



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.09.2018

CORAM:**THE HONOURABLE MR.JUSTICE V.PARTHIBAN****W.P. (MD) No.16837 of 2018**

M.Abdul Azeez

... Petitioner

vs.

The Joint Sub Registrar - IV
Madurai South
Madurai-625004

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records relating to the Check slip No.unnumbered dated 24.07.2018 issued by the respondent in respect of the registration of settlement deed of the petitioner as set out in the Schedule hereunder to the petition and quash the same as illegal and consequently direct the Respondent to register the settlement deed presented by the petitioner on 24.07.2018.

SCHEDULE

All that piece of land situated in Madurai South Registration, Madurai District, Sub-Registrar Joint IV, Avaniyapuram Village, Punja Survey no.651/1A, 0.27 Hectare, 0.67 Acre.

For Petitioner : Mr.M.A.Murthuza Ali

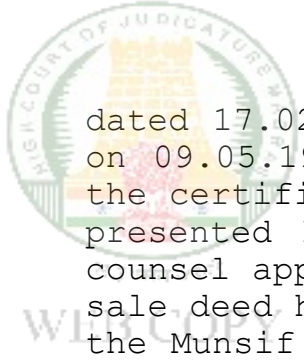
For Respondent : Mr.M.Murugan

Government Advocate (Civil Side)

O R D E R

The petitioner has approached the respondent and presented a settlement deed for registration in favour of his son in respect of the property owned by him in Survey No.651/1A, measuring an extent of 67 Cents, situated in Avaniyapuram Village, Madurai South Taluk. According to the petitioner, he purchased the said property on 17.02.1960. However, the respondent refused to register the document and issued a check slip saying that the document could not be registered, since the original sale deed was not produced for inspection. The said action on the part of the respondent is put to challenge in this writ petition.

2. According to the learned counsel appearing for the petitioner, the petitioner was not having original of the sale deed,



dated 17.02.1960, however, he obtained a certified copy of the same on 09.05.1990 and therefore, he requested the respondent to accept the certified copy of the sale deed and register the settlement deed presented before him for registration. According to the learned counsel appearing for the petitioner, the said certified copy of the sale deed has been submitted in the civil proceedings pending before the Munsif Court and Sub Court, Madurai and the said certified copy of the sale deed had been treated on par with the original sale deed. According to the learned counsel appearing for the petitioner, the Civil Courts have accepted the said certified copy of the sale deed and endorsed its authenticity. However, despite the above facts, the respondent refused to register the document only on the ground that original sale deed was not made available.

3. In response to the notice issued by this Court, a counter affidavit has been filed by the respondent. In the counter affidavit, it is submitted that the Inspector General of Registration has issued Circulars, dated 07.06.2018 and 13.06.2018 and by which, the Registering Authority has to ensure the proper ownership of the property concerned before registering any document. In furtherance of the directions given in these Circulars, the Registering Authority demanded production of the original sale deed, which gave title to the subject property and in the absence of production of the original sale deed, the Registering Authority has rightly refused to register the document.

4. In the counter affidavit, it is also stated that similar directives issued by the Government were examined by the Honourable Division Bench of this Court in W.A.(MD) Nos.710 to 713 of 2010 and the Division Bench of this Court vide Judgment, dated 18.11.2013, has upheld such directives. In the said circumstances, when any doubt arises as to the title of the property, which is covered under the document presented for registration, it is always open to the Registering Authority to insist upon the production of original title deed for inspection purpose and only on being satisfied with the genuinity of the same, further action would be taken towards registration of the document. In the instant case, admittedly the original sale deed has not been produced in order to substantiate the claim of the petitioner and therefore, the respondent has rightly refused to register the document.

5. At this juncture, the learned counsel appearing for the petitioner would strenuously contend that the Circulars issued by the Inspector General of Registration are contrary to the very Scheme of the Registration Act and Rules. According to him, only on certain contingencies as listed under Rule 22 of the Registration Rules (hereinafter, referred to as "the Rules"), the Authority concerned can refuse to register the document. However, it is not open to the Authority to refuse to register the document on any other grounds other than what are mentioned under Rule 22 of the Rules. He would draw the attention of this Court to the six contingencies enumerated under Rule 22 of the Rules, which are



extracted hereunder:

"(i) if the document is presented in the wrong office;

(ii) if an agent has come without a power of attorney or without such a power as the Act requires;

(iii) if the description of the property is either insufficient for purposes of identification or does not fulfil the requirements of rules 16 to 18;

(iv) if the document is not accompanied by a translation or by copy of a map when such translation or copy is necessary;

(v) if there are unattested interlineations, alterations, erasures or blanks, which the Registering Officer considers should be attested by the initials or signatures of the executants; and

(vi) if the date of execution is not given in the document, or if it is anterior to the date of purchase of the stamp paper on which the document is written, or if the date is given according to both the British and the Indian calendars and these dates do not tally."

6. Further, the learned counsel for the petitioner would draw the attention of this Court to Rule 27 of the Rules, which reads as under:

"27. (i) If there are no impediments such as those mentioned to the acceptance of a document for registration, the registering officer shall endorse on the document the date, the hour and the place of presentation and take the signature of the presenting party to such endorsement.

(ii) If the document is deficiently stamped, the Sub-Registrar shall inform the party orally and if he is agreeable and pays the deficit stamp duty, the amount may be collected and certified by Sub-Registrar under section 41 of the Indian Stamp Act, 1899 (Central Act II of 1899). In other cases, the document shall be impounded and action taken under the said Act.

If there are any further impediments in the registration of document, the registering officer may return the same with a check slip. After the impediments have been removed, the registering officer shall act on the document according to the provisions of law.

