

Madasamy Vs. 1.The Inspector General of Registration,

Madasamy Vs. 1.The Inspector General of Registration,

SooperKanoon Citation : sooperkanoon.com/1169879

Court : Chennai

Decided On : Apr-25-2014

Judge : R.Mahadevan

Appellant : Madasamy

Respondent : 1.The Inspector General of Registration,

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

25. 04.2014 CORAM THE HONOURABLE MR.JUSTICE R.MAHADEVAN W.P(MD)No.15636 of 2012 and M.P(MD)No.1 of 2012 Madasamy ... Petitioner Vs. 1.The Inspector General of Registration, Chennai. 2.The District Registrar (Administration), Ramanathapuram, Ramanathapuram District. 3.The Sub Registrar, Muthukulathoor, Ramanathapuram District. ... Respondents Prayer Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records pertaining in No.1715/M1/2011 dated 16.03.2011 signed on 16.03.2012 on the file of the second respondent and quash the same as illegal, unjust and without jurisdiction and consequently, direct the third respondent to register the petitioner's decree in O.S.No.32 of 2009, dated 23.06.2009 on the file of the District Munsif, Muthukulathoor, and to release the same. !For Petitioner ... Mr.S.A.Ajmal Khan ^For Respondents ... Mr.K.Guru, Additional Govt.Pleader * * * * :

ORDER

This writ petition has been filed seeking a writ of Certiorarified Mandamus to call for the records pertaining in No.1715/M1/2011 dated 16.03.2011 signed on 16.03.2012 on the file of the second respondent and quash the same as illegal, unjust and without jurisdiction and consequently, direct the third respondent to register the petitioner's decree in O.S.No.32 of 2009, dated 23.06.2009 on the file of the District Munsif, Muthukulathoor, and to release the same.

2. The grievance of the petitioner is that the petitioner filed a suit in O.S.No.32 of 2009 on the file of the learned District Munsif, Muthukulathoor, seeking declaration and perpetual injunction as against the revenue authorities, in respect of his properties situated in S.Nos.215/1 and 215/3 in Orivanenthal Village, Muthukulathoor Taluk. The said suit came to be decreed exparte in favour of the petitioner. On receiving the copy of the order passed in the said suit, the petitioner presented the same before the second respondent office for registration. However, the third respondent, without considering the same, negatived the claim of the petitioner, as against which, the petitioner preferred an appeal to the second respondent, who rejected the appeal filed by the petitioner on the ground that there was a delay of 235 days in filing the appeal. Aggrieved over the same, the petitioner is before this Court.

3. The learned Counsel for the petitioner submitted that the issue involved in this writ petition is squarely covered by the judgment of the Division Bench of this Court in A.K.Gnanasankar v. The Joint II Sub Registrar [W.A.No.2395 of 2003, decided on 23.03.2007]. and prayed for allowing this writ petition on the same lines.

4. I have considered the rival submissions and perused the materials available on record.

5. In A.K.Gnanasankar v. The Joint II Sub Registrar [W.A.No.2395 of 2003, decided on 23.03.2007]., it is held as follows: ".8.It is useful to refer section 23 of the Registration Act which speaks about the time for presenting documents and reads as follows: ".23. Time for presenting documents.- 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 day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final. ". The above provision makes it clear that all documents except will are to be presented before a proper officer and the same shall be presented within four months from the date of its execution. If we consider the date on which the final decree was passed by the Subordinate Court, as rightly pointed out by the learned Government Advocate, the document presented before the respondent is hopelessly barred by time. However, the Proviso appended to section 23 makes it clear that a copy of decree or order may be presented within four months from the day on which it was made or whether it is appealable within four months from the date on which it becomes final. It is not in dispute that unless the parties to the proceedings deposit the required stamps, final decree cannot be drafted. Taking into consideration the difficulties expressed, ultimately the court concerned accepted the case of the appellant/petitioner/first defendant and extended the time for depositing the required stamps. In view of the said order, which we have already adverted to, we are of the view that the appellant/petitioner has satisfied the condition prescribed in section 23 of the Registration Act and we are unable to accept the contrary conclusion arrived at by the learned Judge. When there is no dispute that the certified copy of the final decree will not be issued unless it is engrossed on the required stamp papers and in view of the fact that after getting certified copy of the decree duly engrossed on the stamps, the petitioner presented the same before the respondent within the period prescribed in section 23 of the Registration Act, we are of the view that the respondent ought to have registered the document, if the same is otherwise in order. In these circumstances, the order of the learned judge dated 4.4.2003 is set aside and direction is issued to the respondent to register the certified copy of the final decree in O.S.No.538 of 1995 on the file of Subordinate Judge's Court, Cuddalore within a period of four weeks from the date of receipt of copy of this order. The writ appeal is allowed. No costs.". (emphasis added.) 6. Following the same, this Court is of the view that the impugned order passed in No.1715/M1/2011 dated 16.03.2011 signed on 16.03.2012 by the second respondent, is liable to be set aside and the same is set aside.

7. In the result, this writ petition is allowed and the matter is remitted to the second respondent for fresh consideration. Accordingly, the second respondent is directed to entertain the appeal filed by the petitioner and dispose of the same on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed. No costs. rsb To 1.The Inspector General of Registration, Chennai. 2.The District Registrar (Administration), Ramanathapuram, Ramanathapuram District. 3.The Sub Registrar, Muthukulathoor, Ramanathapuram District.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com