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W.P.No.31686 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.31686 of 2017

N.S.V.Educational Trust,
Rep. by its Managing Trustee,
Geetha Devi, Nalroad,
Kangeyam Taluk,
Tirupur District.

... Petitioner

Vs.

1.The Sub-Registrar,
Sub Registrar Office,
Sennimalai, Tirupur District.

2.Samiappa Gounder
(R2 impleaded vide order dated 06.02.2020 made in
W.M.P.No.5653 of 2018 in W.P.No.31686 of 2017)

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, Certiorarified Mandamus, calling for the records from the respondent in Check Slip No.1 dated 18.04.2017 and quash the same and also direct the respondent to register the Final Decree dated 29.11.2010 passed by the District Munsif Court, Kangeyam.



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For Petitioner	: Mr.B.Sarath Raj for Mr.N.Stalin
For R1	: Mr.D.Ravichander, Special Government Pleader
For R2	: Deceased – steps due

ORDER

The writ on hand has been instituted challenging the Refusal Check Slip No.1 dated 18.04.2017 issued by the 1st respondent.

2. The petitioner instituted a suit for partition in O.S.No.67 of 2010 on the file of the District Munsif Court, Kangayam. The Suit was decreed finally and the petitioner presented the final decree for registration before the 1st respondent. The 1st respondent issued the impugned Refusal Check Slip on the ground that the decree was presented for registration beyond the period of limitation. With reference to the limitation under Section 23, the Hon'ble Division Bench of this Court has decided the issues with the decree presented for registration cannot be refused.



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3. Issues regarding the limitation under Section 23 of the *res integra* and the Hon'ble Division Bench of this Court in the case of ***S.Sarvothaman -vs- The Sub-Registrar, Pondicherry*** reported in [(2019) 2 CWC 314] and the relevant paragraphs are extracted hereunder:-

*“ 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



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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 Arun Kumar Vs. Inspector General of Registration [W.P.No.16569 of 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 to section 23 the Act states that a copy of the decree may be presented within four months from the date, on which, 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 unde section 23 of the Act should be read with in consonance with section 23 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*



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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 27 of the Act enumerates the documents,*



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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, in 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 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 17 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].



21. By applying the decision in the case of Padala Satyanarayana Murthy to the facts of the case, the only conclusion that could be arrived at is that a court decree is not compulsorily registerable and that the option lies with the party. In such circumstances, the law laid down by this Court clearly states that the limitation prescribed under the Act would not stand attracted.”

4. The learned counsel for the petitioner vehemently contended that the refusal check slip issued by the Sub Registrar is contrary to the principles settled by the High Court in number of cases.

5. In view of the facts and circumstances, the order impugned issued by the 1st respondent in Check Slip No.1 dated 18.04.2017 is quashed and the 1st respondent is directed to proceed with the registration by calculating the registration fee applicable and by following the procedures as contemplated.



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6. With the above directions, the writ petition stands allowed. No costs.

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Index : Yes

Speaking order

Neutral Citation : Yes

To

The Sub-Registrar,
Sub Registrar Office,
Sennimalai, Tirupur District.



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S.M.SUBRAMANIAM, J.

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