

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 10.10.2022

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.21477 of 2022

M.Haja Mohideen

... Petitioner

Vs

The Sub Registrar,
Kadayanallur Sub-Registrar Office,
Kadayanallur, Tenkasi District.

...Respondent

Prayer: 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 respondent's impugned Refusal Check Slip Refusal Number: RFL/Kadayanallur/17/2022 dated 18.08.2022 and quash the same as devoid of merits and consequently direct the respondent to register the sale deed in respect of the house property in Door No.29A, 29B in Melapattai Street, Kadayanallur in Ward D, Block 17, T.S.No.85, 86 presented by the petitioner for registration without insisting for the production of original parent document in the light of the order of this Court in W.P(MD).No.19745 of 2020 dated 11.02.2021 within the period stipulated by this Court.

For Petitioner :Mr.A.Haja Mohideen

For Respondent :Mr.S.R.A.Ramachandran

Additional Government Pleader

ORDER

The petitioner has prayed for issuance of a Writ of Certiorarified Mandamus to quash the impugned Refusal Check Slip Refusal Number: RFL/Kadayanallur/17/2022, dated 18.08.2022 passed by the respondent and consequently, direct the respondent to register the sale deed in respect of the house property in Door No.29A, 29B situated at Melapattai Street, Kadayanallur in Ward D, Block 17, T.S.No.85, 86, presented by the petitioner for registration, without insisting for the production of original parent document, in the light of the order of this Court in W.P(MD).No.19745 of 2020 dated 11.02.2021, within a stipulated time to be fixed by this Court.

2.The petitioner submits that the subject property in Door No.29A, 29B situated at Melapattai Street, Kadayanallur, Ward D, Block 17, T.S.No.85, 86 was originally belonged to one M.Shahul Hameed, who had purchased the said property from his power agent, namely, Makdum, through a registered sale deed in Document No.2167/2004, dated 19.08.2004. His name was also registered in the Town Survey Land Register and he has been peaceful possession and enjoyment of the said property and also paying all the taxes for the said property. During travel time, the said Shahul Hammed lost the original sale deed document, dated 19.08.2004 of the subject property. In this regard, an

online complaint was registered on 27.04.2022 and he has also published the same in the news papers of Trinity Mirror and Makkal Kural, dated 25.05.2022. But, he could not trace the original sale deed. Thereafter, without any encumbrance, he was peacefully enjoying the property. The petitioner has decided to purchase the same from Shahul Hameed, after verifying all the documents and satisfying that there is no encumbrance. Thereafter, the petitioner has approached the respondent for registration of sale deed with all relevant documents and the same was rejected by the respondent, through the impugned order, dated 18.08.2022 in Refusal Check Slip Refusal Number:RFL/Kadayanallur/17/2022 stating that without parent document, the said registration cannot be done. Challenging the said order, the petitioner has come up with the present Writ Petition for the relief stated supra.

3.Heard Mr.A.Haja Mohideen, learned counsel for the petitioner and Mr.S.R.A.Ramachandran, learned Additional Government Pleader appearing for the respondent.

4.Now, the Government of Tamil Nadu, inserted Rule 55-A to the Registration Rules under the Registration Act, 1908, and passed G.O.(Ms.)No. 129, Commercial Taxes and Registration (J2), dated 05.09.2022, [No.SRO

A-16(a)/2022] by way of an amendment. After Rule 55, the following Rule shall be inserted, namely:-

"55A. (i) The registering officer before whom a document relating to immovable property is presented for registration, shall not register the same, unless the presentant produces the previous original deed by which the executant acquired right over the subject property and an Encumbrance Certificate pertaining to the property obtained within ten days from the date of presentation:

Provided that in case an encumbrance as to mortgage, orders on attachment of property, sale agreement or lease agreement exists over the property, the registering officer shall not register such document if the time limit for filing of suit is not lapsed or No Objection Certificate is not granted by the appropriate authority or raising of the attachment is not done, as the case may be:

Provided further that in case the previous original deed is not available as the property being an ancestral one, the registering officer shall not register such document, unless the presentant produce any revenue record evidencing the executant's right over the subject property such as patta copy issued by Revenue Department or tax receipt:

Provided also that if the previous original deed is lost, the registering officer shall register such document only on production of non-traceable Certificate issued by the Police department along with the advertisement published in the local Newspaper as to the notice of loss of the previous original deed:

Provided also that production of the previous original deed shall not be necessary where the Government or a Statutory body is

the executant of the document or for such class of documents as may be notified by the Inspector General of Registration, from time to time.

(ii) The registering officer, on being satisfied that the description of the property contained in the document presented for registration conforms with the description of the property found in the previous original deed produced by the presentant as provided under this rule, he shall inscribe the word 'verified' on a conspicuous portion of the first page of such title deed and affix his signature with date and thereafter cause scanning of page containing such inscription as a reference document.

(iii) In case where revenue records are produced under this rule, the same shall be scanned as the main document and where Non-Traceable Certificate and the advertisement published in the local Newspaper are submitted by the presentant, the same shall be scanned as reference documents:

Provided that such verification and scanning of the previous original deed or record in the manner provided under this rule, shall not be construed to be an act of ascertaining the validity of the document presented for registration and also the same shall not absolve or deprive any person from the provisions contained in Parts XIV and XV of the Registration Act, 1908 (Central Act XVI of 1908).”;

(2) in rule 162, after item XIX, the following item shall be added, namely:-

“XX. Rule 55A. – That the presentant of the document fails to produce the original deed or record specified in rule 55A.”

5. In view of the above, this Court is of the view that unless and until the petitioner produces the copy of the police complaint, non-traceable certificate, the paper publication regarding missing of original parent document and the certified copy of the document, the respondent/Sub-Registrar shall not register the same. Hence, the petitioner is directed to produce all those documents before the respondent to enable him to register the sale deed. On receipt of such documents, the respondent is directed to consider the same and register the sale deed, provided all the aforesaid documents, within a period of eight (8) weeks from the date of receipt of a copy of this order.

6. With the above directions, this Writ Petition is disposed of. No costs.

10.10.2022

Index : Yes/No

Internet: Yes/No

Rmk

To

The Sub Registrar,
Kadayanallur Sub-Registrar Office,
Kadayanallur, Tenkasi District.

WP(MD)N.21477 of 2022

V.BHAVANI SUBBAROYAN,J.,

Rmk

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