

(1997) 01 MAD CK 0099

In the Madras High Court

Case No : Writ Petition No. 10812 of 1987

Hathija Nachiar

APPELLANT

Vs

The District Registrar and Another

RESPONDENT

Date of Decision : 27-01-1997

Acts Referred:

Income Tax Act, 1961 — Section 230A
Registration Act, 1908 — Section 72(2)

Citation : (1997) 1 CTC 685 : (1997) 1 LW 574

Hon'ble Judges : T. Jayarama Chouta, J

Bench : Single Bench

Advocate : K. Chandra Mouli for K. Venkata Subramanian, for the Appellant; S. Gopinathan, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

T. Jayarama Chouta, J.—In this writ petition, the petitioner has prayed to issue a writ of mandamus or any other appropriate Writ, Order or Direction directing the second respondent to register the sale deed dated 19.1.1986 executed in favour of the petitioner by Kanagasabai and others and as directed by the first respondent in his proceedings Appeal No. 7 of 1986 dated 10.8.1987.

2. In support of the above writ petition, the petitioner has sworn to an affidavit, wherein, she has stated that nanja lands measuring 1.05 acres in R.S.No. 37/12 and 21 Cents in R.S.No. 18/5, in all measuring 1.26 acres in Thittacherry Village, Nannilam Taluk belonged to Kanagasabai, Vaithenathan, Murugesan and Viswalingam as their ancestral properties. They agreed to convey the said extent of 1.20 acres to the petitioner, for a consideration of Rs. 22,680. Accordingly, sale consideration was paid in two instalments and the deed of settlement was also duly executed by them. The petitioner was also put in possession of the lands purchased by her.

3. The document of conveyance was presented before the Sub-Registrar, who is the second respondent, on 22.1.1986 for registration. The vendors also appeared

and admitted the execution of the said document. The balance of consideration amount agreed to be paid was also paid before the Sub-Registrar, which was also endorsed by the second respondent on the back of the sale deed. Since the vendors did not furnish the necessary certificate u/s 230(A)(i) of the Income Tax Act, the second respondent refused the registration of the sale deed by an order dated 4.7.1986.

4. Against the said order of refusal by the second respondent, the petitioner preferred an appeal before the first respondent contending that non-production of the certificate is not a ground for not registering the document. However, the vendors during the pendency of the appeal purchased necessary certificates required under the Income Tax Act and also appeared before the Registrar and gave their consent for the registration of the sale deed. The first respondent after satisfying himself that the provisions of the Act have been complied with directed the registration of the sale deed by his order dated 10.8.1987. While issuing such a direction for registration of the sale deed, the first respondent also directed that the same should be presented before the second respondent for registration within thirty days from the date of the order in the appeal.

5. The petitioner in the affidavit has further stated that after filing of the said appeal, she had to leave to Singapore on 27.3.1987 and returned to India only on 11.9.1987. In fact before leaving India in view of her proposed visit to Singapore she filed the application before the first respondent for early disposal of the appeal by filing an application on 17.11.1986. However, the said appeal was not heard early and orders were not passed until 10.8.1987. The said Order was communicated during her absence in India and the family members on 18.8.1987.

6. Since, she was under the impression that the document had to be presented for registration on or before 10.9.1987 and as she was not aware of the passing of the order by the first respondent until she returned to India. She presented an application before the first respondent on 14.9.1987, requesting him for extension of time for presentation of the document for registration before the second respondent upto 22.9.1987. However, the first respondent orally submitted that time will not be extended and refused to pass any order on the said application. In view of the refusal of the first respondent, the petitioner was constrained to present the document before the second respondent on 22.9.1987 with a written application for condoning the delay in presentation of the document for registration. The second respondent refused to accept her plea and returned the document to her on the ground that he has no power to extend the period of 30 days, aggrieved by the act of the second respondent refusing the registration of the document, the present writ petition has been filed for the relief which has been mentioned above.

