

(2010) 03 MAD CK 0206

In the Madras High Court

Case No : Writ Petition No. 12983 of 2005

Vijayalakshmi Ravikumar and S.R. Rakesh Kumar alias
Rakesh Babu

APPELLANT

Vs

The Principal Revenue Control Authority and Inspector
General of Registration, The District Registrar
(Administration) and The Sub-Registrar

RESPONDENT

Date of Decision : 30-03-2010

Acts Referred:

Limitation Act, 1963 — Section 10, 11, 12, 13, 14
Registration Act, 1908 — Section 23
Registration Rules, 1908 — Rule 162

Citation : (2010) 5 LW 648 : (2011) 6 RCR(Civil) 2630

Hon'ble Judges : T. Raja, J

Bench : Single Bench

**Advocate : V.G. Suresh Kumar, for the Appellant; B. Vijay, Government
Advocate, for the Respondent**

Final Decision : Allowed

Judgement

T. Raja, J.—The present writ petition has been filed by Vijayalakshmi Ravikumar and Rakesh babu seeking to issue a writ of certiorarified

mandamus to call for the entire records of the second respondent, the District Registrar (Administration), South Chennai, in the proceedings

Appeal No. 1 of 2005 including the order dated 21.02.2005, confirming the order of the third respondent dated 25.09.2004 made in proceeding

bearing reference Regn. II-3-106 Books -29-9-80-G.B.P.PDKT and quash the order dated 24.9.2004 and 21.02.2005 and further direct the

respondents to register the decree of this Hon"ble Court made in the partition suit C.S. No. 579 of 1998 dated 22.11.2001, which was confirmed

by the Judgment and decree dated 22.08.2003 in terms of the memorandum of

compromise.

2. The property bearing plot No. 2AL, First Cross Street, Sastri Nagar, Chennai 600 020 compromised in T.S. No. 33, Block No. 30 of an

extent of 15 grounds and 2138 Sq.feet, which is the subject matter of the appeal before the second respondent, came to be sold by the Tamil

Nadu Housing Board in favour of Sri. P.T. Srinivasan under a registered deed of sale dated 04.09.1985, duly registered as Document No. 2388

of 1985 of Book I, Volume 146, pages 19 to 24 in the office of the Sub-Registrar, Adyar. Subsequently, Sri. P.T. Srinivasan died on 31.07.1998

and, thereafter, a suit for partition was filed in this Court in relation to his properties in C.S. No. 579 of 1998. The said property came to be

allotted to the share of petitioner's husband and the father of the 2nd petitioner, P.T.S.Ravikumar, the son of Late Sri. P.T. Srinivasan, under

Judgment and decree dated 22.11.2001 which came to be confirmed in the Judgment and decree dated 22.08.2003.

3. After the death of the petitioner's husband, the suit property devolved on the petitioners and presently it is an educational institution under the

name and style of ""Vidyarthna P.T.S. Matriculation School"" duly recognised by the Government of Tamil Nadu, is functioning in the said

property.

4. Whiles, pursuant to the judgment made in the suit for partition dated 22.11.2001, as confirmed by the judgment and decree dated 22.08.2003,

the third respondent, Sub-Registrar, Adyar was requested to effect necessary changes in the records of the SubRegistry duly recording the decree

in the suit partition and to record all the names of petitioners as the owners of the property. But the third respondent, by order dated 24.09.2004,

made in proceedings bearing reference Regn.II-3-106 Books -29-9-80-G.B.P.PDKT, refused registration on the ground that the document has

not been presented for registration within the time stipulated as per Section 23 of the Registration Act and Rule 162 of the Registration Rules.

5. Aggrieved by the said order passed by the third respondent, the petitioner filed an appeal as provided under the rules before the second

respondent. But, unfortunately, the second respondent also, by impugned order dated 21.02.2005, made in Appeal No. 1 of 2005, confirmed the

order passed by the third respondent. Hence, the present writ petition has been

filed.

