



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.03.2021

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. (MD) No.7177 of 2021

1.P.Mariappan
2.K.Pasupathy
3.Elazabeth

.. Petitioners

Vs

The Sub Registrar,
No.1, Joint Sub Registrar,
Palayamkottai,
Tirunelveli District.

.. Respondent

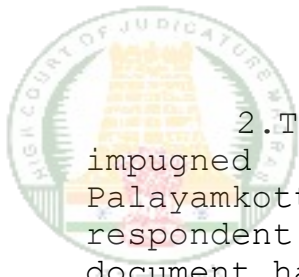
PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned refusal Check Slip No.1 Joint Sub Registrar, Palayamkottai/13/2021, dated 27.02.2021 and quash the same and consequently direct the respondent to register the document presented by the petitioners for registration without insisting for the production of the original parent document within the time fixed by this Court.

For Petitioners : Mr.L.Prabhakaran

For Respondent : Mr.K.Sathiya Singh
Additional Government Pleader

ORDER

The case of the petitioners is that they are the joint owners of the dry land in S.No.311/1 situated in Keelanatham Village in Palayamkottai Taluk and they are in possession and enjoyment of the property. While so, on 26.02.2021 the petitioners executed a sale deed in favour of one Gurunathan for valuable consideration. In the said circumstances, when the petitioners presented the documents relating to the property for registration on 27.02.2021, the respondent has been refusing to register the same insisting upon the production of original parent deed.



2.The respondent refused to register the said document by the impugned refusal cheque slip No.RFL/1 Joint Sub Registrar, Palayamkottai/13/2021, dated 27.02.2021. 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.

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3.On enquiry, the petitioners were 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 petitioners, this Court has consistently held that the Registering Authority cannot insist on production of original title deeds as a matter of pre-condition for registration of the documents. According to the Courts, such pre-condition is not provided in the statute.

4.Mr.L.Prabhakaran, who has entered appearance on behalf of the petitioners, 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 Vs. 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 SCC OnLine Mad 5868 (Lakshmi Ammal Vs. 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 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."

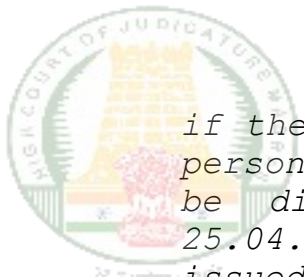
iii) **2018 SCC OnLine Mad 3898 (C.Moorthy Vs. Sub Registrar, Aruppukkottai)**. In the above decision, yet another learned Single Judge of this Court has clearly held as under:-

"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 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 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. K. Sathiya Singh, learned Additional Government Pleader, 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

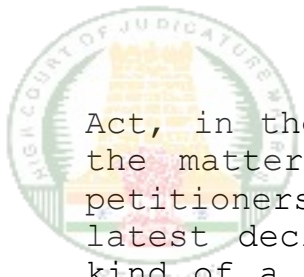


if there is any reasonable doubt about the identity of the person executing the documents, the original documents can be dispensed with. The entire circular issued on 25.04.2012 cannot be questioned. In fact, the circular issued by the Inspector General of Registration should be appreciated, as in order 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 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 caused 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 petitioners 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 petitioners 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 petitioners 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 petitioners, 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 petitioners, the learned Additional Government Pleader 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.In the above circumstances, the impugned refusal slip in RFL/1 Joint Sub Registrar, Palayamkottai/13/2021, dated 27.02.2021 is hereby set aside. The respondent is directed to register the documents presented by the petitioners 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.

11.The Writ Petition stands allowed, accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

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/ /2021

Sub Assistant Registrar(CS)

To
The Sub Registrar,
No.1, Joint Sub Registrar,
Palayamkottai,
Tirunelveli District.
+1 CC to M/s.AGP (SR-14683[F] dated 31/03/2021)
+1 CC to M/s.L.PRABHAKARAN, Advocate (SR-14852[F] dated
31/03/2021)

W.P. (MD)No.7177 of 2021

30.03.2021

HB (24.04.2021) 5P 4C

<https://hcservices.ecourts.gov.in/hcservices/>