7. On behalf of the respondents, the first respondent District Registrar of Nagapattinam District has filed a counter affidavit denying all the allegations except that was specifically admitted by him. After narrating all the necessary

facts which made the petitioner to file this writ petition, he has stated that the appeal filed by her was posted for hearing on 2.9.1986, all the four executants submitted their petition stating that they have no objection for the registration of the said document. The appeal was posted for subsequent hearing on 23.9.1986, 7.10.1986 and also on 1.12.1986. Again from 1.12.1986 the appeal was posted on 26.12.1986. On that day the executants and claimants were present before the second respondent. Hence, the appeal was posted to 26.12.1986 and from 26.12.1986 it was adjourned to 28.2.1987 and again posted on 9.3.1987, 11.5.1987, 8.6.1987 and 27.7.1987. In the mean time, one Syed Sultan Bibi daughter of the petitioner had written letter that the petitioner had gone abroad and she was not aware of the time of her return, but the petitioner had neither given intimation to the District Registrar that she had left India nor appointed an agent or an advocate to act on her behalf in her absence. She had not even informed of her address after leaving India. According to this respondent, the petitioner had totally neglected the District Registrar's order and hence the District Registrar decided to dispose of the case as the appeal is pending for long time and the appearance of the petitioner could not be secured. Judgment was reserved on 10.8.1987 and notice was also issued to the executants and claimants stating the said position. He has admitted the fact that the petitioner came to him with the copy of the judgment and asked him whether it could be registered now. The Sub-Registrar told that as the period of 30 days from the date of the order had elapsed, the document could not be admitted for Registration as per Section 72(2) of the Registration Act. Since the petitioner has not produced the document as per the direction of the Registrar within 30 days, and as per the provisions of Section 72(2) of the Registration Act, the document could not have been registered. Under those circumstances, the respondents submitted that the writ petition has no merits and has to be rejected.

8. I heard the learned Senior Counsel Mr. K. Chandra Mouli, on behalf of the petitioner and the learned Government Pleader on behalf of the respondents. Perused the affidavit and the counter-affidavit. The learned senior counsel submitted that the second respondent was not justified in refusing to register the document. According to him that the period of 30 days should be counted from the date of knowledge of the order. The order is dated 10.8.1987 whereas the petitioner came to know about the said order only on 11.9.1987 and the time of limitation should be computed from the date of 11.9.1987 and hence the action of the second respondent in refusing to register the document is illegal. On these grounds, he has submitted that it is a fit case to direct the second respondent to register the document. On the other hand, the learned Government Advocate submitted that the period should be counted from the date of the order and not from the knowledge and that the date of order being 10.8.1987, the petitioner should have produced the said document for registration within 30 days as per the direction in the appeal and in view of Section 72(2) of the Act, the second respondent has no power to extend the said period of limitation

9. Now let me consider the rival submissions. It will be proper for me to refer to

the provisions of the Section 72(2) of the Indian Registration Act which reads as follows:

"72(2) If the order of the Registrar directs the document to be registered and the document is duly presented for registration within thirty days after the making of such order, the Sub-Registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in Sections 58, 59 and 60; and such registration shall take effect as if the document had been registered when it was first duly presented for registration."

In this connection, the learned Senior counsel pointed out that taking of such order should be given liberal meaning and it would include the date of knowledge and not the date of order, as such. He has invited my attention to a decision of this Court reported in *O.A.O.A.M. Muthiah Chettiar Vs. The Comr. of Income Tax*, . He placed reliance on the following portion of the said judgment at page 205 in paragraph 2, which reads thus:

"The only question on the merits which falls for decision is whether the one year has to be computed from the date when the order was signed by the Income Tax Officer, or the date when it was communicated to the petitioner, or the date, if there be any, on which the petitioner had the opportunity of coming to know of the order. The learned advocate for the petitioner has relied on a catena of decisions of this Court of which it is sufficient to refer to two, namely, *Secretary of State v. Gopisetti Narayanasami*, 34 Mad. 151 : (S.I.C.398) & *Swaminathan v. Lakshmanan*, 53 Mad. 491 : AIR 17 1930 Mad. 490 which support his contention that the date of the order does not mean the date when such order was either communicated to the party or the date when it was pronounced or published in such a manner that the party much be deemed to have had notice of it or the date of such pronouncement or publication."

10. The other decision on which reliance has been placed by the learned senior. Counsel is reported in *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, . He placed reliance on paragraph 6 at page 1504, which reads thus:-

"Similarly if without notice of the date of its pronouncement an award is pronounced and a party is not present the award can be said to be made when it is communicated to the party later. The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fairplay and natural justice the expression "the date of the award" used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words "from the date of the Collector's award" used in the proviso to Section 18 in a literal or mechanical way."

