



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.07.2018

CORAM

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P. (MD) No.11426 of 2018
and
WMP (MD) No.10421 of 2018

C.Moorthy

... Petitioner

-Vs-

The Sub Registrar,
Aruppukkottai,
Virudhunagar District.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned Check Slip No.3/2018 dated 09.05.2018 issued by the respondent and to quash the same as illegal and consequently directing the respondent to register the sale deed dated 09.05.2018 presented by the petitioner for registration and release the same to the petitioner .

For Petitioner : Mr.N.Satheesh Kumar
For Respondent : Mr.M.Murugan,
Government Advocate

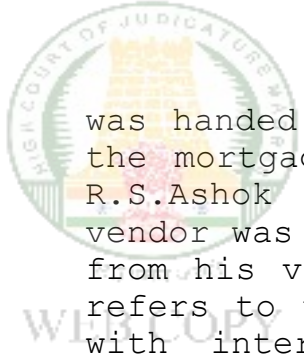
O R D E R

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus to quash the Check Slip bearing No.3 of 2018, dated 09.05.2018, issued by respondent and to direct the respondent to register the sale deed dated 09.05.2018 and release the same to the petitioner.

2.The brief facts that are necessary for disposal of the writ petition, are as follows:

2.1. The petitioner wanted to purchase some property measuring to an extent of 2970 square feet in S.F.No.3/1 in Kanchanayakkanpatti Village Aruppukkottai Taluk, Virudhunagar District, which belong to one S.Selvi wife of Late.Shanmugasubramanian. After verifying the fact that the petitioner's vendor had mortgaged the property to one R.S.Ashok, Son of R.Sankara Raja for a sum of Rs.4,80,000/-, the petitioner obtained sale deed from the said Selvi on 09.05.2018.

2.2.It is pertinent to mention that the original sale deed, by which the petitioner's vendor got title (sale deed dated 17.09.2012)



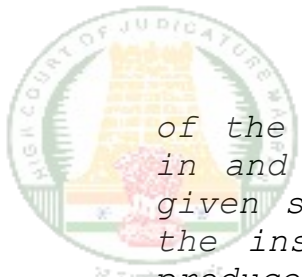
was handed over to the mortgagee. After referring to the fact that the mortgage deed had already been executed in favour of the said R.S.Ashok and that the original parent document of title of his vendor was with the mortgagee, the petitioner obtained the sale deed from his vendor on 09.05.2018. The sale deed dated 09.05.2018 also refers to the fact that the sum equivalent to the mortgage amount with interest accrued is retained by the petitioner for the redemption of the mortgage by the petitioner.

2.3.The petitioner presented the sale dated 09.05.2018 for registration. After accepting the document for registration, the Sub Registrar, Aruppukkottai returned the original sale deed along with the impugned check slip dated 09.05.2018, for the reason that the petitioner had not produced the original parent document. The order of the Sub Registrar, Aruppukkottai, directing the petitioner to resubmit the document with the original document of sale dated 02.12.2009, is challenged in the present writ petition.

3.The learned Counsel for the petitioner submitted that the Registering Officer has no power to return the document for non production of parental document, as the Registration Act, 1908 and the Rules framed thereunder do not contemplate production of original parent documents for registering any subsequent deed of conveyance. The learned Counsel for the petitioner further submitted that the original document of title is available with the mortgagee and the petitioner can get the document only after redemption of the mortgage. This is revealed even from the recitals of the sale deed dated 09.05.2018 executed in favour of the petitioner.

4. When the petitioner obtained sale deed on 09.05.2018, he has retained a part of the sale consideration for the purpose of discharge of mortgage loan. Hence, it is not possible for the petitioner to get the original document and the impugned order and the direction of the Registering Officer in the impugned order, cannot be complied with by the petitioner. In this regard, the learned Counsel for the petitioner also relied upon the judgment of this Court in the case of **Lakshmi Ammal Vs.The Sub Registrar, Chennai and another**, reported in **CDJ 2015 MCH 5710**, wherein a Hon'ble single Judge of this Court has held as follows:

"7.Now, the question that arises for consideration is, whether the first respondent can refuse to register the document on the ground that the original parental deed has not been produced before him. Section 71 of the Registration Act, 1998 (herein after called as the Act), contemplates that the Registrar can refuse to register the document giving reasons for refusal. Nowhere in the Registration Act, it contemplates that the Registrar can insist for production of the original parental document. When the Act does not contemplate so, the first respondent cannot insist the petitioner to produce the same. However, the first respondent seems to have relied on the circular



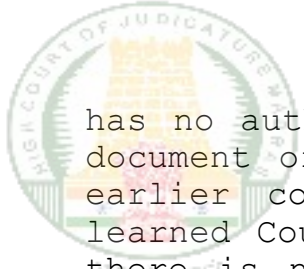
of the Inspector General of Registration dated 25.04.2012, in and by which the Inspector General of Registration has given several instructions to the Sub Registrar and one of the instructions is that he shall require the parties to produce the original parental documents. The circular can only be a guideline and it has no force in law. Unless otherwise, such requirement is made under the Registration Act, the guideline alone, without any provisions in the Act, has any role to play. In fact, the said view was taken by this Court in the judgment reported in 2011-2-L.W.648, *K.S.Vijayendran Vs. The Inspector General of Registration and another.*"

5. The learned Counsel for the petitioner also relied upon the judgment of this Court dated 18.03.2011, in the case of *K.S.Vijayendran Vs. The Inspector General of Registration and another*, reported in 2011 (2) LW 648, wherein this Court has held that none of the provisions of the Act or the Rules contemplate the Registrar to require the production of original title deeds. Further, it has been held as follows:

" 11. A close reading of the Act as well as the Rules, elicited above, shows that the reason which has been made out by the registering authority for refusing the registration does not find place either under the Act or the Rules. The scope of enquiry by the registering authority is restricted only as per the statutory provisions enunciated under the Act as well as the Rules framed thereunder and the authority cannot do anything which is contrary to the provisions of the Statute.

