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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2024

CORAM

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
and**

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A.No.578 of 2023

and

C.M.P.Nos.22367 of 2022 and 5738 of 2023

S.Rasiya Begam

... Appellant

Vs.

1. Minor Sivasukanth

2. The Sub-Registrar,
Office of Sub-Registrar,
Dharapuram, Tiruppur District.

3. The Inspector General of Registration,
No.100, Santhome High Road,
Foreshore Estate, Pattinapakkam,
Chennai – 600 028.

4. The District Registrar,
The District Registrar Office,
Neriperichal, Tiruppur.

5. The Government of Tamil Nadu,
Rep. through the Secretary to Government,
Commercial Taxes and Registration Department,
Fort St.George, Chennai – 9.

... Respondents



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Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 25.08.2022 made in W.P.No.21762 of 2022.

For Appellant : Mr.N.Manoharan
for Mr.N.Ponraj

For R1 : Mr.C.Deivasigamani

For R2 to R5 : Mr.P.Anandakumar,
Government Advocate

J U D G M E N T

(Judgment of the Court was made by **S.M.SUBRAMANIAM, J.**)

By the leave of this Court, the Writ Appeal has been instituted challenging the order dated 25.08.2022 passed in W.P.No.21762 of 2022 instituted by Minor Sivasukanth, represented by his natural guardian, Mother.

2. The facts in nut-shell for consideration would be that the 1st respondent filed a Writ Petition seeking a direction against the Sub-Registrar, Dharapuram to register the decree passed on 05.02.2008 in O.S.No.70 of 2007 on the file of the Subordinate Court, Dharapuram on payment of registration charges and without insisting on the period of limitation. The learned Single Judge considered the fact that the decree in O.S.No.70 of 2007 was passed in favour of the 1st respondent, (which is a



compromise decree between the Minor son, Sivasukanth and the Father, Mr.V.Sivaraj) and directed to register the decree passed in O.S.No.70 of 2007 and the order of refusal of registration was set aside. The refusal order has been set aside by the learned Single Judge inspite of the fact that there is no such challenge is made in the writ proceedings.

3. The writ affidavit filed in W.P.No.21762 of 2022 reveals that the 1st respondent/Minor Sivasukanth, represented by his natural gaurdian, Mother filed a six paragraph affidavit by simply stating that a Suit in O.S.No.70 of 2007 was instituted and a compromise decree between the 1st respondent and his father was entered and a decree had been issued by the Sub-Court, Dharapuram. The decree passed on 05.02.2008 was presented for registration and the Sub-Registrar refused to register the same. Thus, a direction is to be issued to register the decree under the provisions of the Registration Act, 1908 and no other facts are stated.

4. Pertinently, the writ appellant/S.Rasiya Begam was not a party respondent in the writ proceedings filed by the 1st respondent. Since the appellant is also claiming right over the subject property, she filed the



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present Writ Appeal and leave was granted by this Court.

5. The learned counsel for the appellant, Mr.N.Manoharan would submit that the Father of the writ petitioner, Mr.V.Sivaraj entered into a sale agreement (Document No.1990 of 2007) with the appellant to sell his self-acquired property measuring 80½ cents in R.S.No.344/1 for Rs.4,00,000/-. Since the sale was not executed in terms of the sale agreement, the appellant filed O.S.No.67 of 2007 on the file of the Sub Court, Dharapuram against Mr.V.Sivaraj, Father of the 1st respondent / minor Sivasukanth for the relief of specific performance. The 1st respondent / Minor Sivasukanth, represented by his Mother filed another Suit in O.S.No.70 of 2007 on the file of the learned Sub-Court, Dharapuram against his father Mr.V.Sivaraj in respect of very same property on 26.06.2007. A compromise decree was obtained in O.S.No.70 of 2007 between the 1st respondent Minor Sivasukanth and his Father Mr.V.Sivaraj on 05.02.2008.



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6. Pertinently, the Suit for specific performance filed by appellant in O.S.No.67 of 2007 was decreed after contest on 08.09.2009. The appellant filed E.P.No.155 of 2009 for execution of sale deed in the year 2009. Pending Execution Petition, the father of the 1st respondent / Mr.V.Sivaraj filed an Appeal Suit in A.S.No.111 of 2010, which was dismissed. Second Appeal in S.A.No.514 of 2013 filed by the father of the 1st respondent was dismissed by the High Court on 21.06.2017. SLP (c) Diary No.5515 of 2018 filed by the father of the 1st respondent/Sivaraj was dismissed by the Hon'ble Supreme Court on 09.07.2018.

7. Thus, it is clear that the Suit for specific performance decreed in favour of the appellant was confirmed up to the Hon'ble Supreme Court of India. Execution Petition was allowed and the sale deed was executed in favour of the appellant. The 1st respondent / Sivasukanth filed obstruction petition in E.A.No.67 of 2013 in E.P.No.32 of 2013 under Order 21 Rule 90 and 99 CPC raising obstruction for delivery of possession on the basis of the compromise decree in O.S.No.70 of 2007. However, the Execution Application was dismissed by Sub Court, Dharapuram on 15.03.2017. Thus, the decree passed in E.A.No.67 of 2013 is binding on the 1st respondent



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Minor Sivasukanth in view of Order 21 Rule 103 of the Code of Civil Procedure. Rule 103 stipulates that “*where any application has been adjudicated upon under Rule 98 or Rule 100, the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree*”. More so, the decree passed in O.S.No.70 of 2007 was between the 1st respondent Minor Sivasukanth, represented by his Mother and his Father and thus, the compromise decree itself is doubtful.

