



W.A.No.2174 of 2

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

W.A.No. 2174 of 2024
and
C.M.P.No. 15384 of 2024

The Joint Sub-Registrar - I,
Udhagamandalam,
The Nilgiris.

...Appellant

Vs.

P.Vasanth Kumari
...Respondent

Prayer: Writ Appeal filed under Clause 15 of the Amended Letters Patent,
against the order dated 05.01.2024 made in W.P.No.36564 of 2023.

For Appellant : Mr.Stalin Abimanyu
Additional Government Pleader
For Respondent : Mr.K.RSamratt

J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The respondent herein filed W.P.No.36564 of 2023 seeking a Writ of
Certiorarified Mandamus to call for the records of the Joint Sub-Registrar - I,
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Udhagamandalam / appellant herein regarding a refusal cheque slip issued by the said Officer on 29.09.2023, to quash the same and to register the decree in O.S.No.102 of 2004 in accordance with law.

2. The background facts that are necessary for disposal of the decree are as follows:-

The respondent herein had claimed that 5 cents of land in West Bury Road, Udhagamandalam Town belong to one Nallusamy Naidu. The said Nallusamy Naidu bequeathed the property in favour of the husband of the respondent under a registered Will bearing Document No. 24 of 1979. After the demise of the said Nallusamy Naidu, the Will was probated. The husband of the 1st respondent, Mr.P.Prasad died on 09.06.1993, leaving behind the 1st respondent and her daughter as legal heirs while so, the father-in-law of the petitioner, Pandurangan sold the property to one T.G.Bridget suppressing the Will. On learning about the said sale, the petitioner filed a suit in O.S.No.102 of 2004 before the Sub-Court, Udhagamandalam seeking a declaration that the sale is null and void. The said suit came to be decreed exparte on 08.06.2005.



3. Attempts made by the defendant in the suit, Mr.T.G.Bridget to have the exparte decree set aside also failed in as much as the application to set aside the exparte decree filed in I.A.No.698 of 2005 was dismissed for default on 03.03.2006. An application in I.A.No.283 of 2013 filed under Order 9, Rule 9 of the Code of Civil Procedure to restore I.A.No.698 of 2005 was also dismissed on 12.08.2014. It is claimed by the petitioner that the said order has become final. Thereafter, the petitioner presented the decree for registration as aforesaid. The Registrar refused to register the decree on the ground that it is an exparte decree, relying upon the circular issued by the Inspector General of Registration on 27.02.2023. It is this refusal cheque slip that was challenged by the petitioner in the Writ Petition.

4. The learned single Judge dismissed the Writ Petition on the ground that the document was presented belatedly after the period of four months under the proviso to Section 23 of the Act. The learned Judge allowed the Writ Petition concluding that the proviso to Section 23 has been held to be inapplicable to the Court decrees and that the Registrar cannot launch upon the enquiry regarding the validity of a decree issued by a Civil Court. The learned single Judge rightly observed that unless the decree presented for



registration is subsequently set aside or over ruled or modified by a competent forum, it is the duty of the Registrar to register the document.

Quite surprisingly, the Registrar has chosen to challenge the said direction.

We are unable to fathom as to how the Registrar can maintain an appeal, since he is not an aggrieved person. This kind of frivolous appeals must be avoided. But however, a ground is urged that in view of the circular of the Inspector General of Registration, which according to the appellant, is superior to the Constitution of India and any decree or order passed by the Civil Court in India, an exparte decree cannot be registered, we were constrained to issue notice to the Inspector General of Registration asking him to explain as to how such circular came to be issued by him, directing the Registrars not to register exparte decrees.

5. An affidavit has been filed by the Inspector General of Registration stating that such a circular came to be issued because of the directions issued by a single Judge of this Court in W.P(MD).No.5955 of 2014 dated 27.07.2016. The relevant portion of the said circular issued by the Inspector General of Registration dated 27.02.2023 reads as follows:-

"f) Stay Order, ex-parte order போன்றவைகளை
பார்வை 2ல் கண்ட உயர்நீதிமன்றத்தின் தீர்ப்பாணையில்



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தொரிவிக்கப்பட்டுள்ளவாறு பதிவு செய்ய கூடாது எனவும்
தொரிவிக்கப்படுகிறது."

