



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2022

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.915 of 2022

Sulaiman

...Petitioner

-Vs-

1. The Sub Registrar,
Sub Registrar Office,
Purasaiwalkam, Chennai.

2. The Inspector General of Registration,
Santhome High Road,
Chennai - 600 028.

...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order "Refusal Check Slip", dated 05.01.2022 in Ref.No.RFL/Purasaiwalkam/1/2022 passed by the first respondent relating to the General Power of Attorney in respect of the property bearing Door No.4 and 5, Erukkanchery High Road, Vyasarpadi, Chennai - 600 039, comprised in R.S.No.537/1, as per patta 537/8 and 537/9 Block No.27 of Perambur Village, Perambur Taluk, measuring 302 sq.ft., executed by Rahimunisha Begum by quashing the same and further directing the first respondent to receive the General Power of Attorney dated 05.01.2022 and register the same in accordance with law.

For Petitioner : Mr.R.Manickavel

For Respondents: Mr.Yogesh Kannadasan
Special Government Pleader

ORDER

This Writ Petition has been filed for the issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order "Refusal Check Slip", dated 05.01.2022 in Ref.No.RFL/Purasaiwalkam/1/2022 passed by the first respondent relating to the General Power of Attorney in respect of the property bearing Door No.4 and 5, Erukkanchery High Road, Vyasarpadi, Chennai - 600 039, comprised in R.S.No.537/1, as per



patta 537/8 and 537/9 Block No.27 of Perambur Village, Perambur Taluk, measuring 302 sq.ft., executed by Rahimunisha Begum by quashing the same and further directing the first respondent to receive the General Power of Attorney dated 05.01.2022 and register the same in accordance with law.

2.Heard Mr.R.Manickavel, learned counsel appearing for the petitioner and Mr.Yogesh Kannadasan, learned Special Government Pleader appearing for the respondents.

3.The property comprised in R.S.No.537/1, situated at Block No.27 of Perambur Village, Perambur Taluk, ad-measuring 604 sq.ft, bearing Door No.4 and 5, Erukkanchery High Road, Vyasarpadi, Chennai - 600 039, belong to one Rahimunisha Begum and her late husband Ghoush Basha. They purchased the said property by the registered sale deed, dated 06.02.2009 registered vide Document No.393 of 2009. The said Ghoush Basha gifted his half share by way of Hiba in favour of his wife Rahimunisha Begum and by the Hiba deed, dated 13.04.2016. Thus, the said Rahimunisha Begum became the absolute owner of the entire property.

4.Thereafter, the said Rahimunisha Begum executed a Power of Attorney in favour of the petitioner to deal with the property, dated 23.09.2002. The said Power of Attorney has been presented for registration on 05.01.2022 before the first respondent. However, the first respondent refused to register the same by the impugned check slip, dated 05.01.2022 for the reason that as per the Gift deed executed through Hiba is unregistered one. It is a settled law that the provisions of the Transfer of Property Act under Section 122 to 129 of Chapter VII shall not be applicable to Muhammadan Law. The provisions under Section 123 makes it clear that a deed of gift executed by a donor in favour of donee shall be compulsorily registered, but Section 123 shall not apply if the parties to the transaction of a gift are Muslims.

5.In this regard, the learned counsel for the petitioner relied upon the Judgment of Hon'ble Supreme Court of India reported in 2001 (5) SCC 654 in the case of "Hafeeza Bibi and others Vs. Shaikh Farid (Dead) by Lrs and others".

"29. In our opinion, merely because the gift is reduced to writing by a Mohammadan instead of it having been made orally, such writing does not become a formal document or instrument of gift. When a gift could be made by Mohammadan orally, its nature and character is not changed because of it having been made by a written document. What is important for a valid gift under Mohammadan Law is that three



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essential requisites must be fulfilled. The form is immaterial. If all the three essential requisites are satisfied constituting valid gift, the transaction of gift would not be rendered invalid because it has been written on a plain piece of paper. The distinction that if a written deed of gift recites the factum of prior gift then such deed is not required to be registered but when the writing is contemporaneous with the making of the gift, it must be registered, is inappropriate and does not seem to us to be in conformity with the rule of gifts in Mohammadan Law".

6. Such being the position of law, the first respondent ought not have refused to register the Power of Attorney document on the ground that the Hiba deed is an un-registered one. It is contrary to law, outside the purview of the Registration Act. The above Judgment is followed by the Hon'ble Division Bench of this Court, recently reported in CDJ 2020 MHC 5077 and held that, merely because the gift is reduced to writing by a Mohammadan instead of it having been made orally, such writing does not become a formal document or instrument of gift. When a gift could be made by Mohammadan orally, its nature and character is not changed because of it having been made by a written document. What is important for valid gift under Mohammadan law is that the three essential requisites must be fulfilled. i.e. (i) declaration of the gift by the donor (ii) acceptance of the gift by the donee expressly or impliedly and (iii) delivery of possession either actually or constructively. The form is immaterial.

7. If all the three essential requisites are satisfied constituting valid gift, the transaction of gift would not be rendered invalid because it has been written on a plain piece of paper. The distinction that if a written deed of gift recites the factum of prior gift then such deed is not required to be registered but when the writing is contemporaneous with the making of the gift, it must be registered, is inappropriate and does not seem to us to be in conformity with the rule of gifts in Mohammadan Law.

8. Thus, it is well settled that un-registered Hiba does not require any registration and therefore the refusal to register the Power of Attorney in which the principal mentioned that she acquired the property from her late husband through Hiba.

9. In view of the above, the impugned check slip cannot be sustained as against the petitioner and it is liable to be set aside. Accordingly, the impugned check slip dated 05.01.2022 in



Ref.No.RFL/Purasaiwalkam/1/2022 passed by the first respondent is hereby quashed.

10.The principal and the petitioner are directed to represent the Power of Attorney documents, dated 23.09.2002, before the first respondent for registration. On receipt of the same, the first respondent is directed to register and release the same forthwith, if it is otherwise in order.

11.In view of the above, this writ petition stands allowed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub Registrar,
Sub Registrar Office,
Purasasiwalkam, Chennai.
2. The Inspector General of Registration,
Santhome High Road,
Chennai - 600 028.

+1cc to Mr.R.Manickavel, Advocate, S.R.No.4556

+1cc to the Government Pleader, S.R.No.5632

W.P.No.915 of 2022

SS(CO)
RGA(16/02/2022)