6. The learned Counsel for the petitioner submits that the interpretations given by respondents 2 and 3 are totally against the Limitation Act. The

decree for partition was passed on 22.11.2001. Immediately, on 18.12.2001, the petitioner applied for the certified copy of the decree. For

various administrative reasons, the Registry of this Court made the certified copy only on 25.06.2004. Thereafter, on 09.08.2004, after receiving

the certified copy of the decree for partition, he presented the document for registration. But, the third respondent refused to register the same on

the ground that the petitioner's husband failed to register the same within four months from the date of decree.

7. In support of his arguments, he has also relied upon the judgment of the Honourable Apex Court in *India House Vs. Kishan N. Lalwani*,

wherein the Apex Court has clearly given the method of computation of period of limitation under the special local Law and also the condonation

of delay, if any. The ratio laid down by the Apex Court in the above said judgment is the time required for obtaining the copy of decree is liable to

be excluded while computing the period of limitation. Therefore, by applying the ratio, excluding the time taken by the Registry for making the

certified copy ready, the document was presented well within the time for registration.

8. Therefore, as per the above said judgment, if the time taken by the Registry to provide the certified copy is excluded, then the question of delay

would not arise for consideration because the petitioner's husband has complied with the decree. The decree for partition was passed on

21.11.2001. The petitioner has admittedly complied with the order dated 18.12.2001 with a delay of 26 days. So, if 26 days are excluded, out of

120 days, it comes to 94 days. Therefore, 26 days as well as 45 days viz., 71 days are to be excluded from the date of making the certified copy

ready, till the date of presentation of the decree for the registration. Therefore, out of 120 days, if 71 days are excluded, still the petitioner has got

49 days more to present the document. Therefore, the reason given by the Respondents 2 and 3 for declining to register the document on the

ground that there has been a delay, cannot be legally accepted.

9. The learned Government Advocate for the respondents, Mr. B. Vijay, also

clearly submitted that after deducting the period between the date of applying for the certified copy and till the same was made ready, the same has to be excluded and going by the date of presentation of the

document the petitioner has presented it without any delay. Therefore, the reason given by the Respondents 2 and 3 cannot stand to good reason.

10. In the case on hand, the decree for partition was passed on 22.11.2001. The petitioner applied for a certified copy of the decree on

18.12.2001, but, due to various reasons, the Registry of this Court could not make the decree ready till 25.06.2004. Therefore, the time taken by

the Registry for making the certified copy of the decree ready would always be excluded while computing the period of limitation.

11. As held by the Apex Court in India House Vs. Kishan N. Lalwani, that the period of limitation statutorily prescribed has to be strictly adhered

to and cannot be relaxed or departed from for equitable considerations.

12. However, after the certified copy of the decree was made ready on 25.06.2004, the petitioner presented the certified copy for registration

only on 09.08.2004 with a delay of 45 days. Therefore, out of 120 days, the first 26 days time taken for applying the certified copy and 45 days

time taken for presenting the application for registration are excluded, 49 days are available for the petitioner to present his application for

registration. Therefore, the application presented for registration by the petitioner is well within four months from the date of passing the partition

decree, namely 24.11.2001.

13. Let me see the power of Court in condoning the delay u/s 5 for sufficient cause as dealt by the Apex Court in India House v. Kishan N.

Lalwani reported in (2003) 9 Supreme Court Cases 393. While dealing with Section 12(2) and 29(2) of the Limitation Act, 1963 the Supreme

Court has dealt with the issue as follows:

Sub-section (2) of Section 12 and Sub-section (2) of Section 29 of the Limitation Act, 1963 are relevant, which are reproduced hereunder:

12.Exclusion of time in legal proceedings--(1)

(2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on

which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or

sought to be revised or reviewed shall be excluded.

29. Savings--(1)

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the

Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining

any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 - 24

(inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law.

7. It is well settled that by virtue of Sub-section (2) of Section 29 of the Limitation Act the provisions of Section 12 are applicable for computing

the period of limitation prescribed by any special or local law. The period of limitation statutorily prescribed has to be strictly adhered to and

cannot be relaxed or departed from for equitable considerations. At the same time full effect should also be given to those provisions which permit

extension or relaxation in computing the period of limitation such as those contained in Section 12 of the Limitation Act. The underlying purpose of

these provisions is to enable a litigant seeking enforcement of his right to any remedy to do so effectively and harsh prescription of time bar not

unduly interfering with the exercise of statutory rights and remedies. That is why Section 12 has always been liberally interpreted. To wit, the time

requisite for obtaining a copy of the impugned decree, sentence or order has been held liable to be excluded from computing the period of

limitation although such copy may not necessarily be required to be filed along with the appeal, application or memo of representation or review.