8. Mr.Deivasigamani, learned counsel for the 1st respondent would say that the order passed in E.A.No.67 of 2013 is under challenge in C.M.A.No.118 of 2017 on the file of the Additional District Judge, Dharapuram.

9. The mother of the 1st respondent / Smt.Thilaga submitted a representation to the 2nd respondent /Sub Registrar to register the compromise decree passed in O.S.No.70 of 2007. The Sub-Registrar refused to register the same. Thus, W.P.No.21762 of 2022 came to be instituted. The learned Single Judge set aside the refusal order *suo motu* and issued a



direction to the Sub Registrar to register the compromise decree passed in O.S.No.70 of 2007 dated 05.02.2008.

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10. The learned counsel for the 1st respondent, Mr.Deivasigamani would contend that the decree has already been registered by the Sub Registrar pursuant to the orders passed in the writ proceedings. Therefore, the Writ Appeal became infructuous. He would further contend that the delay in presenting the decree for registration cannot be a ground to be considered in the present Writ Appeal. The appellant herein filed a Writ Petition in W.P.No.27953 of 2022 for a direction to consider her representation. The said Writ Petition filed in W.P.No.27953 of 2022 was dismissed by the learned Single Judge on 19.10.2022. A liberty was granted to the appellant to challenge the compromise decree passed in O.S.No.70 of 2017. The appellant has not preferred any appeal against the said order of dismissal in the writ proceedings and the compromise decree remains unchallenged. Thus, the present Writ Appeal is not entertainable.

11. We have considered the arguments and the materials available on record.



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12. Curiously, the writ affidavit filed by the 1st respondent is bereft of all the required details and the facts and circumstances leading to a compromise decree has not been stated. The 1st respondent has suppressed the fact regarding the Suit for Specific Performance instituted by the appellant in O.S.No.67 of 2007 and confirmation of the said decree by the Hon'ble Supreme Court. More particularly, the 1st respondent filed E.A.No.67 of 2013 in E.P.No.32 of 2013 under Order 21 Rule 99 Code of Civil Procedure raising obstruction for delivery of possession in view of the compromise decree in O.S.No.70 of 2007. The Sub Court, Dharapuram dismissed the said Exeuction Application in the year 2000 and passed an order, which would have an effect of a decree in view of Order 21 Rule 103 of Code of Civil Procedure. Thus, the said order passed in E.A.No.67 of 2013 is binding on the 1st respondent and those facts are conveniently suppressed by the 1st respondent in the Writ Petition for the purpose of securing an order to register the compromise decree passed in O.S.No.70 of 2007. A person, who suppressed the material facts before the Court is not entitled to get any relief from the hands of the Court. The Writ Petition was filed by the 1st respondent as if a decree in O.S.No.70 of 2007 passed



independently and there is no other litigation was pending in respect of the subject property. Such an approach of the 1st respondent before the writ court cannot be appreciated. Therefore, the order secured before the writ court in W.P.No.21762 of 2022 dated 25.08.2022 was based on suppression of material facts, which all are relevant for consideration with reference to the subject property. The subsequent order of the writ court vide order dated 19.10.2022 passed in W.P.No.27953 of 2022, the learned Judge though referred about the order passed in E.A.No.67 of 2013, there is no consideration of the overall facts and circumstances. Therefore, we are not inclined to go into the order passed in the Writ Petition. Further, the said order dated 19.10.2022 passed in W.P.No.27953 of 2022 is not under challenge before us. Mr.N.Manoharan, learned counsel for the appellant would submit that in the order dated 19.10.2022 passed in W.P.No.27953 of 2022, the learned Single Judge made an observation as follows:-

“ 7. A perusal of the materials available on record reveals that this Court, in W.P. No.21762/2022 vide order dated 25.08.2022, finding that there was no restraint order against the decree passed in O.S. No.70 of 2017, directed the Sub Registrar to register the said decree. The



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said order has not been put to test by way of appeal by the petitioner; rather the petitioner has filed the present petition to consider his objection/representation and to pass orders on the same before registering the said decree. When this Court had already pointed out that there is no restraint order, which would bar registering the said decree, the stand of the petitioners to consider his objections/representation before registering the decree is an exercise in futility and no useful purpose would be served as the Sub Registrar does not have any power to decide the title to the property. Therefore, the relief sought for by the petitioner cannot be granted.”

13. Considering the facts and circumstances, we are of the opinion that the refusal order passed by the Sub-Registrar seems to be in consonance with the provisions of the Registration Act, 1908, since the appellant was the decree holder and the decree obtained by her was confirmed up to the Hon'ble Supreme Court of India. Therefore, the



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appellant is entitled to succeed. Consequently, the order impugned dated 25.08.2022 passed in W.P.No.21762 of 2022 is set aside. The 2nd respondent, Sub-Registrar, Dharapuram is directed to cancel the registration of decree passed in O.S.No.70 of 2007 dated 05.02.2008, if already registered. Necessary changes in the encumbrance register also is directed to be made. The said exercise is directed to be completed within a period of two weeks from the date of receipt of a copy of this order. With reference to the civil rights between the parties, they are at liberty to establish the same before the competent Civil Court of law, if they are advised to do so.

14. Accordingly, the Writ Appeal stands allowed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

(S.M.S.,J.) (K.R.S.,J.)
27.02.2024

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Index : Yes
Speaking order
Neutral Citation : Yes

To



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S.M.SUBRAMANIAM, J.
and
K.RAJASEKAR, J.

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