

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date: 27.08.2020

CORAM

THE HONOURABLE MR.JUSTICE **N.SESHASAYEE**

S.A(MD)No.306 of 2020

Saranya

:Appellant/Appellant/Plaintiff

Vs.

The Sub-Registrar,
Sub-Registrar's Office,
Uppiliyapuram,
Thuraiyur Taluk,
Trichy District.

:Respondent/Respondent/Defendant

PRAYER: Second Appeal is filed under Section 100 of C.P.C, against the Judgment and Decree of the Sub-Court, Thuraiyur in A.S.No.85 of 2016 dated 14.8.2019 confirming the Judgment and decree of the District Munsif Court, Thuraiyur in O.S.SR.No.328 dated 12.09.2016.

For Appellant सत्यमेव जयते : Mr.V.Singan

For Respondent : Mr.K.Sathiya Singh,
Additional Government Pleader

J U D G M E N T

The plaintiff is the appellant herein. She laid a suit seeking a decree of mandatory injunction against the defendant, the Sub-Registrar,

Uppiliyapuram Sub Registry, Thuraiyur Taluk, Trichy District to register a sale deed in her favour in document No.102/2001 and to release the said document after due registration. The plaint was rejected both by the trial Court as well as by the first appellate court. Hence, the second appeal.

2.The brief facts are that;

- The suit property is described as a land measuring to an extent of 24.3 a and comprised in Survey No. 2/1 (correlated to old Survey No.2) in Thuraiyur Taluk, Pongalayi Kombai Village. This property originally belonged to a certain Devadoss, from whom, one Rengarajan had purchased the same. This Rengarajan had executed a Power of Attorney document on 21.03.2011 appointing one Rajasekaran as his Power Agent and on the strength of this Power of Attorney, the said Rajasekaran sold the property to the plaintiff. When presented for registration before the defendant, this document was received in document No.102/2001, but, was not registered by him.
- The refusal of the Sub-Registrar to register the sale deed was founded on a misapprehension that the suit property belonged to

the deity of Siddhi Vinayagar Temple, Manakkal Village, Lalgudi Taluk, Trichy District, that the said temple comes under the administrative jurisdiction of H.R. & C.E. Board and therefore, necessary permission is required from the Commissioner, H.R. & C.E. The defendant accordingly addressed a communication to the plaintiff refusing registration.

- There is no foundation for the allegation that the property conveyed under the document 102/2001 belonged to the aforesaid deity. Earlier a part of the property was acquired by the Govt., and the Special Tahsildar appointed therein Vide his proceedings dated 10.11.1989 had found that the property did not vest in the said deity. For this purpose, the Special Tahsildar had traced title to the suit property to a certain Raja Chidambaram Reddiar and Smt.Ramaniganthammal and a Will executed by them. The said Will provides that a portion of the money had to be spend in favour of the Siddhi Vinayagar temple. It is more in the nature of a partial dedication. This would imply that there is no bar on the descendants/legatees of the aforesaid Raja Chidambaram Reddiar to alienate the property.

- This apart, this property was not covered under any Government Order issued in terms of Section 22-A of the Registration Act, restraining alienation of the property.

3. The suit was not taken on file, and it was rejected on the ground that under Section 73 of the Registration Act, in cases wherein the Sub Registrar has refused the registration, an appeal before the Registrar can be filed within 30 days and under Section 77 of the Registration Act, in cases where the Registrar refused to order registration of the document, the aggrieved party should institute a Civil Suit before appropriate forum within 30 days. Since the plaintiff has not exhausted the statutory route the civil suit was considered as not maintainable. In an appeal preferred by the plaintiff in A.S.No.85 of 2016, the decree of the trial Court came to be confirmed.

4. The learned counsel for the plaintiff/appellant submitted that Sec. 73 of the Registration Act provides for an appeal to the Registrar only in cases where the Sub Registrar has refused registration of a document on the ground that any person by whom it was purported to have been executed or representative or assign of such latter mentioned person, have denied the very execution of the document. In this case, the executant of document No.102/2001 has not denied the execution of

document. Section 77 is *impari materia* in its operative content with sec.73. In other words, an internal appeal is provided for only in cases where the execution of the document required to be registered is denied.

5. Section 73 and 77 of the Registration Act reads as follows:

Section	Provision
73	<p>Application to Registrar where Sub-Registrar refuses to register on ground of denial of execution</p> <p>(1) When a Sub-Registrar has refused to register a document on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution, any person claiming under such document, or his representative, assign or agent authorized as aforesaid, may, within thirty days after the making of the order of refusal, apply to the Registrar to whom such Sub-Registrar is subordinate in order to establish his right to have the document registered...</p>
77	<p>Suit in case of order of refusal by Registrar</p> <p>(1) Where the Registrar refuses to order the document to be registered under section 72 or section 76, any person claiming under such document, or his representative, assign or agent, may, within thirty days after the making of the order of refusal, institute in the Civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree..."</p>

5. This Court finds considerable merit in the submissions of the learned counsel for the appellant. When the plain expression of a statute provides for addressing a certain situation, it is impermissible for the court to read situations or expressions not covered by the statutory provisions. Necessarily, the impugned decree is liable to be set aside.

