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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2021

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.11096 of 2014
and M.P.Nos.1 and 2 of 2014

Sengottian

...Petitioner

-Vs-

The Sub-Registrar,
Senthamangalam,
Namakkal District.

...Respondent

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the entire records relating to the proceedings in P.Doc.No.8/2009, dated 12.08.2013 from the file of the respondent and quash the same and further direct the respondent to register the said document by taking into consideration of the fact that the stamp duty payable by the petitioner is only 1% of the value of the share allotted to the petitioner's wife namely the 1st plaintiff in O.S.No.115 of 2008 on the file of the District Munsif Court, Namakkal.

For Petitioner : Mr.D.Shivakumaran

For Respondent : Mr.A.Selvendran
Government Advocate.

ORDER

This Writ Petition has been filed for the issuance of Writ of Certiorarified Mandamus, calling for the entire records relating to the proceedings in P.Doc.No.8/2009, dated 12.08.2013 from the file of the respondent and quash the same and further direct the respondent to register the said document by taking into consideration of the fact that the stamp duty payable by the petitioner is only 1% of the value of the share allotted to the petitioner's wife namely the 1st plaintiff in O.S.No.115 of 2008 on the file of the District Munsif Court, Namakkal.

2. Heard Mr.D.Shivakumaran, learned counsel appearing for the petitioner and Mr.A.Selvendran, learned Government Advocate appearing for the respondent.



3. The respondent issued the impugned notice, dated 12.08.2013 and thereby directed the petitioner to pay the deficit stamp duty and the balance registration fees of Rs.95,865/- (Rupees Ninety Five Thousand Eight Hundred and Sixty Five only). According to the petitioner, the respondent already issued the very same notice on 06.07.2009 which was challenged before this Court in W.P.No.2386 of 2010. On 14.06.2013, this Court while setting aside the said notice dated 06.07.2009 passed the following order:-

3. The learned counsel for the petitioner submitted that in Writ Appeal No.2395 of 2003 vide judgment dated 23.3.2007, the Division Bench of this Court considered the very same issue and rendered judgment giving direction to register the document even if it was presented after four months. The order of the Single Judge dated 04.4.2003 was set aside and the writ Appeal was allowed. In paragraph 8 of the judgment, the Division Bench held as follows:-

"8. It is useful to refer section 23 of the Registration Act which speaks about the time for presenting documents and reads as follows:

'23. Time for presenting documents.

Subject to the provisions contained in Section 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 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.



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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.

In these circumstances, the order of the learned Judge dated 04.4.2003 is set aside and direction is issued to the respondent to register the certified copy of the final decree in O.S.No.538 of 1995 on the file of Subordinate Judge's Court, Cuddalore within a period of four weeks from the date of receipt of a copy of this order. The writ appeal is allowed.

4. The learned Additional Government Pleader appearing for the respondents, after going through the said judgment, submitted that the issue involved in this writ petition is covered by the above said judgment and similar orders may be passed in this writ petition also.



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5. In view of the above, the impugned notice dated 6.7.2009 is set aside and the writ petition is allowed. The respondent is directed to register the document, if it is otherwise in order, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

4. Thus, this Court directed the respondent to register the document, if it is otherwise in order, within a period of four weeks. However, by the present impugned order dated 12.08.2013, the respondent again issued the very same order and directed the petitioner to pay the deficit stamp duty and registration charges. Further, it is observed that as per the order passed by this Court, within a period of four weeks, the petitioner has to pay the deficit stamp duty as well as the registration charges.

5. This Court subsequently recorded 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 under Section 23 of the Registration Act. Therefore, directed the respondent to register the same. Without even considering the above order passed by this Court, the respondent again mechanically passed the impugned order.

6. In view of the above, the impugned order cannot be sustained and it is liable to be set aside. Accordingly, the proceedings in P.Doc.No.8/2009, dated 12.08.2013 of the respondent is hereby set aside. The respondent is directed to register the document, which was presented for registration by the petitioner, within a period of two weeks from the date of receipt of a copy of this order and to release the same.

7. In the result, this writ petition stands allowed. Consequently, connected Miscellaneous petitions are closed. There shall be no order as to costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar



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To

The Sub-Registrar,
Senthamangalam,
Namakkal District.

+1 CC to Mr.D.Shivakumaran, Advocate sr 58078
+1 CC to The Government Pleader sr 58212.

W.P.No.11096 of 2014
and M.P.Nos.1 and 2 of 2014

PMK (CO)
SP (29/11/2021)