



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 01.09.2021

CORAM:

WEB COPY THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

W.P.No. 17436 of 2021

Sri Devi ... Petitioner

/Vs/

1. Sub Registrar, Vadalur.
2. District Registrar, Cuddalore.
3. Inspector General of Registration.
Chennai. ... Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India praying Writ of Certiorarified Mandamus, to call for the records by order dated 30.06.2021 made in RFL/Vadalur/84/2021 on the file of the first respondent, to quash the same and consequently, to direct the first respondent to register the Power of Attorney dated 30.06.2021, submitted by the petitioner.

For Petitioner : Mr.V.V.Sairam

For Respondents: Mr.Yogesh Kannadasan.
Government Advocate

ORDER

The grievance of the petitioner is that she is the adoptive daughter of one Anusuya @ Balasundarammal dated 04.08.1988 in Doc.No.34 of 1988 registered on the file of Sub Registrar Office, Vadalur, Cuddalore District and confirmed by the order passed by the learned Principal District Judge, Cuddalore in Guardian O.P.No.59 of 1998, dated 12.08.1999. In the meanwhile, the petitioner's adoptive mother Anusuya @ Balasundarammal died, therefore, she could not get the original title deed despite her best efforts, she had applied for certified copies of the sale deeds for the properties. While filing the GOP.No.59/1998 her natural mother was said to have enclosed only certified copies of the sale deeds. Thereafter, the petitioner has caused the preparation of General Power of Attorney Deed after going through the



formalities it came to be presented before the first respondent for registration. In the circumstances, when the petitioner presented the documents relating to the properties for registration, the respondent has been refused to register the same insisting upon the production of original parent deed. However, the first respondent/Sub Registrar has refused to register the said document. The refusal of the respondent is only on the basis of the fact that the parental document has not been produced for perusal of the Authority.

2. In one such attempt to register the document, the petitioner presented a Power of Attorney in favour of petitioner relating to the properties belonging to her adoptive mother. The respondent refused to register the Power of Attorney by the impugned refusal. The refusal of the respondent is only on the basis of the fact that the parental document has not been produced for perusal of the authority.

3. On enquiry, the petitioner was informed that the Inspector General of Registration, Chennai, had issued a circular dated 25.04.2012, which requires the production of original title deeds to the Authority concerned for the purpose of registration. However, according to the petitioner, this Court has consistently held that the Registering Authority cannot insist on production of original title deeds as a matter of precondition for registration of the documents. According to the Courts, such pre-condition is not provided in the statute.

4. Mr.V.V.Sairam, who has entered appearance on behalf of the petitioner, would reiterate the above facts and also would draw the attention of this Court to three decisions of this Court, which read as under:-

(i) 2011-2-L.W.648 (K.S. Vijayendran v. The Inspector General of Registration, Chennai, and others). The observation of the learned Single Judge of this Court reads as under:-

"10. None of the provisions of the Act or the Rules contemplate the Registrar to require the party appearing before him for presenting document to produce the original title deeds relating to the property so as to satisfy himself about the ownership of the executant in respect of the property sought to be executed."

(ii) 2015 Online SCC Mad 5868, Lakshmi Ammal v. The Sub Registrar, Office of the Sub Registrar, Villivakkam, Chennai and Others.

In the above case also, the learned Single Judge of this Court has clearly held that insistence on production of original title deeds through the circular dated 25.11.2012 was



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found to be not having any statutory force, in view of the absence of any provision in the Act. The observation of the learned Single Judge is extracted hereunder:-

"4..... Further, the petitioner also produced the encumbrance certificate from 1987 till date showing nil encumbrance. When the petitioner insisted upon a written order, the impugned order was passed by relying upon a circular issued by the Inspector General of Registration, dated 25.11.2012 and stated that since the petitioner did not produce the original sale deed, dated 07.09.2011, the settlement deed cannot be admitted for registration. Challenging the same, the present Writ Petition has been filed.10. For the reasons stated above, I am of the considered view that the impugned order of the first respondent dated 05.09.2012 is liable to be set aside and accordingly, set aside and the writ petition stands allowed. The first respondent is directed to register the deed of release on presentation by the petitioner in respect of the property in question. He is directed to register the document on the date of presentation without making the parties to run from pillar to post. He is also directed to do so on receipt of the order copy from this Court or on production of the same. No order as to costs. Consequently, connected miscellaneous petition is closed."

