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W.P.No.28433 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.28433 of 2022

Siddhagounder

... Petitioner

Versus

1. The District Registrar
Registration Department
Salem West, Salem.
2. The Joint Sub Registrar-III
Sub Registrar's Office
Salem West, Salem.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the second respondent in his Refusal Check Slip in RFL.No.3, Joint Sub Registrar, Salem West/21/2022, dated 23.08.2022 by the 2nd respondent, quash the same, and to direct the 2nd respondent to register the document presented by the petitioner for registration of settlement deed pertaining to S.No.27/2, measuring an extent of 16 cents and in S.No.27/4A measuring an extent of 3

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acres 19.5 cents, measuring a total extent of 3 acres 35.5 cents situated at

Thumbathulipatti Village, Perumampatty Panchayat, Veerapandi Union.

For Petitioner : Mr.SP.Yuaraj
For Respondents : Mr.C.Kathiravan
Special Government Pleader

ORDER

The writ petition has been filed for issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent relating to the impugned order *vide* refusal check slip, dated 23.08.2022 in RFL/No.3, Joint Sub Registrar/Salem West/21/2022, quash the same and for consequential direction to the second respondent to register the settlement deed, dated 22.08.2022 by verifying the certified copy of the parent document and encumbrance certificate without insisting for original parent deed.

2. Mr.C.Kathiravan, learned Special Government Pleader, takes notice for the respondents 1&2. In view of the consent expressed by the learned counsel appearing on either side, this petition is taken up for final

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disposal.

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3. It is the case of the petitioner that the petitioner acquired the property comprised in S.No.27/2 measuring an extent of 16 cents and S.No.27/4A measuring an extent of 3 acres 19.5 cents, measuring a total extent of 3 acres 35.5 cents situated at Thumbathulipatti Village, Perumampatty Panchayat, Veerapandi Union, by way of sale deed, dated 12.03.1976 and the petitioner has two daughters and one son, all of them were married. After the demise of his son, he has settled the aforesaid property in favour of his daughters sons (grandchildren) by virtue of registered settlement deed, dated 22.08.2022 situated at Thumbathulipatti Village, Perumampatty Panchayat, Veerapandi Union. While that being so, a suit has been filed by the plaintiffs in O.S.No.96 of 2022 before the Subordinate Judge, Salem, for partition and permanent injunction and the same is pending for adjudication.

4. It is the further case of the petitioner that the petitioner has decided to settle the aforesaid property in favour of the petitioners Grandchildren by way of settlement deed, dated 22.08.2022 and the same was presented for

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registration before the second respondent. But the second respondent issued the impugned refusal check slip refusing to register the same on the ground of non production of original parent document and pendency of the suit. Challenging the impugned order passed by the second respondent, the present writ petition is filed.

5. The learned counsel for the petitioner submits that the second respondent has refused to register the settlement deed on the ground of pendency of the suit in respect of the subject property and non-enclosure of original parent document along with the settlement deed. The reasons stated by the second respondent cannot be a ground for refusing registration. Further, mere pendency of the suit and any interim order thereon restraining the alienation of the subject property cannot be an embargo for registration of the settlement deed. It is further case of the petitioner that, the petitioner annexed the certified copy of the parent document, however, the second respondent refused to register the document, which is not sustainable. Hence, the Refusal Check Slip impugned in this writ petition is liable to be quashed and he prayed to allow this writ petition.



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6. The learned Special Government Pleader appearing for the respondents 1&2 herein submits that the said refusal check slip was issued by the second respondent on the following grounds:

(i) A suit for partition in respect of the subject property of the writ petition is pending before the competent Civil Court.

(ii) The original parent document was not annexed along with the settlement deed which was presented for registration before the 2nd respondent.

7. The learned Special Government Pleader further submitted that it is not in dispute that the suit is pending in respect of the subject property. Though it is the case of the petitioner that he has produced the certified copy of the parent document, as per the rules, it is the duty of the second respondent to verify the authenticity of the document. Therefore, the production of original parent document is mandatory in the present case. In such circumstances, the Refusal Check Slip issued by the second Respondent/Joint Sub Registrar-III cannot be found fault and hence, the order impugned in this writ petition needs no interference by this Court and deserves to be dismissed.



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8. Heard the learned counsel on the either side and perused the materials available on record.

9. The issue involved in the present case, is no more *res integra*, as similar issues were considered by this Court in ***Vadamugam Vellode Nalukarai Nattu Goundergal Sangam Vs Inspector General of Registration, reported in 2021 (1) CTC 535*** and the Madurai Bench of this Court in ***W.P.(MD)No.19745 of 2020***, order dated 11.02.2021.

10. The relevant portion of the order of this Court in ***W.P.(MD)No.19745 of 2020, order dated 11.02.2021*** 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.



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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 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."

11. In *Vadamugam's* case [supra], this Court has held as follows:

"10. The 5th Respondent has approached the Civil Court and he has filed O.S.No.48 of 2019, seeking for the relief of Partition and separate possession of 1/27th share in the Suit properties. It is also seen that the 5th Respondent has filed yet another Suit in O.S.No.58 of 2017 in which she has claimed for the relief of Permanent Injunction restraining the Defendants not to alienate the Suit properties. In both the Suits, there is no Order passed by the Competent Civil Court injuncting from dealing with the Suit properties. What the 5th Respondent was not able to achieve before the Civil Court is now sought to be achieved through the 3rd Respondent by virtue of a Letter given before this Court, dated 21.2.2020. The 3rd Respondent is a Statutory Authority, who has to strictly perform his function in accordance with law. This Court exercising



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*its jurisdiction under Article 226 of Constitution of India can never prevent a Statutory Authority from performing his function. **Therefore, unless and otherwise a Competent Civil Court passes any Interim Order restraining the alienation of the property, the 3rd Respondent has to entertain the documents and register the same, if it is otherwise in order.** Ultimately, even if the suit is decreed, the transaction will be subject to the Rule of lis pendens. There is no law in force which says that no transaction can take place during the pendency of the Suit. That is exactly why Section 52 of the Transfer of Property Act, provides a solution for transactions that take place during the pendency of the Suit.*

***11.** In view of the above discussion, the impugned Letter of the 3rd Respondent, dated 21.02.2020 is hereby quashed and the 3rd Respondent is directed to entertain the documents submitted for registration and register the same, if it is otherwise in order. It goes without saying that the necessary Stamp Duty and Registration Fee will be paid at the time of submitting the document for registration.”*

***12.** This Writ Petition is accordingly allowed. No Costs. Consequently, the connected Miscellaneous Petitions are closed.”*

12. In view of the decisions [supra] and on going through the facts and circumstances of the present case on hand, which are similar in nature, this Court is of the view that copy of the parent document is sufficient to entertain the document for registration. Further, in the absence of any



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M.DHANDAPANI,J.

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