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W.P. No.36564 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2024

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

W.P. No.36564 of 2023

P.Vasanth Kumari

... Petitioner

Vs.

The Joint Sub Registrar-1
Udhagamandalam
The Nilgiris

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records of the respondent in refusal No.RFL/Udhagamandalam-Joint I/47/2023 dated 29.09.2023 and quash the same and direct the respondent to register the decree in O.S.No.102 of 2004 dated 08.06.2005 in accordance with law.

For Petitioner : Mr.A.C.Mani Bharathi
for K.R.Samratt

For Respondent : Mr.R.U.Dinesh Rajkumar
Additional Government Pleader

**ORDER**

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This Writ Petition is filed seeking a Writ of Certiorarified Mandamus to call for the records of the respondent in refusal No.RFL/Udhagamandalam-Joint I/47/2023 dated 29.09.2023 and quash the same and direct the respondent to register the decree in O.S.No.102 of 2004 dated 08.06.2005 in accordance with law.

2. The learned counsel for the petitioner submitted that the land admeasuring 5 cents situated at West Bury Road, Udhagamandalam is originally belonged to one Nallusamy Naid who is the father of the father-in-law of the petitioner. The said Nallusamy Naidu bequeathed the said property in favour of the petitioner's husband under a Will registered as Document No.24/1979. After the demise of the Nallusamy Naidu, the said Will was probated. Thereafter, the petitioner's husband P.Prasad died on 09.06.1993 leaving behind the petitioner and her daughter as his legal heirs. While so, the petitioner's father-in-law namely Panduranga by suppressing the said Will, sold the said property to one T.G.Bridget and on coming to know about the same, the petitioner filed a suit in O.S.No.102/2004 before the Sub Court,



Udhagamandalam to declare the said sale as null and void in which, the petitioner got an ex-parte decree dated 08.06.2005 and subsequently, the defendant filed an application to set aside the ex-parte decree and the same was dismissed and therefore, the ex-parte decree got by the petitioner has become final. Thereafter, the petitioner presented the so called ex-parte decree before the respondent for registration, whereas the respondent refused to register the same and passed the refusal check slip stating that as per the circular ந.க.எண்.34930/சு1/2019 நாள் 27.02.2023, there is a bar in registering the ex- parte decree. Hence, the present writ petition is filed.

3. Heard and perused the materials available on record.

4. The proviso Section 23 of the Registration Act only says about the period for presenting documents for registration as follows;

23. Time of presenting document.- *Subject to the provisions contained in Sections 24, 25, and 26, no document other than a Will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution*

Provided that a copy of a decree or order 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 date on which it becomes final.

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5. In this case, a perusal of the refusal check slip does not show anything that the decree was presented for registration beyond the stipulated period of 4 months and therefore, the same was refused to be registered whereas, the reason given by the respondent for not registering the decree is that since it was an ex-parte decree, as per the circular ந.க.எண்.34930/சு1/2019 நாள் 27.02.2023, issued by the Inspector General of Registration, Chennai, ex-parte decree cannot be registered.

6. It is settled proposition of law that no circular will prevail over the Act or Rules. Therefore, the reason given by the respondent for not registering the ex-parte decree based on the said circular is against the provisions of law. Circular is only for internal communication and not to bypass or over rule or modify the Act. Therefore, though it is not challenged, since this Court has come across several writ petitions wherein, the Registrars by citing the said circular, have refused to 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, is hereby quashed.

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7. Admittedly, in this case, the petitioner has not presented the said ex-parte decree within the stipulated period of 4 months from the date of ex-parte decree. However, the proviso Section 23 of the Registration Act is not mandatory. If the decree/decreed 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 forum. 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, 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.

8. Therefore, the refusal check slip passed by the respondent in No.RFL/Udhagamandalam-Joint I/47/2023 dated 29.09.2023 is quashed and the respondent is directed to register the decree in O.S.No.102 of 2004 dated



08.06.2005 if the same is otherwise in order.

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9. With the above directions, the Writ Petition is allowed. No costs.

05.01.2024

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

To

The Joint Sub Registrar-1
Udhagamandalam
The Nilgiris

Copy to

The Inspector General of Registration
Chennai.



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P.VELMURUGAN. J.

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