Explanation.- Under valuation of property



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shall not be a ground for the return of the document, but will be dealt with according to section 47-A of the Indian Stamp Act, 1899 (Central Act II of 1899) as amended by the Indian Stamp (Tamil Nadu Amendment) Act, 1967 (Tamil Nadu Act 24 of 1967).

(iii) If, however, any of the impediments referred to above is discovered after the presentation endorsement has been made on the document, the latter may be returned for correction or amendment if the party so desires with an endorsement to that effect. Should the document be presented again, a re-presentation endorsement shall be made."

7. According to the learned counsel appearing for the petitioner, the Circulars issued by the Inspector General of Registration are contrary to the above Rules and therefore, the same are liable to be declared as ultra vires of the Act.

8. However, this Court does not wish to go into the vires of the Circulars or its validity for the proposed orders to be passed hereunder.

9. Although the Honourable Division Bench of this Court, in the above said writ appeals, has upheld the power to issue directives, however, in the final portion of the Judgment, liberty has been given to the appellant / petitioner therein to produce any other relevant documents of title for the purpose of proving his alleged ownership in respect of the properties mentioned in the sale deed concerned, which means that it is always open to the person, who presented the document for registration, can produce those documents to prove his / her title to the property, which is covered under the instrument presented for registration. Paragraph No.14 of the Judgment of the Honourable Division Bench is extracted hereunder:

"14. Since the first respondent has had acted well within the contour of the subsequent circular issued by the State Government, this Court is of the view that the orders passed by the first respondent are not illegal. However, the appellant/petitioner can be permitted to produce relevant documents of title for the purpose of proving his alleged ownership in respect of the properties mentioned in the concerned sale deeds. With the above observations, these Writ Appeals are liable to be disposed of."

10. The learned counsel appearing for the petitioner has also drawn the attention of this Court to the observations made by the



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Honourable Division Bench in the above said writ appeals, particularly Paragraph Nos.10 to 12, which are reproduced hereunder:

"10. The learned counsel appearing for the appellant/petitioner has fairly conceded that the State Government has issued circular wherein it has been stated to the effect that if there is any suspicion with regard to title of vendor of a particular property, the Registering Authority can direct the concerned seller to produce relevant document for the purpose of proving his/her alleged title.

11. In the instant case, as narrated earlier, the first respondent has passed all the impugned orders, wherein it has been clearly stated that a cloud has been in existence with regard to title of the petitioner in respect of the properties mentioned in the sale deed. Under the said circumstances, he has been directed to produce patta or other documents issued by Revenue Authority.

12. Considering the fact that in the impugned orders passed by the first respondent it has been specifically stated that a suspicion has arisen with regard to title of the appellant/petitioner in respect of the properties to be sold, the Court cannot come to a conclusion that the orders passed by the first respondent are totally illegal and the same are beyond the scope of Registration Act."

11. According to the learned counsel for the petitioner, as there was a genuine suspicion with regard to the title of the property and in that context, the Honourable Division Bench has rendered the above findings and the same cannot be applied to the factual matrix of the present case, for the reason that there is absolutely no dispute or rival claim in regard to the title of the property concerned. He would submit that all the documents and the encumbrance certificate would unequivocally establish the fact that the petitioner is the owner of the property and therefore, he has every right to settle the property in favour of his son. In fact, the certified copy as produced by the petitioner before the Civil Courts, which was obtained on 09.05.1990, is fair enough to satisfy the requirements of the Registering Authority.

12. This Court is in agreement with the submissions made by the learned counsel appearing for the petitioner.

13. In this Case, admittedly, the original of the sale deed is not available. But, however, it appears that the petitioner has a certified copy of the sale deed, which was issued to him on 09.05.1990 and it was accepted and endorsed by the Civil Courts in



respect of the pending litigations. Moreover, in regard to the petitioner's title, the Registering Authority can always call for any other documents available in his possession in order to verify the title credentials of the property covered under the instrument presented for registration.

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14. When the original title deed is not available, there has to be some other method for the Registering Authority to verify the genuineness of the title of the party to the property covered under the instrument presented for registration. All that required by the Registering Authority is to make a basic enquiry into the claim of the petitioner in regard to the title of the property, which is covered under the settlement deed submitted for registration. It is always open to the Registering Authority to verify such of those documents to be presented by the petitioner and ascertain the title claim of the petitioner and take a decision in this regard on being satisfied about the claim of the petitioner.

15. This Court, from the above, is of the clear view that even as per the observations of the Honourable Division Bench in the above writ appeals, it is open to the party concerned to produce relevant documents to substantiate the claim of ownership to the property, which is covered under the instrument presented for registration. Therefore, this Court directs the petitioner to submit whatever documents, which are available with him, to the Registering Authority and on production of those documents by the petitioner, the Registering Authority is directed to conduct an enquiry into the genuineness of the claim of the petitioner in regard to his title, without insisting upon the production of the original sale deed, which is the subject matter of the settlement deed and the Registering Authority being satisfied with the enquiry being made into the claim of the petitioner, they shall proceed to register the settlement deed presented by the petitioner for registration. The petitioner is directed to submit the necessary documents in this regard within a period of one week from the date of receipt of a copy of this order and the respondent is directed to take a decision and pass appropriate orders, within a period of two weeks thereafter.

16. With the above observations, the writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(P&T)

/True Copy/

Sub Assistant Registrar(CS-II)



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To:

The Joint Sub Registrar - IV,
Madurai South,
Madurai-625 004.

+1cc to Mr.M.A.Murthuza Ali, Advocate in SR No.86299
+1cc to Spl Government Pleader, SR No.86379

W.P. (MD) No.16837 of 2018

NM/RP/SAR 2/08.10.18/7P/4C