No distinction is drawn between decrees or orders pronounced on the original side or the appellate or revisional side. No application is required to

be made seeking the benefit of Section 12 of the Limitation Act; it is the statutory obligation of the court to extend the benefit where available.

Although the language of Sub-section (2) of Section 12 is couched in a form mandating the time requisite for obtaining the copy being excluded

from computing the period of limitation, the easier way of expressing the rule and applying it in practice is to find out the period of limitation

prescribed and then add to it the time requisite for obtaining the copy-- the date

of application for copy, and the date of delivery, thereof both included --and treat the result of addition as the period of limitation. The underlying principle is that such copy may or may not be required to accompany the petition in the jurisdiction sought to be invoked yet to make up one's mind for pursuing the next remedy, for obtaining legal opinion and for appropriately drafting the petition by finding out the grounds therefore the litigant must be armed with such copy. Without the authentic copy being available the remedy in the higher forum or subsequent jurisdiction may be rendered a farce. All that Sub-section (2) of Section 12 of the Limitation Act says is the time requisite for obtaining the copy being excluded from computing the period of limitation, or, in other words, as we have put it hereinabove, the time requisite for obtaining the copy being added to the prescribed period of limitation and treating the result of addition as the period prescribed. In adopting this methodology it does not make any difference whether the application for certified copy was made within the prescribed period of limitation or beyond it. Neither is it so provided in sub-Section (2) of Section 12 of the Limitation Act nor in principle we find any reason or logic for taking such a view.

9. In *Murlidhar Shrinivas v. Motilal Ramcoomar* the Full Bench, speaking through Beaumont, C.J., held that the court cannot impose upon the statutory right of an appellant a restriction not warranted by the Act and a rule providing that no time shall be allowed for obtaining a copy of the decree unless such copy be applied for within specified days from the date of the decree would be ultra vires. In computing the time for appeal from a decree it is legitimate (in a proper case) to exclude the period requisite for obtaining a copy of the decree even when no application for such copy was made till after the expiration of the time for appeal. A Full Bench of the Madras High Court presided over by Srinivasan, J. (later a Judge of the Supreme Court) held that though the application for certified copies for judgment and decree was made after the prescribed period of limitation, the period was liable to be excluded in all cases depending on whether sufficient cause was shown or not. We find ourselves in respectful agreement with the view so taken by the Full Benches of the Bombay and Madras High Courts.

11. So far as the applicability of Section 5 of the Limitation Act is concerned, the

power of the court to extend the prescribed period of limitation

on the ground of availability of sufficient cause for not preferring the appeal within the prescribed period, within the meaning of Section 5 of the

Limitation Act, stands circumscribed by the limitation imposed on the power of the High Court by the proviso to Sub-section (2) of Section 25 of

the Act. The discretionary power to condone the delay in filing the revision can be exercised for condoning any delay which does not exceed one

month over and above the period liable to be excluded from computing the period of limitation by reference to Sections 4 - 24 of the Limitation

Act.

12. Computing the time within which the revisions were filed in the High Court, consistently with the law as stated hereinabove, the revisions by the

respondent were filed within a period of 53 days. As the total time, excluding the time requisite for obtaining the copy, does not exceed 60 days,

the High Court had power to condone the delay in filing the revision petitions. No fault can be found with the discretionary jurisdiction so exercised

by the High Court.

14. Therefore, I am of the considered view that while computing the period of limitation, the time required for obtaining the copy has to be

excluded with regard to the fact whether the copy was applied for before the expiry of the period of limitation or not.

15. In view of the above said judgment, the time consumed by the Registry for making the copy ready has to be excluded. In view of this matter,

the present impugned order is liable to be quashed. Accordingly, the impugned order is set aside and the third respondent is directed to register the

same in accordance with law.

With the above observations, the writ petition is allowed.