12. On the facts of the present case, when the petitioner, being the husband, seeks to execute settlement deed in favour of his wife, it is not for the registering authority to satisfy himself about the ownership and right of the petitioner over the property to enable him to execute the settlement deed. Such power can never be construed to be vested on the registering authority either under the Act or the Rules or even as per the circular of the first respondent dated 12.09.2010, which only clarifies about the power of enquiry under Rule 55 of the Registration Rules in order to avoid registration of bogus documents. Thus, looking from any angle, I am of the considered view that the reasons given by the second respondent for not registering the document are untenable under any of the provisions of the Act. There is absolutely no reason for not registering the document which has been presented by the petitioner."

6. The learned Counsel for the respondent fairly conceded that the legal position reiterated by this Court in several judgments have not been followed and that the Registering Officer in this case



has no authority to return the document for production of original document of title based on the circular, as the same circular was earlier considered by this Court in the judgment cited by the learned Counsel for the petitioner. As held by this Court earlier, there is no provision in the Registration Act, 1908 of the Tamil Nadu Registration Rules, 1983 which confers power to the Registering Officers to insist production of original parental document. The Executive orders cannot be issued contrary to Rules framed in exercise of power conferred any Statute. In this case production of parent document is not possible without redemption of mortgage.

7. Having regard to the scope of enquiry that is contemplated under Registration Act, Registrar cannot conduct any roving enquiry as to the title, as that would lead to unwanted situations affecting the rights of parties to deal with their party in the manner prescribed in law. It may be open to the Registering Officer to insist in certain exceptional or peculiar circumstances, where an objection is raised on the ground that the particular transaction is fraudulent or opposed to public policy. This is not a case where a proceeding is initiated either under Section 81 or 82 of the Registration Act, 1908 or the transaction can be termed as one against public policy.

8. Having regard to the fact that the sale deed is executed by the person who has valid title and patta stands in the name of the petitioner's vendor, which is required to be produced before the Registrar in terms of Section 5 of Patta Pass Book Act, the impugned check slip is arbitrary, unwanted and unsustainable.

9. The Sub Registrar has passed an order without an authority or power under the Registration Act, under the guise of the Circular. The scope of enquiry by the Sub Registrar for the purpose of registering a document can not be expanded. The respondent relied upon the circular dated 25.04.2012 which is reproduced as under:

"The object and purpose of the Registration Act is to provide information to public regarding the transaction that had taken place in a property.

2. In order to fulfil the objects of the act, several circulars as cited in the reference were issued. Through, these circulars, instructions were given to Sub Registrars that they ought to verify the previous original documents/patta and other revenue records to ascertain the right over the property by the persons who executed the documents.

However, it is brought to my knowledge that documents are being registered without proper verification of the title deeds and other original relevant documents which leads to fraudulent registration.



Hence, in order to safeguard the public interest by preventing bogus or fraudulent registration of documents, following instructions are reiterated for strict adherence in letter and spirits.

(A) In respect of deeds involving transfer of immovable property, such as sale, gift, settlement, exchange or creating charge over the property such as Mortgage or Power of Attorney, the registering officer should insist presentation of previous original deed/deeds by which the executants acquired right over the said property before registering the document and then verify the previous documents to satisfy himself that the executants have right over the property.

(B) In case previous document are not available as the property may be ancestral, the executants should produce revenue records such as Patta copy issued by the Revenue Department and tax receipt in original along with attested/notarized Xerox copies to prove that the properties are owned by them. The Registering officer should verify the original and return them to the party concerned and preserve the attested xerox copy as part of the document by scanning and numbering it.

(C) In case the previous original document is lost, the party should produce certified copy of the document, copy of complaints recorded in Police Station and copy of advertisement published in local dailies regarding loss of documents. In such case, party has to produce patta/property tax receipt in original.

(i) In case if the property is Government land/poramboke land or belonging to religious institution as per revenue records/other records and the party has not produced any patta prove his right the Registering Officer should return the document with check slip stating the facts.

(ii) In the above mentioned case, if the party produces patta, then the Registering Officer should keep the document pending for ascertaining the facts and genuineness of patta from concerned department /revenue officials.

5. In case of cancellation of settlement deed, if the settler is unable to produce the original settlement deed as it may be with settlee then the settler should produce certified copy of the statement deed. The Registering Officer, after verifying the certified copy for identity, then register the cancellation deed without insisting for original deed.

The above instructions should be strictly adhered along



with other instruction already issued in this regard."

10. Even the circular, dispenses with the production of original in case it is lost. In this case a xerox copy of mortgage deed and the previous sale deeds are produced. Though, unilateral cancellation of settlement is illegal and held to be void, the circular provides for cancellation of settlement deed on production of certified copy of settlement deed.

11. Hence, this Court is of the view that the circular dated 25.04.2012 is not one which is in tune with the provisions of the Registrations Act and the Rules framed there under.

12. In view of the above discussion the impugned check slip is quashed and the respondent is directed to accept the document namely sale deed dated 09.05.2018, from the petitioner and Register the same without insisting the production of original parent document, namely, sale deed dated 02.12.2009.

13. With the above direction, the Writ petition is allowed. Consequently, connected Miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

The Sub Registrar,
Aruppukkottai,
Virudhunagar District.

+ 1 CC TO Mr.N.SATHEESH KUMAR, ADVOCATE IN SR No. 70685

DSK

TE/SKN-RSK/SAR-2 : 17/07/2018 : 6P/3C

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