

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.12639 of 2017

and

WMP No.13425 of 2017

1. Samraj
2. Sellammal ... Petitioners

Vs

1. The District Registrar of Krishnagiri
(Administration),
Office of the District Registrar,
Krishnagiri.
2. The Joint II Sub Registrar of Krishnagiri
Office of the Sub Registrar,
Krishnagiri. Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the order of the Joint II Sub Registrar, Krishnagiri in Memo No.2/2016 dated 29.07.2016 and confirmed by the District Registrar (Administration), Krishnagiri in Na.Ka.No.4192/2016/Aa1/ dated 01.09.2016 and quash the said orders and consequently direct the respondents to register the certified copy of the final decree dated 27.03.2015 in I.A. No.298 of 2009 in O.S. No.127 of 2006 (District Munsif of Krishnagiri) within a time to be stipulated by this Court.

For Petitioners : Mr.N.E.A.Dinesh

For Respondents : Mr.B.Kannan

Government Advocate for Registration

ORDER

Heard Mr.N.E.A. Dinesh, learned counsel for the petitioners and Mr.B.Kannan, learned Government Advocate for the respondents.

2. The only issue involved in this writ petition is whether a Court decree which was received admittedly by the petitioners

from the Court on 29.04.2016 and was presented for Registration on 10.07.2016 is within the period of limitation, as prescribed under proviso to Section 23 of the Registration Act.

3. The proviso to Section 23 of the Registration Act, stipulates that a copy of the decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it became final.

4. In the instant case, it is not in dispute that the petitioners received the final decree passed in I.A. No.298 of 2009 in O.S. No.127 of 2006 on the file of the District Munsif Court, Krishnagiri only on 29.04.2016 from the Court Registry and the said decree was made available on 28.04.2016. It is also not in dispute that the petitioners have presented the final decree for Registration before the second respondent on 10.07.2016, within four months from the date on which they received the decree from the Registry of the Court.

5. The only contention raised by the respondents as seen from the counter is that since the date of decree is 27.03.2015, the document has been presented beyond the prescribed period, as stipulated under Section 23 of the Registration Act, 1908.

6. In identical matters, two different Division Benches of this Court as well as a learned Single Judge of this Court have considered a similar issue, wherein, it was held that the limitation prescribed under Section 23 of the Registration Act shall apply only from the date of receipt of the decree. The details of the Division Bench Judgments as well as the single bench judgment are as follows:

a) 2007 2 TCJ 68 in the case of A.K.Gnanasankar vs. The Joint II Sub Registrar, Cuddalore - 2 :-

The above provision makes it clear that all documents except WILL are to be presented before a proper officer and the same shall be presented within four months from the date of its execution. If we consider the date on which the final decree was passed by the Subordinate Court, as rightly pointed out by the learned Government Advocate, the document presented before the respondent is hopelessly barred by time. However, the Proviso appended to section 23 makes it clear that a copy of decree or order may be presented within four months from the day on which it was made or whether it is appealable within four months from the date on which it becomes final. It is not in dispute that unless the parties to the proceedings deposit the required stamps, final decree cannot be drafted. Taking into consideration the difficulties expressed, ultimately the court

concerned accepted the case of the appellant / petitioner / first defendant and extended the time for depositing the required stamps. In view of the said order, which we have already adverted to, we are of the view that the appellant / petitioner has satisfied the condition prescribed in section 23 of the Registration Act and we are unable to accept the contrary conclusion arrived at by the learned Judge. When there is no dispute that the certified copy of the final decree will not be issued unless it is engrossed on the required stamp papers and in view of the fact that after getting certified copy of the decree duly engrossed on the stamps, the petitioner presented the same before the respondent within the period prescribed in Section 23 of the Registration Act, we are of the view that the respondent ought to have registered the document, if the same is otherwise in order.

b) In another case of S.Sarvothaman vs. The Sub-Registrar, Oulgaret, Pondicherry, a Division Bench of this Court passed in W.A. No.336 of 2019 dated 07.02.2019, has held as follows :-

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.

26. As pointed out by us earlier, the time limit stipulated under Section 23 of the Act will have no application to a court decree. For the above reasons, we are of the considered view that the reasons assigned by the respondent for refusing to register the decree dated 29.04.1970 vide order dated 05.07.2018 is unsustainable in law.

c) A Single Judge of this Court has also followed the decision of the aforesaid Division Bench Judgments in the case of K.Krishnan vs. Inspector General of Registration and Ors in W.P. (MD) No.13896 of 2019, dated 20.06.2019 reported in Manu/TN/5556/2019.

7. In view of the settled position of law, the impugned order has to be quashed and accordingly, the impugned order dated 01.09.2016 is hereby quashed.

8. In the result, this Court directs the respondents to register the certified copy of the final decree dated 27.03.2015 passed in I.A. No.298 of 2009 in O.S. No.127 of 2006 (District Munsif, Krishnagiri), within a period of one month from the date of receipt of a copy of this order and this writ petition shall stand allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The District Registrar of Krishnagiri
(Administration),
Office of the District Registrar,
Krishnagiri.

2. The Joint II Sub Registrar of Krishnagiri
Office of the Sub Registrar,
Krishnagiri.

+1 CC to The Government Pleader (SR. No.10395)
+1 CC to Mr. V. Nicholas

SSD (CO)
AT (20/05/2020)

W.P. No.12639 of 2017

WEB COPY