



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2021

CORAM:

THE HON'BLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

W.P.No.21479 of 2021

S.Duraivel

...Petitioner

Vs.

The Sub-Registrar,
Pollachi,
Coimbatore District.

...Respondent

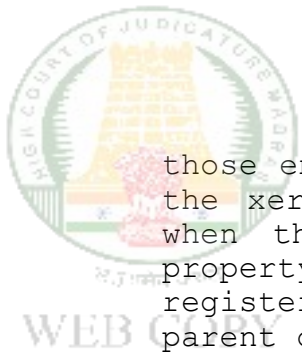
Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certioraified Mandamus, by calling for the entire records pertaining to the impugned Refusal Check Slip issued by the Respondent vide its proceedings in Refusal Number:RFL/Pollachi/13/2021 dated 03.09.2021 and quash the same as illegal and consequently to direct the Respondent to register the Release Deed dated 16.08.2021 presented by the petitioner for registration without insisting for the production of original document within the time stipulation as prescribed by this Court.

For Petitioner : Mr.S.Balaji
For Mr.S.Kumar Sankar

For Respondents : Mr.V.Veluchamy
Government Advocate

ORDER

The grievance of the petitioner is that he has a share in the property inherited from his father. According to him, the petitioner's mother and his sister have decided to give their share of 2/3 to him by way of executing a release deed in respect of the aforesaid property. In fact, the original sale deed made between his father and one V.Sivakumar was found missing and the said original sale deed was kept by his father. The petitioner has hectic efforts to find out the same but all



those ended in vain and the petitioner's family are only keeping the xerox copy of the sale deed. In the said circumstances, when the petitioner presented the documents relating to the property for registration, the respondent has been refused to register the same insisting upon the production of original parent deed.

2. In one such attempt to register the document, the petitioner presented a xerox copy of the sale deed relating to the aforesaid property belonging to his father. However, the respondent/Sub Registrar has refused to register the said document by the impugned refusal No.RFL/Pollachi/13/2021, dated 03.09.2021. 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 15.09.2010, 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.S.Kumar Sankar, 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 found to



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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."

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.V.Veluchamy, learned Government Advocate, who has entered appearance on behalf of the respondent 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



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Registrar, can very well be verified about the genuineness of the certified documents produced by the 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 supra 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.

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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 respondent is hereby directed to register the document 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(CO)

//True Copy//

Sub Assistant Registrar

gba/msm

To

The Sub-Registrar,
Pollachi,
Coimbatore District.

W.P.No.21479 of 2021

VBM(CO)
SU(30/11/2021)