6. The said clause refers to the judgment of this Court in W.P(MD).No.5955 of 2014. The relevant portion of the judgment of this Court reads as follows:-

"7.Further, there is no logic in the argument if the same is tested with reference to various other documents. Secondly, this Court is conscious of the serious implications by the registration of decree or order of Civil Court which is either appealable or has not attained finality. It is also possible for any one to get a decree from Civil Court either by adopting fraud or collusion. Hence, it is always necessary and important that the person who seeks to register a decree of Civil Court may be asked to prove that the decree has become final and that it is not collusive. In the instant case, it is brought to the notice of this Court that neither the petitioner nor the defendant in the suit has got patta in respect of the suit properties. But nevertheless registration of such decree will lead to further complication as the same will be shown as an encumbrance in respect of the properties which are the subject matter of the suit. The registration of a decree, as in the present case, will cause serious inconvenience / injury to the real owner who is really a third party to the suit, when he



wants to deal with the property. Taking advantage of the registration of a collusive and fraudulent decree, the person who has obtained the decree, may also persuade the revenue officials for mutation of revenue records and grant of patta in his favour by resorting to proviso to Section 14 of the Tamil Nadu Patta Passbook Act. In order to protect the interest of true owners, it is necessary for the registering authority to hold an enquiry in the case of presentation of a decree or order of Civil Court to ensure that the decree or order has reached finality and that the decree is not obtained by fraud or collusion. ..."

7. The above observations of this Court were made in the context where it was found that the revenue records do not reflect the names of the persons who claimed under the decree. Even that we find, is not in accordance with law. By the judgment dated 27.07.2016, the learned single Judge, has in fact, authorized a Registering Officers to hold an enquiry as to the genuineness of a validly passed decree. Once a Civil Court passes a decree, be it exparte or otherwise, it is a valid decree until it is set aside. In ***Vijay Singh Vs. Shanti Devi and Another*** reported in ***(2017) 8 SCC 837***, the Hon'ble Supreme Court held as follows:-



*"12. We are only concerned with clause(a), which provides that if summons are duly served and the defendant does not put in appearance, the court may make an order that the suit would be heard ex parte. In this case, this was the procedure followed and an ex parte decree was passed. **There is no manner of doubt that an ex parte decree is also a valid decree. It has the same force as a decree which is passed on contest. As long as the ex parte decree is not recalled or set aside, it is legal and binding upon the parties.**"*

(emphasis applied)

The power to set aside a decree, be it ex parte or collusive or fraudulent is only vested in a competent Civil Court. To vest these powers with the Registering Officers will elevate them as extra constitutional authorities who have a right to determine the validity of a Civil Courts decree. Neither the constitutional scheme nor the legislative scheme permits such invasion into the powers of the Courts.

8. We are therefore, convinced that the direction issued by the learned single Judge in W.P(MD).No.5955 of 2014 extracted above has to be overruled and accordingly, the said judgment is over ruled. We make it clear that if a decree of a Court is presented, a Registrar will have to register it without launching upon any further enquiry. We therefore, set aside the direction contained in Clause - 5 of the circular dated 27.02.2023 also.



9. When this case came up on the condonation of delay stage, we had issued notice to the Inspector General of Registration requiring him to appear, since we were of the view that such an invasion into the powers of the Civil Court will amount to interference with the judicial process as well as dispensation of justice. We had also sought for an explanation from him as to why proceedings for contempt should not be initiated against him, since the circular dated 27.02.2023 amounted to interference in the course of justice. After receipt of the said notice, the Inspector General of Registration has issued another circular on 11.07.2024 wherein, it is stated that the circular dated 27.02.2023 was issued pursuant to the directions made by this Court in W.P.No.5955 of 2014.

10. The judgment in W.P.(MD)No.5955 of 2014 is dated 27.07.2016 and the circular was issued only on 27.02.2023, after about 7 years. Even in the second circular dated 11.07.2024, the Inspector General of Registration has only stated that Registering Officer ***should not refuse registration only on the ground that it is an exparte decree***. Even this circular does not, in our considered opinion, satisfy the requirements of law. Once a decree of a



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Civil Court, validly passed, is produced before the Registrar for registration, he is bound to register it without raising any query regarding its validity. It is fundamental principle of law that a decree is binding only on the parties to it and no third party right could be affected by registration of the said decree.

11. Even if a person is aggrieved by a decree, it is open to him to have it set aside in the manner known to law. We cannot merely because there is a possibility of some person colluding and obtaining a decree permit usurpation of the powers of the Civil Court by the Registrars who have no right to question the decrees of Civil Court. Hence, this Writ Appeal is **dismissed** as frivolous, motivated and made only with an intention of harassing the presentant of the decree. While condemning the appellant for coming up with such frivolous appeal, we should also appreciate him as this appeal has given us an opportunity to put on record straight, hence, we do not impose costs on appellant which we would have otherwise. Consequently, connected miscellaneous petition is closed.



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12. The respondent will represent the decree for registration within a period of four weeks from the date of receipt of a copy of this order. On such representation, the decree shall be registered and returned to her within a week from the date of such representation. Any lapse will be viewed very seriously. The Inspector General of Registration is directed to forward a copy of the judgment to all the Registrars in the State.

(R.S.M., J.) (R.S.V., J.)
22.07.2024

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Internet: Yes

Index: Yes

Speaking

Neutral Citation : Yes



To:-

The Joint Sub-Registrar - I,
Udhagamandalam,
The Nilgiris.



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