



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.10.2021

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P(MD).Nos.19054 and 19062 of 2021

and

W.M.P(MD).Nos.15823 and 15827 of 2021

K.Karthikeyan

... Petitioner in W.P(MD).No.19054 of 2021

Hepzi

...Petitioner in W.P(MD).No.19062 of 2021

Vs.

The Sub Registrar,

Alangulam, Tenkasi District. ...Respondent in both cases

Prayer in W.P(MD).No.19054 of 2021: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned refusal check slip No.RFL/Alangulam/49/2021 dated 11.10.2021 on the file of the respondent and to quash the same and further directing the respondent to receive and register the settlement deed termed as family arrangement dated 11.10.2021 executed by the petitioner in favour of the petitioner's only son Mr.Athiban Kuthalingam submitted for registration with the respondent under Temporary No.TP/106135317/2021.

Prayer in W.P(MD).No.19062 of 2021: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned refusal check slip No.RFL/Alangulam/50/2021 dated 11.10.2021 on the file of the respondent and to quash the same and further directing the respondent to receive and register the settlement deed termed as family arrangement dated 11.10.2021 executed by the petitioner in favour of the petitioner's only son Mr.Athiban Kuthalingam submitted for registration with the respondent under Temporary No.TP/106130091/2021.

For Petitioner
(In both cases)

: Mr.G.Prabhu Rajadurai

For Respondent
(In both cases)

: Mr.K.S.Selva Ganesan
Counsel for State



COMMON ORDER

In both these writ petitions, refusal check slips are assailed. The petitioner in W.P.(MD).No.19054 of 2021 is the husband of the petitioner in W.P.(MD).No.19062 of 2021. In connection with the Rice Mill operated by Mr.K.Karthikeyan (petitioner in W.P.(MD).No.19054 of 2021), a cash credit facility was availed of from one S.A.Kannan. As security in respect thereof, a Memorandum of Deposit of Title Deeds dated 24.03.2017 (in W.P.(MD).No.19062 of 2021) and Memorandum of Deposit of Title Deeds dated 26.10.2018 (in W.P.(MD).No.19054 of 2021) were executed by the respective petitioner in favour of the lender/mortgagee.

2.The respective petitioner submits that it was decided to settle the relevant property in favour of the son of the petitioners, namely, Athiban Kuthalingam. Accordingly, a settlement deed was executed and presented for registration. By separate refusal check slips dated 11.10.2021, the request for registration was refused.

3.The respective petitioner assails the separate refusal check slip on the ground that the only reason stated therein is the non-production of the original parent document. The respective petitioner points out that the non-production of the original parent document is not a valid ground to refuse to register a document.

4.Mr.K.S.Selva Ganesan, learned counsel for the State, accepts notice on behalf of the sole respondent. He submits that the respondent may be directed to reconsider the matter after providing a reasonable opportunity to the mortgagee.

5.The respective petitioner has enclosed a copy of the relevant Memorandum of Deposit of Title Deeds. The said document discloses that the original title deeds were deposited with the mortgagee. It is stated by the respective petitioner that no separate loan agreement was executed in relation to the loan. Loan agreements typically contain a clause restraining alienation of the secured assets without the prior consent of the mortgagee. Although the respective petitioner asserts that there is no separate loan agreement, this is an aspect that should be ascertained by the respondent by issuing notice to the mortgagee. The second aspect to be considered is whether the original title deeds are with the mortgagee. If such is the case, it would explain the non-production thereof by the respective petitioner. As held in several earlier judgments, a request for registration should not be refused solely on the ground of non-production of original parent documents. A person presenting a document for registration may have legitimate reasons for non-production. Therefore, the impugned order in the two writ petitions cannot be sustained. The said orders are, therefore, quashed.

6.As a corollary, the matter is remitted for reconsideration by the respondent. For such purpose, the respective petitioner is directed to submit the relevant document for registration. Such



re-submission shall be done within a period of two (2) weeks from the date of receipt of a copy of this order. Upon such re-submission, the respondent is directed to reconsider the request for registration by providing a reasonable opportunity to the respective petitioner and the mortgagee. In course of such inquiry, the respondent shall ascertain whether the original documents are with the mortgagee and also whether the terms and conditions of the loan agreements executed by and between the respective petitioner and the mortgagee contain any restrictions on alienation without the consent of the mortgagee. The respondent shall not go into the liability of the respective petitioner to the mortgagee, which is a matter to be decided in independent proceedings. After conducting an inquiry in the manner aforesaid, the respondent is directed to either register the relevant documents or issue a reasoned communication indicating the reasons for refusal to do so. In either case, the entire process shall be concluded within a period of two (2) months from the date of receipt of the resubmitted documents from the respective petitioner.

7.W.P(MD).Nos.19054 and 19062 of 2021 are disposed of on these terms without any order as to costs. Consequently, W.M.P.(MD) Nos.15823 and 15827 of 2021 are closed.

Sd/-

Assistant Registrar (CRL)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sn/sji

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Sub Registrar, Alangulam, Tenkasi District.

+1 CC to M/s.SPL.GP (SR-33040[F] dated 28/10/2021)

+2 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-33084[F] dated 28/10/2021)

**W.P(MD).Nos.19054 and 19062 of 2021
and**

**W.M.P(MD).Nos.15823 and 15827 of 2021
27.10.2021**

MGJ/UV(09.11.2021) 3P 5C

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