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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2021

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.NO.24857 OF 2014

AND

M.P.NO.1 OF 2014

Anitha  
W/o.Rajeshkannan

... Petitioner

Vs.

1. The Inspector of Registration,  
Office of the Inspector of Registration,  
Santhome High Road,  
Chennai.

2.The District Registrar,  
Salem West,  
Salem.

3.The Sub-Registrar,  
Jalagandapuram,  
Salem District.

... Respondents

Prayer:

Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, call for the records relating to the order passed by the third respondent herein proceeding NIL dated 30.07.2014, quash the same further direct the third respondent herein to register the final decree and judgment dated 02.11.2012 passed in I.A.No.733 of 2012 in O.S.No.85 of 2011 on receipt of penalty and registration charges.

For Petitioner : Mr.C.Prabakaran

For Respondents: Mr.P.P.Purushothaman  
Government Advocate



## ORDER

This writ petition is filed for issuing a Writ of Certiorarified Mandamus, to quash the order passed by the third respondent dated 30.07.2014 and direct the third respondent herein to register the final decree and judgment dated 02.11.2012 passed in I.A.No.733 of 2012 in O.S.No.85 of 2011 on receipt of penalty and registration charges.

2. Brief facts which are necessary for disposal of the writ petition are as follows:

One Kandasamy who is the brother of the petitioner's father filed a suit in O.S.No.85 of 2011 on the file of the Sub-Court, Sankari for partition of the suit properties. The petitioner's father and mother were arrayed as defendants 2 and 3 and the petitioner was arrayed as fourth defendant in the said suit. It is admitted that the suit was disposed of on the basis of a compromise. Based on the compromise the brother of the petitioner's father filed an application in I.A.No.733 of 2012 in O.S.No.85 of 2011 for passing final decree in terms of the compromise memo filed before the Sub-Court, Sankari. The Sub-Court, Sankari passed the final decree on 02.11.2012 in terms of the compromise memo. Thereafter, the petitioner had obtained the certified copy of the final decree in O.S.No.85 of 2011 and approached the third respondent for the purpose of registration of the final decree.

3.The said application was rejected on the ground that the judgment and decree of the Sub-Court cannot be registered as the same have been obtained after the period of limitation. Challenging the order of the third respondent, the above writ petition is filed.

4.The learned counsel for the petitioner states that the third respondent passed the impugned order without jurisdiction. Though, the learned counsel for the petitioner has raised several grounds in this writ petition, it is seen that the main issue in this petition is whether Law of Limitation as prescribed under Section 23 of the Limitation Act would apply to decree of Civil-Court. Similar issue came up for consideration before the Division Bench in the case of A.K.Gnanasankar Vs.Joint-II Sub-Registrar, Cuddalore-2[(2007) 2 TCJ page 68]. It was held that the limitation prescribed for presenting a document does not apply to a decree of Civil-Court as it is a permanent record of the Court and to register the same, no limitation is prescribed. In yet another judgement delivered by an Hon'ble Division Bench of this Court in the case of S.Sarvothaman Vs.Sub-Registrar, outgaret [(2019) 3 MLJ page 571], The earlier judgments were followed and the position is



reiterated in the following lines:-

"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 a decree, as it is a permanent record of the court and to 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 ArunKumar Vs. Inspector General of Registration [W.P.No.16569of 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,



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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



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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].”.

5. In view of the legal position settled in several precedents and the factual position, this Court is of the view that the respondents cannot refuse registration of the Court's decree on the ground of limitation. Accordingly, the writ petition is allowed, the impugned order is quashed and the petitioner is directed to re-present the judgement and decree passed by the Sub-Court, Sankari in I.A.No.733 of 2012 in O.S.No.85 of 2011 before the Sub-Registrar.

The Sub-Registrar shall admit the document for registration and register the document within a period of three weeks from the date of re-presentation of the document for registration. It is open to the third respondent to collect the stamp duty, which is required as per law. No Costs. consequently, the connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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Copy To

1. The Inspector of Registration,  
Office of the Inspector of Registration,  
Santhome High Road,  
Chennai.
2. The District Registrar,  
Salem West,  
Salem.



3.The Sub-Registrar,  
Jalagandapuram,  
Salem District.

+1cc to the Government Pleader, S.R.No.12783

W.P.No.24857 of 2014

PL (CO)  
CS/29/03/2021