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W.P.No.5943 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2024

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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No. 5943 of 2024
and
W.M.P.No.6596 of 2024

G.Chandrasekar

... Petitioner

versus

The Sub-Registrar,
Registration Department,
Sooramangalam,
Salem District.

...Respondent

Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned Refusal Check Slip bearing No.RFL/Sooramangalam/117/2023 dated 25.04.2023 on the file of the respondent herein quash the same and consequently direct the respondent herein to register the judgment and decree dated 25.11.2019 passed in O.S.No.221/2012 on the file of the Principal Sub-Court, Salem within a stipulated period.

For Petitioner : Mr.K.Govi Ganesan

Pg.Nos.1/8



W.P.No.5943 of 2024

For Respondent : Mr.R.Neethi Perumal
Government Advocate

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ORDER

Mr.R.Neethi Perumal, learned Government Advocate accepts notice for the respondent. With the consent of both the parties, this Writ Petition is taken up for final disposal at the admission stage itself.

2. This writ petition has been filed to quash the impugned Refusal Check Slip bearing No.RFL/Sooramangalam/117/2023 dated 25.04.2023 on the file of the respondent herein and consequently direct the respondent herein to register the judgment and decree dated 25.11.2019 passed in O.S.No.221 of 2012 on the file of the Principal Sub-Court, Salem within a stipulated period.

3. Learned counsel for the petitioner submitted that one Ramesh has filed the said suit in O.S.No.221 of 2012 on the file of the Principal Sub Court, Salem against the petitioner and another, for partition. The petitioner as a first defendant, has contested the suit, but the second defendant one



W.P.No.5943 of 2024

Usharani remained *ex-parte*. After full-fledged trial, the trial Court dismissed the suit, vide judgment and decree dated 25.11.2019. Aggrieved by the same, the said Ramesh filed an appeal in A.S.No.30 of 2020 on the file of the Principal District Court, Salem and the same was dismissed as abated on 10.08.2021. While so, the petitioner presented the judgment and decree dated 25.11.2019 for registration through online, by remitting requisite stamp duty and registration charges. However, the respondent fell in grave error in construing the judgment and decree as an *ex-parte* decree/stay order and passed the impugned refusal check slip stating that as per the Circular in ந.க.எண்.34930/சு1/2019 நாள் 27.02.2023, there is a bar in registering the *ex- parte* decree.

4. Learned counsel for the petitioner further submitted that as per Section 17(2)(vi) of the Registration Act, 1908, the respondent is duty bound to register the judgment and decree of the Court. Therefore, the respondent has no jurisdiction to pass the impugned refusal check slip and hence, the same is liable to be quashed.



W.P.No.5943 of 2024

WEB COPY

5. Heard both sides and perused the materials available on record.

6. On a perusal of the records, it is seen that after full-fledged trial, the trial Court dismissed the suit, vide judgment and decree dated 25.11.2019, even the petitioner has also contested the suit as the first defendant. Hence, the decree presented by the petitioner is not an *ex-parte* decree and it is a contested decree.

7. Section 17(2) (vi) of the Registration Act, 1908, is very clear that if any decree or order is passed by a Court, the Registrar/Sub-Registrar can register the same.

8. For better appreciation Section 17(2) (vi) of the Registration Act, 1908 is extracted hereunder :

" 17. Documents of which registration is compulsory :-

(1)

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to

(vi) any decree or order of a Court [except a decree or order expressed to be made on a compromise and comprising immovable property



W.P.No.5943 of 2024

other than that which is the subject matter of the suit or proceedings]; or"

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9. Further, if the decree holder gives a valid reason for presenting the decree for registration, the same has to be considered, unless the said decree was subsequently set aside or over-ruled or modified. Even otherwise, if any dispute arises regarding the same, the aggrieved party can work out their remedy before the civil Court. The Registrar is not the competent authority to testify as to whether the *ex-parte* decree presented before him/her is a valid and executable one or not. Unless the decree presented for registration is subsequently set aside or over-ruled or modified by the competent forum, the said decree is an executable decree, and it is the duty of the Registrar to register the document, if the document is otherwise in order and within the purview of the Registration Act. Therefore, the reason given by the respondent for not registering the *ex-parte* decree that too based on the said circular, is against the provisions of law and hence, the same cannot be accepted. Circular is only for internal communication and not to by-pass or over rule or modify the Act. This Court has come across several writ petitions wherein, the Registrars, by citing the said circular, have refused to



W.P.No.5943 of 2024

register the *ex-parte* decree. The specific portion in the Circular

ந.க.எண்.34930/சு1/2019 நாள் 27.02.2023 directing the registering authority not

to register the *ex-parte* decree, which is against Act or Rule, was already quashed by this Court in W.P.No.36564 of 2023, dated 05.01.2024.

Further, this Court, time and again interpreted the proviso that if any decree or order passed by a Court is presented for registration and the same is otherwise in order, the concerned authority has to register the same. Instead of registering the same, the respondent herein, by total non application of mind, referred to the circular and refused registration, which is highly deprecated. Therefore, the impugned refusal check slip dated 25.04.2023 passed by the respondent is liable to be quashed with costs of Rs.25,000/- (Rupees Twenty five thousand only). The respondent/Sub Registrar, Registration Department, Sooramangalam, Salem District is directed to pay the costs of Rs.25,000/- from his/her salary to the credit of Chief Justice Relief Fund.

10. In view of the above, this writ petition is allowed and the impugned refusal check slip dated 25.04.2023 passed by the respondent is



W.P.No.5943 of 2024

quashed. The respondent is directed to register the judgment and decree dated 25.11.2019 passed in O.S.No.221 of 2012 on the file of the Principal Sub Court, Salem, if the same is otherwise in order, within a period of six weeks from the date of receipt of a copy of this order and the petitioner has paid the registration fees as well as stamp duty. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

07.03.2024

Index: Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No
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To
The Sub-Registrar,
Registration Department,
Sooramangalam,
Salem District.



WEB COPY



W.P.No.5943 of 2024

P.VELMURUGAN, J.
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W.P.No.5943 of 2024

07.03.2024

Pg.Nos.8/8