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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.12.2023

Pronounced on : 16.05.2024

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.28611 of 2023

Maharasi

.... Petitioner

Vs.

The Sub Registrar,
Radhapuram,
Tirunelveli.

... Respondent

Prayer : Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned refusal check slip in RFL/Radhapuram/85/2023 dated 10.11.2023 on the file of the respondent and quash the same as illegal and consequently direct him to register the Certified Copy of the Decree dated 06.02.2016 made in A.S.No.57 of 2010 on the file of Sub-Court, Valliyoor.

For Petitioner : Mr.V.S.Kishore Kumar

For Respondent : Mr.K.Balasubramani
Special Government Pleader



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ORDER

Heard both sides.

2. One Rathinamony filed O.S.No.221 of 2004 on the file of Principal District Munsif Court, Valliyoor against the petitioner's husband and others for the relief of declaration and injunction. The suit involved the validity of the sale deed dated 31.08.2004. The Court held that there is no oral partition and that the sale deed was not valid and dismissed the suit on 15.07.2010. Rathinamony filed A.S.No.57 of 2010 on the file of Sub Court, Valliyoor. During the pendency of the appeal, the petitioner's husband passed away and the petitioner was added as the fourth respondent. Appeal was dismissed on 06.02.2016. It has become final. The petitioner subsequently presented the copy of the judgment and decree made in the first appeal. The registering authority refused to register the same. Instead the impugned refusal check slip was issued. Challenging the same, the present writ petition came to be filed.

3. The issue raised in this writ petition is no longer *res integra*. A learned Judge of this Court vide order dated 21.06.2023 in W.P(MD)No.14723 of 2023 (S.Elangovan Vs The District Registrar, Karur District, Karur & Another) had



held that a registering authority cannot sit over the judicial order or decree and that it is not open to him to undertake the verification exercise in respect of the rights of the parties. Another learned Judge vide order dated 05.01.2024 in W.P.No.36564 of 2023 (P.Vasanth Kumari vs The Joint Sub Registrar-1, Udhagamandalam, The Nilgiris) had held as follows:

“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.

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 e/f/vz;/34930-rp1-2019 ehs 27/02/2023, issued by the Inspector General of Registration, Chennai, exparte decree cannot be registered.



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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 e/f/vz;/34930-rp1-2019 ehs 27/02/2023 directing the registering authority not to register the ex-parte decree, which is against Act or Rule, is hereby quashed.*

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



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the document if the document is otherwise in order and within the purview of the Registration Act.”

Respectfully applying the ratio laid down in the aforesaid decisions, the impugned refusal check slip is quashed.

4.The petitioner is permitted to re-present the certified copy of the judgment and decree. It shall be registered by the respondent and appropriate entries shall be made in the encumbrance register. The petitioner of course has to fulfill the other usual formalities, if any.

5.This writ petition is allowed accordingly. There shall be no order as to costs.

16.05.2024

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
MGA

To

The Sub Registrar,
Radhapuram,
Tirunelveli.



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G.R.SWAMINATHAN, J.

MGA

Copy to

- 1.The Principal District Munsif Court, Valliyoor.
- 2.The Sub Court, Valliyoor.

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