

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.06.2022

CORAM:

THE HONOURABLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE
and
THE HONOURABLE MRS.JUSTICE N.MALA

Writ Appeal No.469 of 2022
and
C.M.P.No.3374 of 2022

S.Natarajan

.. Appellant

Vs.

1. S.Prakash

2. The District Registrar,
No.1/3, Vignesh Complex, Ground Floor,
PN Road, Opp: Sivan Theatre,
Postal Colony, Tiruppur-641 602.

3. The Sub-Registrar,
Registration Office,
154/8, Kangeyam Road,
Pallakkattupudur, Nallur-641 606,
Tiruppur District.

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent,
against the order dated 17.12.2021 passed by the learned Single
Judge, in Writ Petition No.15850 of 2021, on the file of this
Court.

Prayer in W.P No.15850 of 2021: Writ of Certiorari, Calling for
the records in Na.Ka. No.670/Aa1/ 2020 dated 24.06.2021 on the
file of the 1st respondent and quash the same as illegal.

For appellant : Mr.N.Manokaran

For respondents : Mr.T.Shunmugarajeswaran
for R-1/Caveator
Mr.P.Muthukumar,

State Govt. Pleader,
assisted by Mrs.R.Anitha,
Spl.G.P. for RR-2 & 3

JUDGMENT

(The Judgment of the Court was delivered by The Honourable Chief Justice)

By this Writ Appeal, the order dated 17.12.2021 passed by the learned Single Judge allowing the Writ Petition preferred by the first respondent herein, has been challenged.

2. It is a case where the first respondent (writ petitioner) presented a document before the Sub-Registrar for registration. The order was passed refusing registration of the document and accordingly, he preferred an appeal under Section 72 of the Registration Act, 1908. The appeal therein was dismissed upholding the order of the Sub-Registrar to deny the registration of the document. The Writ Petition was filed by him challenging the order of the Registrar and the said Writ Petition was allowed by the learned Single Judge.

3. According to the appellant, the Writ Petition filed by the first respondent herein, was not maintainable, because, the order of the Registrar to refuse registration of the document, could have been remedied under Section 77 of the Act of 1908. The first respondent herein (writ petitioner) did not pursue the remedy under Section 77, but preferred the Writ Petition. The objection as to the maintainability of the Writ Petition was specifically taken in the counter affidavit filed before the Writ Court and argued before the learned Single Judge, but the same has not been dealt with. It otherwise goes to the root of the case and therefore, the Writ Appeal has been filed challenging the order of the learned Single Judge.

4. Learned counsel for the appellant has referred to the facts of the case and submitted that the order of the Sub-Registrar is a speaking order, which was upheld by the Registrar. The learned Single Judge, yet, entered into the issue and that too many issues of factual nature to allow the Writ Petition ignoring the fact that the writ petitioner (first respondent herein) is having remedy under Section 77 of the Act of 1908. The prayer is accordingly made to set aside the order passed by the learned Single Judge.

5. The learned counsel for the first respondent/caveator (writ petitioner) and the learned State Government Pleader appearing for the respondents 2 and 3, have opposed the Writ Appeal and submitted that whenever the document is presented for registration, it is required to be registered, unless the allegation of fraud exists. In the instant case, the writ petitioner had presented the document, but was not accepted for

registration. It is despite the fact that the non-appellant had not indulged in mal-practices. The appellant's father executed a settlement deed in favour of the appellant with respect to the subject property and subsequently it was cancelled, and therefore, the appellant had no authority to raise objection against the registration of the document. But, at the instance of the appellant, the document was refused to be registered by the Sub-Registrar.

6. Learned counsel for the first respondent-caveator (writ petitioner) referred to a decision of a Division Bench of this Court in W.P.No.674 of 2020, dated 05.11.2020 (N.Ramayee Vs. The Sub-Registrar and another) to show that whenever a document is presented for registration, it is obligatory on the part of the Registrar to register it, and therefore, when the writ petitioner presented a document for registration, it was obligatory on the part of the Sub-Registrar and then the Registrar to register it. In the light of the above said judgment of the Division Bench, the learned Single Judge has rightly allowed the Writ Petition and a direction was issued by the learned Single Judge to register the document and for that reason, no interference in the matter may be made.

7. We have considered the rival submissions made on either side and perused the materials available on record.

8. Admitted facts show that the writ petitioner presented a document for registration. The Sub-Registrar passed an order to refuse registration of the document. The writ petitioner availed the remedy under Section 72 of the Registration Act, 1908, and accordingly, the appeal was preferred before the Registrar. The Registrar refused to register the document and hence, the Writ Petition was preferred by him. The objection as to the maintainability of the Writ Petition was taken in the light of the remedy under Section 77 of the Act of 1908. The learned Single Judge did not deal with the objection as to the maintainability despite being taken.

9. In the light of the aforesaid, we find force in the arguments of the learned counsel for the appellant (third respondent before the Writ Court) challenging the order of the learned Single Judge, where a direction has been issued for registration of the document. Once there is an order of refusal, the party aggrieved by it has to take the remedy in the manner provided under the Act of 1908.

10. The refusal of registration of the document, was challenged by the writ petitioner by maintaining appeal before the Registrar and therefore, further remedy is available under Section 77 of the Act of 1908. Since this objection was raised

in the pleadings and during the course of arguments, the learned Single Judge ought to have decided the issue and having failed to do it, we find reason to cause interference in the order under challenge and the same is accordingly set aside.

11. Liberty is granted to the first respondent/caveator to avail remedy under Section 77 of the Act of 1908 to approach the Civil Court and looking into the peculiar facts and also that the first respondent/caveator was bona-fidely pursuing the remedy before this Court, if the Civil Suit is preferred by the first respondent/caveator within 15 days challenging the order of the Registrar, it shall be decided in the manner known to law. The delay in preferring such suit shall be considered by the Civil Court in reference to Section 14 of the Limitation Act.

12. Further liberty is granted to the appellant herein to challenge any of the documents executed by the first respondent herein (writ petitioner), if he is aggrieved by it. Acceptance of appeal shall not affect the right of the appellant on that account.

13. The Writ Appeal is allowed, setting aside the order passed by the learned Single Judge.

14. It is made clear that the order passed herein would not be taken adverse to the first respondent/caveator, on merits, rather, it would be adjudicated in the appropriate proceedings pursuant to the said liberty given by this Court and is availed of by the first respondent/caveator.

15. There shall be no order as to costs. C.M.P. is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

CS

To

1. The District Registrar,
No.1/3, Vignesh Complex, Ground Floor,
PN Road, Opp: Sivan Theatre,
Postal Colony, Tiruppur-641 602.

2. The Sub-Registrar,
Registration Office,
154/8, Kangeyam Road,
Pallakkattupudur, Nallur-641 606,
Tiruppur District.

+1cc to M/s.T.Shunmugarajeswaran, Advocate, S.R.No.34097

+1cc to Mr.N.Manokaran, Advocate, S.R.No.34328

+1cc to the Government Pleader, S.R.No.34554

W.A.No.469 of 2022

RK(CO)
SB(17/06/2022)