(iii) 2018 Online SCC Mad 3898, C.Moorthy v. The Sub Registrar, Aruppukottai. In the above decision, yet another learned Single Judge of this Court has clearly held as under:-

"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 5/12 http://www.judis.nic.in W.P.(MD)No.19745 of 2020 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



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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."

5. The learned counsel therefore would submit that the issue as to whether the original title deeds should be produced for registration by the party concerned or whether the Registering Authority can insist on production of original title deeds as a pre-condition for registration is no more res-integra.

6. Mr.Yogesh Kannadasan, learned Government Advocate, who has entered appearance on behalf of the respondents, would submit that recently a learned single Judge of this Court in W.P.(MD) No.16768 of 2020, dated 26.11.2020, had taken a different view and he has produced a copy of the unreported order of the learned single Judge. He would rely upon the paragraph Nos.8 and 9 of the said order, which are extracted hereunder:-

"8.This Court has already considered the issue in W.P. (MD) No.2657 of 2020, wherein, it is held that there are certain occasions where the original documents may not be available with the executor of the documents and that if there is any reasonable doubt about the identity of the person executing the documents, the original documents can be dispensed with. The entire circular issued on 25.04.2012 cannot be questioned. In fact, the circular issued by the Inspector General of Registration should be appreciated, as in order to avoid duplication of registration and fraudulent registration of the very same property, it has been issued. The contention of the respondent that the extract mentioned by him supra cannot be read in isolation and it got to be read as a whole.

9. Apart from the directions given by this Court in W.P. (MD) No.2657/2020 dated 19.02.2020, this Court is of the view that if the Sub Registrar has got any doubt about the documents, copy of the parent documents, which is available in the office of the Sub Registrar, can very well be verified about the genuineness of the certified documents produced by the



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petitioner. Even assuming that the executor is a genuine person and producing fake documents, it is open to the Sub Registrar to refuse to register the document. Hence, this Court is of the view that the condition may be included in the Circular by way of amendment stating that the Sub Registrar will have to verify the records of the parent document from their office or from the office, where the said document is obtained and produced, as the Sub Registrars office have been bifurcated many times, scrutinize the same and after completely satisfied with the document, referring to those documents, he can register the same so that no prejudice would be cause to any person, more so, the buyer. Accordingly, the impugned order is set aside and the matter is remanded back to the authorities."

7. At this, the learned counsel for the petitioner would submit that this Court has consistently held in a number of decisions that such insistence is nowhere found in the provision of the Registration Act and therefore, the latest decision of the learned single Judge may not be a correct view.

8. This Court is entirely in agreement with the submissions made on behalf of the petitioner in this regard. The latest decision of the learned single Judge appears to have not considered the implication of the circular with reference to the scheme of the relevant Act. On the other hand, the above three decisions cited on behalf of the petitioner would certainly hold the field and in which event, insistence on production of original title deeds by the Registering Authority is without any authority of law. The circular issued by the Inspector General of Registration, Chennai in this regard cannot have any sanctity, unless the power of issuance of such circular is authorized under the provisions of the Act. This Court has consistently held that no such power can be read into the Act, in the absence of any specific provisions and in that view of the matter, as rightly contended by the learned counsel for the petitioner, the subject issue is no more res-integra. As far as the latest decision of the learned single Judge is concerned, being a kind of a contra view, this Court is of the opinion that the order passed by the learned single Judge of this Court in W.P. (MD) No.16768 of 2020, dated 26.11.2020 has not appreciated the provisions of the Act, as the reasons of the learned single Judge are contrary to the well considered earlier judgments of this Court. The learned Judge has reasoned without any specific reference to the scheme of the Act, which governs the registration.



9. In fact, in one of the judgments cited by the learned counsel for the petitioner, the learned Government Advocate for the respondent himself has conceded the legal position. In that view of the matter, the reliance placed by the Department on the latest order of the learned single Judge needs to be held as not valid.

10. With the above observations, the Writ Petition is disposed of and the first respondent is hereby directed to register the documents presented by the petitioner for registration, if the document is otherwise in order, without insisting on the production of original parent document, in terms of the law laid down by this Court in the three decisions as cited supra. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gba/msm

To

1.Sub Registrar.
Vadalur.

2. District Registrar.
Cuddalore.

3. Inspector General of Registration.
Chennai.

+1 cc to Mr.V.V.Sairam, Advocate Sr.NO. 44039

+1 cc to Government Pleader Sr.NO. 44297,44604

W.P.No.17436 of 2021

VSN II(CO)

A.SK(30.11.2021)