

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.16176 of 2017

and

WMP No.17475 of 2017

K.Rathinasamy

..Petitioner

Vs

1. The District Registrar  
Salem West,  
Salem  
Salem District.

2. The Sub Registrar,  
Sub Registrar Office,  
Mettur and Kolathur,  
Mettur - 636 401,  
Salem District.

...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 proceedings of the 1st respondent in his office Ref. Mu.Mu.No.3843/Aa1/2017, dated 24.05.2017 and the proceedings of the 2nd respondent in her office Ref. Mu.Mu.No.235/2017, dated 02.06.2017, quash the same and direct the respondents to register the decree dated 17.03.2016 passed in O.S. No.226 of 2014 on the file of the District Munsif Court, Mettur dam.

For Petitioner : Mr.P.Mani

For Respondents : Mr.B.Kannan

Government Advocate for  
Registration

ORDER

Heard Mr.P.Mani, learned counsel for the petitioner and Mr.B.Kannan, learned Government Advocate for the respondents.

2. The only issue involved in this writ petition is whether Section 23 of the Registration Act prescribing four months time for presentation of a document for registration will apply to a Court decree when the Court decree was presented for

registration within the four months period but the date of the Court decree was beyond the four months period. In the instant case, the Court decree was received by the petitioner on 14.11.2016 and on the same day, he has presented it for registration. But the second respondent kept the document pending under the guise of getting instructions from the first respondent. Further, it is the case of the petitioner that he has submitted representations dated 23.02.2017 and 07.03.2017 to the second respondent to register the said decree or to issue Rejection Check Note. Subsequently, the first respondent has issued Proceedings in Mu.Mu.No.3843/Aa1/2017, dated 24.05.2017 to the second respondent stating that decree has not been presented for registration within the time prescribed under Section 23 of the Registration Act. Further, it has been stated by the first respondent in his letter dated 24.05.2017 that there was a delay of 7 months and 15 days in applying for the certified copy of the decree.

3. Section 23 of the Registration Act reads as follows:

23. Time for presenting documents- Subject to the provisions contained in sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution:

Provided that a copy of a 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 becomes final.

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 petitioner received the final decree passed in O.S. No.226 of 2014 before the District Munsif, Mettur Dam, on 14.11.2016 from the Court Registry. It is also not in dispute that the petitioner has presented the decree for Registration before the second respondent on the same day itself, i.e. 14.11.2016.

5. The only contention raised by the respondents as seen from the counter is that since the date of decree is 17.03.2016, the document has been presented beyond the prescribed period, as stipulated under Section 23 of the Registration Act, 1908.

6. In identical matters, a Division Bench of this Court has considered a similar issue, wherein, it has been held that the limitation prescribed under Section 23 of the Registration Act reported are given below

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 an another case of S.Sarvothaman vs. The Sub-Registrar, Oulgaret, Pondicherry, another Division Bench of this Court in W.A. No.336 of 2019 dated 07.02.2019, 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.Gnanasan kar 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 Bench of this Court has also followed the decision of the aforesaid Division Bench of this Court 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 that Section 23 of the Registration Act will not get attracted when the Court decree has been presented for registration within four months from the date of receipt, the impugned order has to be quashed and accordingly, the impugned order dated 24.05.2017 passed by the 1st respondent is hereby quashed.

8. In the result, this writ petition is allowed and this Court directs the respondents to register the certified copy of the decree dated 17.03.2016 passed in O.S. No.226 of 2014 (District Munsif, Mettur Dam), within a period of one month from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

vsi2

To

1. The District Registrar  
Salem West,  
Salem  
Salem District.

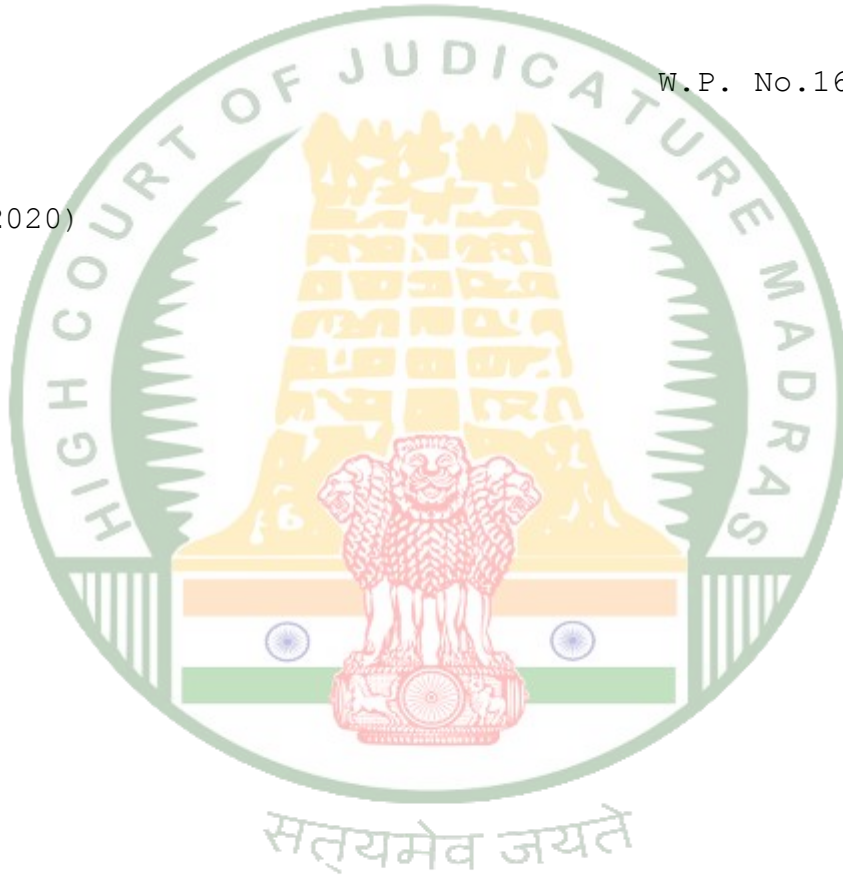
2. The Sub Registrar,  
Sub Registrar Office,  
Mettur and Kolathur,  
Mettur - 636 401,  
Salem District.

+1 CC to Mr.P.Mani, advocate sr 10298.

+1 CC to The Special Government Pleader sr 11364.

W.P. No.16176 of 2017

RP(CO)  
SP(13/03/2020)



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