He also took me to paragraph 10 and placed reliance on the following portion, which reads thus:

"The relevant clause u/s 33-A(2) of the Indian Income Tax Act has also been similarly construed by the Madras High Court in O.A.O.A.M. Muthiah Chettiar Vs. The Comr. of Income Tax, "If a person is given a right to resort to a remedy to get rid of an adverse order within a prescribed time", observed Rajamannar, C.J., "limitation should not be computed from a date earlier than that on which the party aggrieved actually knew of the order or had an opportunity of knowing the order and therefore must be presumed to have the knowledge of the order". In other words the Madras High Court has taken the view that the omission to use the words "from the date of communication" in Section 33-A(2) does not mean that limitation can start to run against a party even before the party either knew or should have known about the said order. In our opinion this conclusion is obviously right."

11. The next decision on which reliance was placed by the learned senior counsel is the decision reported in Swaminathan v. Lakshmanan AIR 1930 Mad. 490, which is as follows:

"I have now referred to the relevant sections of the Act and shall proceed to consider the points raised. Apart from authority, it seems to me that there can be no valid order unless it is made after notice to the parties affected by it, or, it is communicated to them in the absence of such notice. To take a contrary view seems opposed to reason and principle. The learned Advocate-General, for the defence contends that we must, have regard to the express wording of the Act and that the words making of the order are too distinct to admit of any liberal construction. The answer is: no two constructions are possible, the meaning I have suggested being the only reasonable construction of the words. The very word "order" by necessary implication means in law that the party affected has had reasonable notice of it. Not a single case in India has been brought to our notice which takes a different view. On the contrary, every decision on the point seems to recognize the principle I have stated."

I am now refer the relevant paragraph which is at page 493 which is as follows:-

"It is argued on one side that the expression making the order of refusal in Section 77, Registration Act, means only recording the order of refusal in writing and that the time should be calculated from the date of the "order of refusal" in which case the plaintiffs suit will be out of time; while on the other side it is contended that the expression means not merely the recording of the order in writing by the Registrar but communicating it to the party concerned and that in this case time should be calculated from the date when the order was communicated to the plaintiff in which case his suit will be in time. The answer to the question must depend on the special circumstances of each case. If the order of refusal is pronounced in the presence of the parties immediately after inquiry by the Registrar, so that the person concerned knows that his request has been refused, then there can be no doubt that time should be calculated from the date of the order but if the order was not so pronounced and the person concerned does not know that his request has been refused, then it would not be just to

hold that time should be calculated from the date of the order. How is an aggrieved party to take any action unless he knows that an adverse order has been passed by the Registrar? If the construction contended for by the appellant is accepted, then it is clear that in cases of this kind the party aggrieved may be altogether deprived of the privilege of taking proceedings u/s 73(1) and Section 77 of the Act."

Placing reliance on the above referred decisions, the learned senior counsel submitted that the period of limitation starts from the date of notice of the order and not from the date of the order. According to him, the petitioner came to know about the order on 11.9.1987 when she came to India from Singapore and she had presented the document for registration before the second respondent on 22.9.1987 i.e., well within 30 days and hence the second respondent was not justified in refusing to register the said document on the ground that it is barred by a period of 30 days as prescribed u/s 72(2) of the Registration Act.

12. There is considerable force in the said submission. The writ petitioner admittedly was not in India, she has gone to Singapore and before leaving India, she infact, had requested the appellate authority to consider and dispose of her appeal, but however the said request was not granted, hence she left for Singapore. She was not aware of the order passed by the appellate authority until she came to India i.e., on 11.9.1987. When she came to know about the order in the appeal, immediately she had approached the second respondent for registration of the document within 30 days from the date of 11.9.1987. Petitioner was not present and order was passed and no notice was issued to the petitioner to be present before the authority at the time of passing of the order. Under those circumstances, I am of the opinion that the period of limitation has to be construed from the date of notice, i.e., from 11.9.1987 and the presentation of the document for the purpose of registration, which was done on 22.9.1987, was well within the period of 30 days, as prescribed u/s 72(2) of the Act.

13. Hence for the reasons stated above, I allow the writ petition and direct the second respondent to register the sale deed dated 19.1.1986 executed in favour of the petitioner by Kanagasabai and others as directed by the first respondent in his proceedings Appeal No. 7 of 1986, within a period of 15 days from the date of presentation of a copy of this order before the second respondent along with the document for registration. However, there will be no order as to costs.