



W.P.No. 8721 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2024

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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No. 8721 of 2024

R.Vivek

... Petitioner

versus

The Sub-Registrar,
Ammappettai,
Sub Register Office,
Erode District.

...Respondent

Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the record pertaining to the impugned Refusal Check Slip in RFL/Ammappettai/59/2023 issued by the respondent dated 19.09.2023 and quash the same and consequently direct the respondent to register decree dated 22.06.2023 made in O.S.No.29 of 2022 on the file of the District Munsif Court, Anthiyur.

For Petitioner : Mr.K.V.Muthuvisakan

For Respondent : Mr.U.Baranidharan
Additional Government Pleader



W.P.No. 8721 of 2024

ORDER

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Mr.U.Baranidharan, learned Additional Government Pleader 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 in RFL/Ammapettai/59/2023 issued by the respondent dated 19.09.2023 and consequently direct the respondent to register the decree dated 22.06.2023 made in O.S.No.29 of 2022 on the file of the District Munsif Court, Anthiyur.

3. Learned counsel for the petitioner submitted that the petitioner's grand mother one Rajammal was the original owner of the subject properties comprised in Re-survey No.347/1, measuring to an extent of 1 acre 3 cents and Survey No.5A1A, measuring to an extent of 2 acre 54 cents at



W.P.No. 8721 of 2024

Komarayanur Village, Erode District, by virtue of a registered partition deed, dated 01.07.1982, vide Doc.No.1052/1982. While so, the said Rajammal bequeathed the said properties in favour of the petitioner through a Will dated 28.04.2021 and she died on 06.05.2021. After her demise, the petitioner is in possession and enjoyment of the said properties. That being so, one Dharmalingam, who is the adjacent owner of the petitioner's properties is trying to interfere with the petitioner's peaceful possession and enjoyment, and hence, the petitioner has filed a suit in O.S.No.29 of 2022 on the file of the District Munsif Court, Anthiyur, for permanent injunction. Despite service of notice, the said Dharmalingam has not chosen to enter appearance either through a counsel or in person, and therefore, the trial Court passed an *ex-parte* decree on 22.06.2023. Thus, the petitioner presented the judgment and decree dated 22.06.2023 for registration through online, by remitting requisite stamp duty and registration charges, but the respondent refused to register the said document and issued a Refusal Check



W.P.No. 8721 of 2024

Slip on 19.09.2023 stating that there is bar in registering an *ex-parte* decree, as per the order dated 27.07.2016 of the Madurai Bench of Madras High Court in W.P (MD).No.5955 of 2014 and the letter of the Inspector General of Registration vide No.43875/C1/2016 dated 06.02.2017. Hence, the petitioner is constrained to file the present writ petition.

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

5. It is to be noted that as per the judgment dated 27.07.2016 in W.P.(MD).No.5955 of 2014, if it is an *ex-parte* decree, in order to avoid collusion, for abundant caution, the Registrar has to verify the title of the document. However, the impugned Refusal Check Slip would not reveal anything about the verification of the title deed, based on which they obtained *ex-parte* decree. However, there is no distinction between the *ex-parte* decree and the contesting decree. Further, if the decree holder gives a



W.P.No. 8721 of 2024

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 statute/Act. This Court has come across several writ petitions wherein, the Registrars, by citing the said



W.P.No. 8721 of 2024

circular, have refused to register the *ex-parte* decree. Further, 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 to Section 23 of the Registration Act 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. However, in the impugned order, the respondent has not stated any reason except the reason, that it is an *ex-parte* decree.

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



W.P.No. 8721 of 2024

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

8. In view of the above discussion, this writ petition is allowed and the impugned refusal check slip dated 19.09.2023 passed by the respondent is quashed. The respondent is directed to register the judgment and decree dated 22.06.2023 passed in O.S.No.29 of 2022 on the file of the District Munsif, Anthiyur, if the same is otherwise in order and also comply with the directions issued in W.P.(MD).No.5955 of 2014, dated 27.07.2016 within a period of six weeks from the date of receipt of a copy of this order and the



W.P.No. 8721 of 2024

petitioner has paid the registration fees as well as stamp duty. There shall be no order as to costs.

28.03.2024

Index: Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

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To

The Sub-Registrar,

Ammapettai,

Sub Register Office,

Erode District.



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W.P.No. 8721 of 2024

P.VELMURUGAN, J.

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W.P.No.8721 of 2024

28.03.2024