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W.P.No.28209 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2022

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THE HON'BLE MR. JUSTICE M.DHANDAPANI

W.P.No.28209 of 2021

P.Nallappan

... Petitioner

Vs.

The Sub-Registrar,
The Office of Sub Registrar,
Paramathy,
Paramathy Velur Taluk,
Namakkal District - 637 207.

... Respondent

Prayer : Writ Petition has filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus to call for the entire records pertaining to the impugned Refusal Check Slip in Refusal No.RFL/Paramathi/92/2021, dated 30.11.2021, passed by the respondent and to quash the same as illegal, incompetent and ultra-vires and consequently direct the respondent to register the partition deed without insisting for the production of original parent document and cancellation of expired lease.



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For Petitioner : Mr.M.Lokesh

For Respondent : Mr.C.Kathiravan
Special Government Pleader

ORDER

The petitioner has filed this petition seeking for issuance of a Writ of Certiorarified Mandamus to call for the entire records pertaining to the impugned Refusal Check Slip in Refusal No.RFL/Paramathi/92/2021, dated 30.11.2021, passed by the respondent and to quash the same as illegal, incompetent and ultra-vires and consequently direct the respondent to register the partition deed without insisting for the production of original parent document and cancellation of expired lease.

2. The case of the petitioner is that his father had purchased a property, to an extent of 0.96-1/2 acres, out of 6.52 acers in old S.F.No.341/1 and new S.F.No.341/1B, in UDR Patta No.217, situated in Kunnamalai Village, for a valuable consideration and also that a property in Grama Natham house property vide Grama Natham Patta No.253 in S.F.No.299/21 was sold to the petitioner's father by one of his brothers, for a valuable sale consideration. While so, the petitioner's mother died on 20.01.2022, intestate leaving behind her husband, son and daughter. Subsequently, the father of the



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petitioner had passed away, leaving behind his son/petitioner and his daughter one Lakshmi. Thereafter, it came to the knowledge of the petitioner that his father had leased out his undivided share of the property, that he had purchased jointly with his three brothers in S.F.No.290, 297, 298 and 299 to one Ramasamy Gounder and Sengoda Gounder vide registered lease agreement in Document No.1062 of 1973 and the lease period is only for five years and it also got expired on 13.06.1978. Thereafter, the petitioner had leased out the subject property to one C.Rajagopal for a period of five years and after completion of the lease period, he had been in possession of the property. Thereby, the petitioner presented a partition deed for registration before the respondent. However, the same was refused and returned by stating that the original documents have not produced and lease deed has not been cancelled vide Refusal Check Slip in Refusal No.RFL/Paramathi/92/2021. Challenging the said Refusal Check Slip, the present Writ Petition has been filed.

3. Though very many grounds have been raised, learned counsel for the petitioner submits that though the petitioner annexed the certified copy of the parent document, even then the respondent refused to register the document is not sustainable, the issue involved in the present case, is no



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more res-integra. He further relied upon the decision of this Court in W.P.(MD)No.19745 of 2020, order dated 11.02.2021, wherein it has been held that mere copy of the document is more sufficient to entertain the document for registration. The relevant portion of the above said order is extracted hereunder:-

"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 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



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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."

4. Further, mere pendency of the lease deed will not be a bar for the Sub-Registrar to register the document, which has been already decided by the Hon'ble Division Bench of this Court in the case reported in **2020 (6) CTC 697 (N.Ramayee V. Sub-Registrar, Registration Department)**. The relevant portion of the above said order is extracted hereunder:-

"46. It is also brought to our notice about the new Circular in No.24011/C1/2020, dated 8.10.2020. It is the contention of the learned Additional Advocate General that the Registrar has power to regulate the registration in order to prevent fraud and hence, the Registrar is having powers under the Registration Act to regulate the registration and the right to refuse the document and that such power is available under Section 71 of the Registration Act. Such contention is not acceptable for the simple reason that the Circular bars transfer of property on the ground that when a Lease is already executed in respect



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of the property, without expiry of the Lease, transfer cannot be permitted or without consent of lessee no registration is permissible. Further, insisting a no objection from Mortgagee before registration is also against the very substantive provision of law. If any property is sold with existing Mortgage, the transferee steps into the shoes of the Mortgagor. He has the right to redeem the property by paying the Mortgage money. Therefore in the name of regulating the registration, any Circular which is in the nature of violating the substantive provision of law, which deals with the transfer of property, then such circular cannot stand in the eye of law. If the contention of learned Advocate General that without seeking declaration and cancellation of the Agreement of Sale, subsequent Agreement or transaction cannot be registered, is accepted then such restriction, in fact, infringes the very Constitutional right of the citizen provided under Article 300-A of Constitution.”

5. The learned Special Government Pleader appearing for the respondent submits that the issue had already been settled before this Court in the aforementioned order passed by the Hon'ble Division Bench of this Court.



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6. In view of the decision of this Court in ***W.P.(MD)No.19745 of 2020***, order dated 11.02.2021, makes it clear that, there is no need to present the parent document, certified copy of the parent document is sufficient to entertain the document for registration. Further, mere pendency of the lease deed will not be a bar for the Sub-Registrar to register the document, as already decided by the Hon'ble Division Bench of this Court in the case reported in ***2020 (6) CTC 697 (N.Ramayee V. Sub-Registrar, Registration Department)***.

7. In view of the above, this writ petition is allowed, the impugned refusal check slip dated 30.11.2021, is set aside and the respondent is directed to entertain the documents presented by the petitioner and pass appropriate orders within a period of twelve weeks from the date of receipt of a copy of this order and the petitioner is directed to pay requisite Stamp Duty and Registration Charges. No costs.

08.11.2022

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M.DHANDAPANI, J.

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To

The Sub-Registrar,
The Office of Sub Registrar,
Paramathy,
Paramathy Velur Taluk,
Namakkal District - 637 207

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08.11.2022