



W.P.(MD)No.26100 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.11.2024**

CORAM:

THE HONOURABLE **MR.JUSTICE G.K.ILANTHIRAIYAN**

W.P.(MD)No.26100 of 2024

P.Malavizhi

... Petitioner

/Vs./

The Sub Registrar,
Mathagupatti Sub Registrar Office,
Sivagangai District.

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent's impugned proceeding order No.64/2023 dated 05.03.2024 and quash the same as devoid of merits and direct the respondent to register the Decree in OS No.187 of 2015 on the file of the learned Subordinate Judge of Sivagangai dated 10.11.2022, within the period stipulated by this Court.

For Petitioner : Mr.A.Haja Mohideen

For Respondent : Mr.S.P.Maharajan

Special Government Pleader



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ORDER

This writ petition has been filed challenging the order passed by the respondent, thereby rejected the request made by the petitioner to register the decree passed in O.S.No.187 of 2015 on the file of the Sub Court, Sivagangai, dated 10.11.2022.

2. By consent of both parties, this writ petition is taken up for final disposal at the stage of admission itself.

3. Heard the learned counsel on either side and perused the materials placed before this Court.

4. The petitioner filed a suit in O.S.No.187 of 2015 on the file of the Sub Court, Sivagangai, for declaration in respect of the A schedule property and seeking 1/6th share in respect of the B schedule property as against other family members. In the said suit, though notice was served on the defendants, the defendants failed to contest the suit and therefore, the trial Court decreed the suit in favour of the petitioner. Thereafter, the petitioner submitted the preliminary decree dated 10.11.2022 passed in



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O.S.No.187 of 2015 on the file of the Sub Court, Sivagangai, for registration. However, it was rejected on the ground that it is an exparte decree and as per the Circular dated 27.02.2023 issued by the Inspector General of Registration, the exparte decree cannot be registered. The said order was challenged before this Court in WP(MD)No.7057 of 2023. This Court, by order dated 30.03.2023, directed the respondent to examine the documents. The relevant portion of the order reads as follows:-

“5. Necessary enquiry must be conducted by the Sub Registrar, before coming to a conclusion that whether an exparte decree can be registered or not registered. In this case, no such enquiry has been done. Therefore, the impugned order is set aside and the matter is remitted back to the respondent with a direction that the respondent must issue notice to the petitioner herein and examine the copy of the decree in O.S.No.187 of 2015 date 10.11.2022 on the file of the Subordinate Court, Sivagangai, and after coming to subjective satisfaction, take a decision to register / not to register the said document. But such decision cannot be arrived at without any enquiry and without reasons for refusing to register the document. It cannot be stated as a Rule that every exparte decree is obtained by collusion. A decree is a decree. Even an



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exparte decree is executable in nature. It still has the force of law. It can still be put to execution. Therefore, merely because an exparte decree had been granted by a Court, it should not be viewed with skewed eyes.

6. A direction is given to the Sub Registrar, to examine the documents within a period of four weeks from the date on which it is re-presented in proper manner by the petitioner herein.”

5. Accordingly, the respondent conducted the enquiry, in which the defendants 1, 12 and 13 in the suit appeared and submitted that they had filed an application to set aside the exparte decree in IA.No.1 of 2023 in O.S.No.187 of 2015 before the Sub Court, Sivagangai, and it is pending. Therefore, once again, in the light of the Circular dated 27.02.2023 issued by the Inspector General of Registration, the request made by the petitioner was rejected by order dated 05.03.2024.

6. The learned counsel appearing for the petitioner brought to the knowledge of this Court that the application in I.A.No.1 of 2023 in O.S.No.187 of 2015 is filed by the petitioner for passing final decree. Sofar, no application has been filed by the defendants 1, 12 and 13 to set aside the exparte decree. As directed by this Court, the respondent,



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without conducting enquiry properly, mechanically once again rejected the request made by the petitioner to register the decree stating that it is an exparte decree.

7. It is a decree of the Court and it can be executable before the Court of law. Infact, the Circular dated 27.02.2023 issued by the Inspector General of Registration was issued in pursuant to the directions issued by this Court in WP(MD)No.5955 of 2014 dated 27.07.2016. This Court specifically issued the directions to the registering authority to hold an enquiry in case of presentation of a decree or the order of the Civil Court confirming that the decree or order has reached finality and also that the decree is not obtained by fraud or collusion.

8. It is not a case of the counter party that the petitioner obtained the decree by fraud or collusion. The only say for the respondent is that it is an exparte decree. The decree was passed by the Sub Court, Sivagangai, vide judgment and decree dated 10.11.2022. Sofar the defendants did not file any application to set aside the exparte decree. On the other hand, the petitioner being the plaintiff filed an application in



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IA.No.1 of 2023 in O.S.No.187 of 2015 before the file of the Sub Court, Sivagangai, for passing final decree and it is pending. The respondent wrongly construed that the said application was filed by the defendants 1, 12 and 13 and that too for setting aside the exparte decree and rejected the request made by the petitioner to register the decree passed in O.S.No.187 of 2015.

9. In view of the above, the order impugned in this writ petition cannot be sustained and is liable to be quashed. Accordingly, the impugned order dated 05.03.2024 passed by the respondent is hereby quashed. The respondent is directed to register the decree passed in O.S.No.187 of 2015, dated 10.11.2022, on the file of the Sub Court, Sivagangai, if it is otherwise in order, within a period of two weeks from the date of receipt of a copy of this order.

10. With the above direction, this writ petition is disposed of. No costs.

04.11.2024

Index : Yes / No
NCC : Yes / No
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TO:-

The Sub Registrar,
Mathagupatti Sub Registrar Office,
Sivagangai District.



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G.K.ILANTHIRAIYAN, J.

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Order made in
W.P.(MD)No.26100 of 2024

Dated:
04.11.2024