Book No.1 in terms of Section 89(2). He cannot simply get the award itself entered in the index or Register.

19. In view of the above, the writ petition is disposed of, clarifying that an award passed by an Arbitrator can also be filed or indexed in terms of Section 89(2) of the Act, provided the same is a certificate of sale as contemplated in Section 89(2). The petitioner shall get a Sale Deed executed through the Executing Court and in the event of the petitioner obtaining a Sale Deed or sale certificate through the Executing Court, the respondents 1 to 3 shall index the same and register it subject to the fulfilment of all other conditions."

5. It is noticed from the decree dated 30.08.2013 passed in O.S. No. 183 of 2011 by II Additional District Court, Tirupur, sought to be registered by the Petitioner in the present case that he has been required to pay the purchase money within two months from that date, but the affidavit filed in support of the Writ Petition is conspicuously bereft of any detail as to whether that requirement has been complied, or any application under clause (3) of Section 28 of the Specific Relief Act, 1963, had been filed for execution of sale deed in his favour so far. Suffice here to observe that it is for the Petitioner to workout his remedy in that regard before the appropriate forum and no view is expressed by this Court on the entitlement of the Petitioner for such relief in this proceeding. Be that as it may, it remains inevitable that the aforesaid decree for specific performance cannot be registered as sought by the Petitioner for the reasons explained in detail supra. Nothing survives for further adjudication in this Writ Petition.

6. Accordingly, the Writ Petition is dismissed with the aforesaid observations. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vjt/das/sj

To

1. The Inspector General of Registration,
Santhome High Road,
Mylapore, Chennai - 600 004.
2. The Temporary Joint Sub-Registrar,
Avinashi S.R.O.,
Avinashi, Tiruppur District.

+1cc to Mr. M.Murugan, Advocate, S.R.No.15485

+1cc to the Government Pleader, S.R.No.15659

W.P. No. 30353 of 2019

RP(CO)
KKV/10/06/2020

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