

(2010) 07 MAD CK 0372

In the Madras High Court

Case No : Writ Petition No. 10068 of 2008 and M.P. No. 1 of 2010

T. Varadharaja Chettiar (deceased) M.V. Krishnamurthy APPELLANT

Vs

The District Registrar, The Sub-Registrar, The Sub Judge and Others RESPONDENT

Date of Decision : 13-07-2010

Acts Referred:

Registration Act, 1908 — Section 23, 24, 25, 26

Citation : (2010) 5 LW 556

Hon'ble Judges : K. Venkataraman, J

Bench : Single Bench

Advocate : V. Manohar, for the Appellant; R. Neelakandan, Government Advocate, for the Respondent

Judgement

K. Venkataraman, J.—Challenging the order passed by the second Respondent dated 19.11.2007, an order refusing to register the document on the ground that it was presented beyond the prescribed time and consequently directing the second Respondent to register the sale certificate document presented by the Petitioner on 2.11.2007, the present writ petition is filed.

2. The short facts, which are necessary for the disposal of the writ petition are set out hereunder:

One R. Annadurai borrowed a sum of Rs. 30,000/- from the Petitioner and since he has failed to make the payment, the Petitioner was constrained to approach the learned Principal sub Judge, Mettur by filing a suit in O.S. No. 162 of 1995 for recovery of money and thereafter the property belonged to the Defendant thereon was attached. Later, the suit was decreed on 19.2.1999 and E.P. No. 19/2001 was filed for execution of the decree. On the application of the Petitioner in REA No. 147/2004, the public auction was conducted bringing the property of the Defendant thereon for sale. The auction was conducted on 2.12.2004 and the same was confirmed on 3.3.2005. The third Respondent, the learned Sub Judge, Mettur has executed the sale certificate dated 27.6.2006 in

pursuant to the order made in the execution petition. Thereafter, the Petitioner preferred an application before the executing court for delivery of possession of the said property. The delivery of possession was effected on 23.7.2007 by the third Respondent. Thereafter only, the sale deed executed in his favour was returned to the Petitioner. The Petitioner thereafter presented the document before the second Respondent on 2.11.2007. He refused to entertain the sale deed by the present impugned order which is under challenge in the present writ petition.

3. The learned Counsel appearing for the Petitioner mainly submitted that though the sale deed was executed as early as 27.6.2006 by the third Respondent, it was returned to the Petitioner only after an order of delivery of possession was effected on 23.7.2007 by the third Respondent. Thereafter, within four months as contemplated under the Tamil Nadu Registration Act the Petitioner has presented it before the second Respondent on 2.11.2007. Without entertaining the said document, the same has been returned as though it is barred under the said Act.

4. On the other hand, the learned Government Advocate appearing for the Respondent submitted that since the document in question was presented beyond the prescribed time under the Act, the third Respondent has rightly refused to register the document and the same do not require any interference by this Court.

5. I have considered the submissions of the learned Counsel appearing for the Petitioner and the learned Government Advocate appearing for the Respondents 1 and 2.

6. The admitted facts are that there was a public auction in respect of the property which has been purchased by the Petitioner on 2.12.2004 and the Petitioner was the successful bidder. The sale in favour of the Petitioner was confirmed on 3.3.2005 by the third Respondent. Admittedly, the sale deed was executed by the third Respondent, the learned Subordinate Judge, Mettur in favour of the Petitioner on 27.6.2006. Thereafter, according to the Petitioner he has moved an application before the said court for delivery of possession and the delivery was effected on 23.7.2007 by the third Respondent. Thereafter only the document was handed over to the Petitioner. Admittedly, the Petitioner has presented the document on 2.11.2007 which was refused to be registered by the second Respondent on the ground that the same was submitted belatedly.

7. Section 23 of the Registration Act, 1908 contemplates that the document shall be presented before the Sub-Registrar within four months from the execution of the same. It would be more appropriate to extract Section 23 of the Act and the same is extracted hereunder:

23. Time of 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.

8. In the given case on hand, admittedly the document in question was not presented within four months from the date of execution of the document in favour of the Petitioner by the third Respondent. As stated already, the sale deed was executed in favour of the Petitioner by the third Respondent on 27.6.2006 and the document was presented before the second Respondent on 2.11.2007. Thus, the document was presented beyond a period of one year and four months.

9. However, according to the Petitioner, even though the sale deed was executed in his favour on 27.6.2006, the same was handed over to him by the third Respondent, the learned Sub-ordinate Judge, Mettur only on 23.7.2007 since only on the said date delivery of possession was ordered by the third Respondent. However, Section 23 contemplates presentation of the document within four months from the date of execution. But the Petitioner is not left with any other remedy under the said Act. Section 25 contemplates that for unavoidable reasons, if the document was not presented within the time as prescribed u/s 23, the Registrar concerned can register the document if presented with a delay of four months on payment of fine not exceeding ten times the amount of the proper registration-fee. It would be useful to extract Section 25 of the Registration Act and the same is extracted hereunder:

25. Provision where delay in presentation is un-avoidable-

(1) If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in (India) is not presented for registration till after the expiration of the time herein before prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration-fee, such document shall be accepted for registration.

(2) Any application for such direction may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

10. In the given case on hand since it was pleaded by the Petitioner that the document in question was handed over to him by the third Respondent only on 23.7.2007, on the date, when the delivery of possession was ordered and within four months i.e on 2.11.2007, the Petitioner has presented the document with the second Respondent for registration. Thus, the Petitioner can very well invoke Section 25 of the said Act. No doubt the Petitioner has to pay the fine as required under the said Section for registration of the document.

11. In this connection, the learned Counsel appearing for the Petitioner relied on

the decision of the Supreme Court in Raj Kumar Dey and Others Vs. Tarapada Dey and Others, . The Hon''ble Apex Court in the said decision has held that law does not compel a man to do that which he cannot possibly perform and an act of court shall prejudice no man. In the given case on hand as stated already, though the sale deed was executed in favour of the Petitioner by the third Respondent on 27.6.2006, the same was handed over to him only on 23.7.2007, the date on which the delivery was ordered. The Petitioner cannot be faulted for the failure of the third Respondent to return the document immediately after execution of the same.

12. Considering the above facts and circumstances, I am inclined to set aside the impugned order of the second Respondent dated 19.11.2007 and consequently I direct the second Respondent to register the sale certificate document, if presented by the Petitioner with the second Respondent within two weeks from the date of receipt of copy of this order and on presenting the same, the second Respondent is directed to register the said document within a period of 15 days thereafter. Of course, the Petitioner is liable to pay the fine as contemplated u/s 25 of the Act.

13. The writ petition is ordered accordingly. Consequently, the connected M.P is closed. No costs.