

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2020

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.16999 of 2020

Varadhammal

...Petitioner

vs.

The Sub-Registrar,
Kancheepuram Joint II SRO,
Kancheepuram & District.

...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the Refusal Check Slip dated 02.11.2020 in RFL/2 Number Joint Sub Registrar Kancheepuram /7/2020 issued by the respondent herein, quash the same and consequently direct the respondent herein to register the Settlement Deed dated 02.11.2020 executed by the petitioner in favour of his son viz., P.Thanesh Kumar on re-presentation if otherwise in order within a time frame to be stipulated by this Court.

For Petitioner : Mr.G.Mageshkumar
For Respondent : Mr.T.M.Pappiah, SGP

ORDER

On consent given by either side, the main writ petition itself is taken up for final hearing.

2.The case of the petitioner is that the subject property originally belonged to her husband. The husband of the petitioner during his life time, executed a Will in favour of the petitioner and according to the petitioner, the entire property has been bequeathed in her favour. The husband of the petitioner died on 10.10.2005, leaving behind the petitioner and three sons.

3.The further case of the petitioner is that she has become the absolute owner of the subject property and she wanted to execute a settlement deed in favour of one of the sons named P.Thanesh Kumar. The petitioner executed a settlement deed dated

02.11.2020 in favour of her son. When this document was presented for registration before the respondent, the respondent has refused to register the document on the ground that the Will in question is an unregistered document and it will require a probate before the competent Court and only there upon, the respondent can act upon the Will. The impugned refusal check slip has been issued on this ground. Aggrieved by the same, the present writ petition has been filed before this Court.

4. Heard Mr.G.Mageshkumar, learned counsel for the petitioner and Mr.T.M.Pappaiah, learned Special Government Pleader appearing on behalf of the respondent.

5. In the considered view of this Court, a Will does not get a special status by registering the same. Admittedly, it is a document which need not be registered and no law mandates such registration. The law on this issue is well settled and it has been held that just because the Will is registered, reliance cannot be placed on the same, unless it is proved in the manner indicated under the Evidence Act.

6. In the present case, the respondent has insisted for getting a probate with regard to the Will executed in favour of the petitioner. Insofar as probate is concerned, the same becomes mandatory only when it attracts the provisions of Section 213 of the Indian Succession Act. The property in question is situated at Kancheepuram District and the Will has also been executed at Kancheepuram District and therefore, the Will in question does not fall under the requirements of Section 213 of the Indian Succession Act and it does not require a probate for the purpose of acting upon this Will.

7. The petitioner is claiming the right over the subject property by virtue of the Will executed by her husband. She wants to settle the property in favour of one of her sons. Therefore, the respondent can always act upon the Will and should have taken into consideration the fact that the mother is settling the property in favour of one of her sons and there is no third party, who is getting into the transaction. If ultimately the other children of the petitioner are disputing the validity of the Will, they can always approach the competent Civil Court and put the Will to test. Till that happens, the Will is a valid document for all purposes and it can be acted upon.

8. In view of the above discussion, this Court is inclined to interfere with the refusal check slip issued by the respondent and accordingly, the same is hereby quashed. The respondent is directed to entertain the settlement deed dated 02.11.2020 presented by the petitioner and register the same, if it is

otherwise in order. It goes without saying that necessary stamp duty and registration fee will have to be paid, at the time of registration, if not already paid. The document shall be returned back to the petitioner after registration.

9.This writ petition is allowed with the above directions.
No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

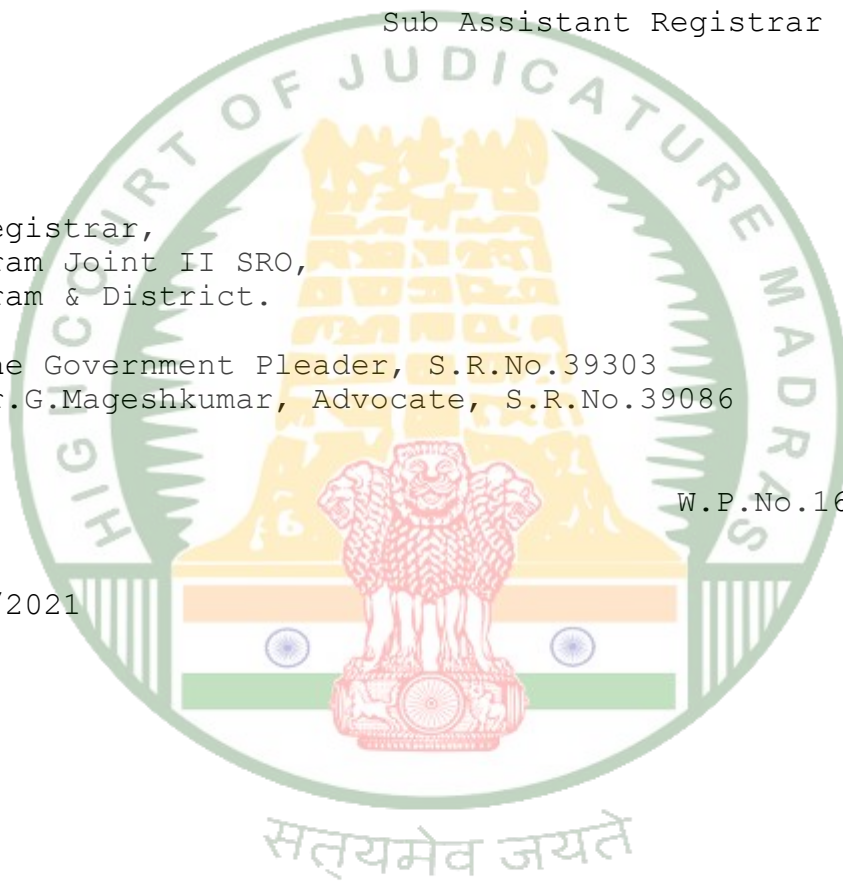
The Sub-Registrar,
Kancheepuram Joint II SRO,
Kancheepuram & District.

+1cc to the Government Pleader, S.R.No.39303

+1cc to Mr.G.Mageshkumar, Advocate, S.R.No.39086

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KKV/05/01/2021



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