6. Having stated thus, this Court observes that the suit itself is not properly framed. The sole defendant arrayed by the plaintiff was the concerned Sub Registrar and the State of Tamil Nadu is not seen arrayed. Order XXVII Rule 5A CPC mandates that in all cases where a relief is sought against a public office, the Government must be made a party. It reads as below:

"5.A. Government to be joined as a party in a suit against a public office

Where a suit is instituted against a public officer for damages or other relief in respect of any act alleged to have been done by him in his official capacity, the Government shall be joined as a party to the suit."

Appendix A to the CPC provides a format for the short cause-title to the suit, and as per this, the state government must be arrayed as State of Tamilnadu.

7. A Sub-Registrar, or a Registrar constituted under the Registration Act, 1908, are mere public offices under the Government. Unlike the instances where a statute itself may constitute an office as a juristic person and as compete to sue or to be sued in the name of the office, (instance of which are Commissioner of H.R. & C.E. under Sec.11 of the said Act, a Regional or a local Planning Authority under Section 8 of the Tamil Nadu Town and Country Planning Act), the Registration Act, has not constituted the office of Sub-Registrar, or the Registrar as persons which may sue or be sued in in the name of the offices. A public office simpliciter is not a juristic person, and it is hence impleading the Government under which they fution are required to be impleaded, for jurisprudentially a Government is a corporate sole.

8. Stricto senso, this appeal has to be dismissed since the plaint is not properly framed. However, since the suit itself is not taken on file yet, and the defect is formal in nature within the meaning of Order XXIII Rule 1 CPC, this court chose to deal with the appeal.

9. In conclusion, this appeal is allowed, the decree passed by the Sub-Court, Thuraiyur in A.S.No.85 of 2016 on 14.8.2019 is set aside,

with a further direction to the plaintiff to implead the State of Tamilnadu as a party defendant and the trial court is required to take the suit on file upon the defendant impleading the State of Tamilnadu as party-defendant. No costs.

10.The Registry is required to circulate the copy of the judgment to all the Civil Courts in the State after obtaining necessary orders from my Lord, The Hon'ble Chief Justice, High Court of Madras.

27.08.2020

Index : Yes/No
Internet : Yes/No
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To

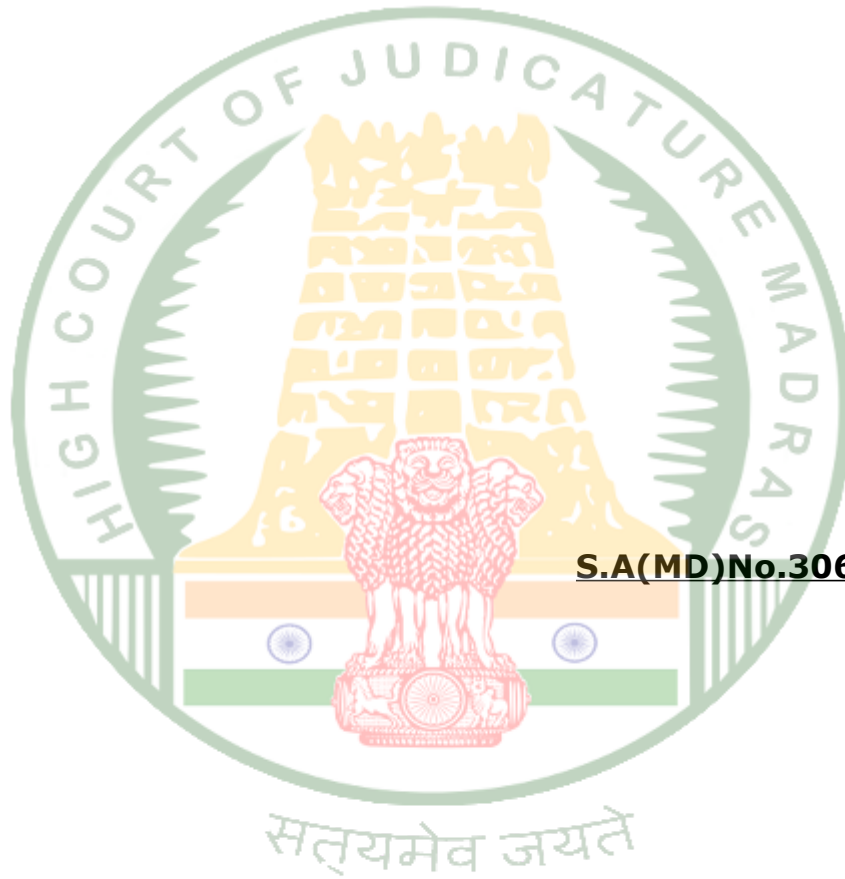
1.The Sub-Registrar,
Sub-Registrar's Office,
Uppilliyapuram,
Thuraiyur Taluk,
Trichy District.

2.The Director,
Tamil Nadu State Judicial Academy,
Madras.

3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

N.SESHASAYEE., J.

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