



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 07.06.2018

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD)No.1403 of 2017

Gandhimathi : Petitioner
Vs.

1.The Sub Registrar,
Peravoorani,
Thanjore District.

2.Mathavi

3.Subadra Devi

4.Gopperunthevi

5.Baladevi : Respondents
(R2 to R5 are impleaded vide Court
order dated 05.04.2018 in
W.M.P(MD).No.2505 of 2017)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records from the respondent's check slip dated 05.12.2016 and to quash the same with consequential direction directing the respondent to register the petitioner's Inam settlement deed dated 01.12.2016.

For Petitioner	: Mr.N.Balakrishnan
For R-1	: Mr.V.Anand Government Advocate
For R2 to R5	: No appearance

ORDER

When the petitioner herein has presented a settlement deed for registration intending to convey the property comprised in S.F.No.397/1B, Maavadukurichi Village, the same was denied to a check slip stating that the petitioner can be settled only 1/5th share and cannot be settled other shares. Challenging the said check slip dated 05.12.2016, the present writ petition has been filed.

2.The learned counsel appearing for the petitioner submitted that there is no provision under the Tamil Nadu Registration Act or the Corresponding Rules to decide the title by the Sub-Registrar.



By relying upon the Rules 55 and 162 of the Registration Act, the learned counsel for the petitioner submitted that the respondent herein is not justified to decide the title.

3. The learned Government Advocate submitted that the District Registrar has the power to superintend and control Sub-Registrars under 68 of the Registration Act and that the Registrar, has the authority to issue any order consistent with this Act to any Sub-Registrar for the purpose of regulating the registration.

4. In a catena of judgments, this Court has categorically held that the Sub-Registrar is not empowered to go into the title of the vendor over the scheduled properties and that they are bound to consider the objections only on the grounds, which are set forth in Rule 55 and Rule 162 of the Tamil Nadu Registration Rules. One such judgment in the case of T.Sundar Vs. Sub Registrar, Office of the Sub Registrar, Palayamkottai, Tirunelveli and another reported in 2010(1)MLJ 1286 reads as follows:-

"10. Thus, in view of the law laid down by this Court in the above referred decision, which has referred to various decisions of this Court in the earlier case, the principle which can be culled out is that the action of the respondents in refusing to release the document on the ground that the sale deed was executed by the person was not the real owner is not legally sustainable. It has been further held that it is not for the registering authority to verify as to whether the vendor in the sale deed has a right to convey the property mentioned therein. Hence, the said judgment squarely applies to the facts and circumstances of the case, and on this ground alone, the petitioners are entitled to succeed.

11. Next, it was pointed out by the learned counsel for the petitioners that a communication has been sent by the second respondent to the first respondent not to entertain any sale deed in respect of the said survey numbers. The Hon'ble Division Bench of this Court had decided the scope of such direction in the nature of prohibition and whether the same could be issued by either the Government or any other body to the said registration of assurance directing him not to entertain any document. In Thiyagavalli Panchayathai Serntha Nochikkadu Grama Vivasayigal Pathukappu Matrum Makkal Pothunala Sangam's case, the Hon'ble Division Bench of this Court held that there is no provision under the statute where the State Government or the respondents therein can validly issue any directions refusing to register any document for which registration is permissible under the provisions of the Act.



12. Therefore, in view of the law laid down by the Hon'ble Division Bench of this Court, the direction issued by the second respondent to the first respondent is also to be held as unsustainable. In fact, the learned counsel for the petitioners would submit that the release of the document is always subject to the right which has already accrued in favour of the Tamil Nadu Housing Board by resisting to release the document by the Board is not justifiable.

13. In view of the law laid down by the Hon'ble Division Bench of this Court as stated supra, all the writ petitions are allowed as prayed for. The first respondent is directed to return the sale deeds to the petitioners. It is made clear that merely because the sale deeds have been released, the same does not mean that the petitioners have title over the said properties and that apart the release of such sale deeds would in any manner affect or impeach the title of the Tamil Nadu Housing Board, or its allottees. No costs. Consequently, connected miscellaneous petitions are closed."

