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WP No.23279 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15-06-2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP No.23279 of 2022

Mr.N.Dheenadhayalan

... Petitioner

Vs.

1.The Inspector General of Registration,
Registration Department,
No.100, Santhome High Road,
Chennai-600 028.

2.The District Registrar,
Combined Registration Buildings,
S.V.Road, Dharmapuri,
Dharmapuri District.

3.The Sub-Registrar, Joint-1,
Combined Registration Buildings,
S.V.Road, Dharmapuri,
Dharmapuri District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India
for issuance of a Writ of Certiorarified Mandamus, calling for the records



pertaining to the impugned order made in Appeal No.2/2022 dated 29.07.2022 passed by the second respondent confirming the order passed by the third respondent in proceeding No.1242/R/2022 dated 05.05.2022, quash the same and consequently direct the third respondent to register the pending document in Settlement Deed No.TP/110640842/2022 dated 11.02.2022.

For Petitioner : Mr.T.Chellapandian for
Mr.R.Joe Anand

For Respondents : Mr.D.Ravichander,
Special Government Pleader.

ORDER

The appellate order passed by the second respondent dated 29.07.2022 confirming the order passed by the third respondent in proceedings dated 05.05.2022, are sought to be quashed in the present writ petition and a further direction is sought for to register the document.

2. The petitioner states that his mother Smt.Angammal passed away on 30.10.2010 and during her lifetime, she executed an unregistered 'Will'. After the demise of Smt.Angammal, the petitioner inherited the



property, succeeded the title and is in possession of the subject property.

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3. The brother of the petitioner Mr.Karunyan and the petitioner partitioned the said property and was in enjoyment of the same. The petitioner presented the Settlement Deed settling the property in favour of his son Mr.D.Deepan.

4. The Settlement Deed presented by the petitioner was not taken for registration and the Registering Authority refused to register the document on the ground that it is an unregistered 'Will' and the original document was not produced and more-so the legal heirship certificate of one of the attesting witness also was not produced.

5. Against the decision of the Registering Authority, the petitioner preferred an appeal under Section 72 of the Registration Act. The Appellate Authority/District Registrar adjudicated the issues and made a finding that the decision taken by he Registering Authority is in consonance with the provisions of the Act.



6. The findings of the Appellate Authority reveals that the 'Will' submitted by the petitioner was unregistered and the petitioner has failed to produce the legal heirship certificate of one of the attesting witness. In the absence of those documents, the Authorities Competent cannot register the documents under the Act.

7. The learned Special Government Pleader appearing on behalf of the respondents raised an objection by stating that as against the order passed by the Appellate Authority, the petitioner has no option but to approach the Competent Civil Court of Law under Section 77 of the Registration Act.

8. The Scheme of the Act in Part XII deals with 'Refusal to Register'. Section 71 contemplates that reasons for refusal to register to be recorded. An aggrieved person is entitled to prefer an appeal to the Registrar from the orders of the Sub Registrar refusing registration on the ground other than denial of execution under Section 72. Sub Section (1) contemplates that "Except where the refusal is made on the ground of denial of execution, an appeal shall lie against an order of a Sub-Registrar refusing



to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-Registrar is Subordinate”.

9. Therefore, if the refusal is made on the ground of denial of execution, the appeal lies against the order refusing to admit a document to registration. Thus the case of the petitioner falls under Section 72 of the Act and the petitioner rightly preferred an appeal under Section 72 of the Act. The order of the Appellate Authority has been passed under Section 76 of the Registration Act.

10. That being the factum, the petitioner has to institute the suit under Section 77 of the Act, since the Registrar/Appellate Authority refused to grant the relief to the petitioner to register the Settlement Deed. Section 77 reads as under:-

“77. Suit in case of order of refusal by Registrar.—(1) Where the Registrar refuses to order the document to be registered, under section 72 or a decree section 76, any person claiming under such document, or his representative,



assign or agent, may, within thirty days after the making of the order of refusal, institute in the Civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree.

(2) The provisions contained in sub-sections (2) and (3) of section 75 shall, mutatis mutandis, apply to all documents presented for registration in accordance with any such decree, and, notwithstanding anything contained in this Act, the documents shall be receivable in evidence in such suit.”

11. In view of the above provisions, the petitioner has to redress his grievances by approaching the Jurisdictional Civil Court of Law.

12. That apart, the High Court in writ proceedings cannot adjudicate the disputed issues raised by the petitioner. When the Scheme under the Act, contemplates that the suit is to be instituted, the writ



proceedings are not entertainable.

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13. The Scheme of the Act if diluted, would result in prejudice to any of the parties. Therefore, this Court is of the firm opinion that the order passed under Section 76 of the Registration Act, is to be taken by way of suit under Section 77 of the Act.

14. The learned counsel for the petitioner raised an apprehension that the parties may suffer in the event of relegating them to the Civil Court, since there is no rival claim. The submission in this regard may not be relevant in view of the fact that Section 77 of the Act, unambiguously stipulates that the order passed under Section 76 of the Act, is to be adjudicated before the Civil Court of Law. Since the legislative intent has got a specific reason for relegating the parties to the Civil Court, the High Court in writ proceedings need not interfere in such cases.

15. Thus the petitioner is at liberty to approach the Competent Civil Court of Law challenging the order passed under Section 76 of the Act. In the event of filing any such civil suit, the Competent Court shall take



into consideration the period during which the present writ petition was pending before the High Court for condoning the delay and entertain and decide the suit on merits and in accordance with law as expeditiously as possible.

16. With the above liberty, the writ petition stands disposed of.

However, there shall be no order as to costs.

15-06-2023

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
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S.M.SUBRAMANIAM, J.

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