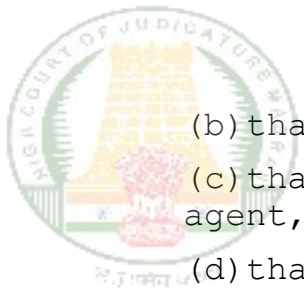
5. In the light of the aforesaid judgment, a Hon'ble Division Bench of this Court also had an occasion to deal with this aspect in a judgment in the case of V.K. Amalraj Vs. Inspector General (Registrations), The Appellate Authority, Government of Tamil Nadu, 120, Santhome High Road, Chennai and 4 others reported in 2011 (1) CWC 283, in which the following observation was made:-

"10. It is the main grievance of the petitioner that registering authorities are indiscriminately registering the documents without making proper enquiry with regard to the rights and ownership of the seller. Therefore, Mandamus has to be issued to the respondents to stop all unlawful registration through out the State of Tamil Nadu by considering his representation, dated 09.10.2009. According to the respondents 1 to 3, the Registering Officer is expected to enquire into the document brought before him and he can make enquiry only within the frame of provisions of the Registration Act and the Rules framed thereunder, particularly with reference to Rule 55 relating to enquiry before the registration speaks about what is not the duty of the Registering Officer. Rule 55 is extracted hereunder:

"55. It forms no part of a registering officer's duty to enquire into the validity of a document brought to him for registration or to attend to any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document; but he is bound to consider objections raised on any of the grounds stated below:-

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(a) that the parties appearing or about to appear before him are not the persons they profess to be;



(b) that the document is forged;

(c) that the person appearing as a representative, assign or agent, has no right to appear in that capacity;

(d) that the executing party is not really dead, as alleged by the party applying for registration; or

(e) that the executing party is a minor or an idiot or a lunatic".

11. A close reading of the said Rule would show the registering authority is bound to consider the objection only on the ground which is stated in the said Rule. Rule 55 does not provide enquiry by the Registering Officer with regard to the right and ownership of the seller. Thus, the authorities concerned are bound to act only in accordance with the Act and Rules framed thereunder. The authorities cannot be directed to act contrary to the provisions of the statute. We also find that the writ petition is filed only to settle the family dispute between the petitioner and the respondents 4 and 5. Hence, we do not find any merit in the writ petition."

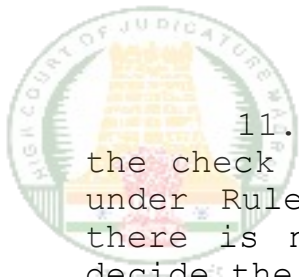
6. In the instant case, the petitioner's request for registration of Inam settlement deed dated 01.12.2016, was refused on the ground that the petitioner can be settled only 1/5th share and cannot be settled other shares.

7. In view of the well settled provisions of law that the registering authority is not empowered to insist upon the parties to prove the title or to verify the title over the property, that is subject matter of the deed of conveyance and that the consideration could be only within the scope of Rules 55 and 162 of the Tamil Nadu Registration Rules, the first respondent may not be justified going into title of the property.

8. I have given careful consideration to the submission made by the respective counsels.

9. As rightly pointed out by the learned counsel for the petitioner, there is no provision under the Registration Act or under the relevant Rules to decide the title by the Sub-Registrar.

10. It is a well settled law that the power of the Registrar to refuse registration is to very limited grounds, namely, (a) that the parties appearing or about to appear before him are not the persons they profess to be; (b) that the document is forged; (c) that the person appearing as a representative, assign or agent, has no right to appear in that capacity; (d) that the executing party is not really dead, as alleged by the party applying for registration; or (e) that the executing party is a minor or an idiot or a lunatic. These are the ingredients of Rule 162 of the Rules, which said about 19 circumstances, under which, the Sub-Registrar may be justified in refusing registration.



11. In the instant case the reason of refusal as evident in the check list is none of the circumstances either under Rule 55 or under Rule 162 of the Registration Rules. As observed earlier, there is no provision under the Registration Act or the Rules to decide the title by the Sub-Registrar.

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12. In the light of the above observation, I am of the considered view that the petitioner herein is entitled to succeed. Accordingly, the Writ Petition stands allowed. Consequently, the impugned check slip dated 05.12.2016 on the file of the first respondent herein stands quashed and the first respondent herein is directed to register the petitioner's Inam settlement deed, dated 01.12.2016, within a period of two weeks from the date of receipt of a copy of this order, if it is otherwise in order and consequently return the settlement deed to the petitioner forthwith. No costs.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

The Sub Registrar,
Peravoorani,
Thanjore District.

+1cc to M/S.N.Balakrishnan, Advocate SR.No. 67603
+1cc to Special Government Pleader, SR.No. 67372

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rmk

JM/SKN RSK/SAR 1/27.06.2018/5P/4C