



W.P.(MD)No.22365 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.09.2022

CORAM

THE HONOURABLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition (MD) No.22365 of 2022

and

W.M.P.(MD)Nos.16545 and 16546 of 2022

Murugarani, W/o.Karupaiyan

.. Petitioner

Versus

The Sub-Registrar,
Office of Sub-Registrar,
Budhalur, Thanjavur District.

.. Respondent

Prayer :- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the respondent in Check Slip RFL/Budalur/41/2022, dated 18.05.2022, thereby refusing to register the document, quash the same as illegal, incompetent and without jurisdiction and further direct the respondent to register the Settlement Deed, dated 17.05.2022, presented by the petitioner, within a time frame as may be fixed by this Court.

For Petitioner : Mr.K.Saravanan

For Respondent : Ms.S.Jayapriya
Government Advocate

ORDER

The petitioner has prayed for issuance of a Writ of Certiorarified

<https://www.mhc.tn.gov.in/filing> Mandamus, to quash the impugned order passed by the respondent in Check



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Slip RFL/Budalur/41/2022, dated 18.05.2022, thereby, refusing to register the document, and further direct the respondent to register the Settlement Deed, dated 17.05.2022, presented by the petitioner, within a time frame.

2.Heard Mr.K.Saravanan, learned counsel appearing for the petitioner and Ms.S.Jayapriya, learned Government Advocate, who takes notice for the respondent. By consent of both sides, the Writ Petition is taken up for final disposal at the admission stage itself.

3.The case of the petitioner is that her father namely, Shanmugam acquired the property together with building, measuring an extent of 4360 sq.ft, comprised in Old Survey No.628/5 , New Survey No.628/513 [Present Natham Patta No.1035], situated at Budalur Village, Thanjavur District, by virtue of settlement deed, dated 24.02.1992, vide Document No.98/1992, on the file of the respondent. The petitioner's father died on 10.12.2016, leaving behind the petitioner, her mother, brother, who pre-deceased her father and two younger sisters. The petitioner's father was in possession and enjoyment of the said property till his death. The petitioner's husband died in an accident long ago. After the demise of her father, the legal heirs are in joint possession and enjoyment of the property and the property was not partitioned till date. All the legal heirs are entitled to get 1/4th share in respect of the property of her



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property to her daughter. Accordingly, she has executed a settlement deed in respect of her 1/4th share in the property and presented the same along with relevant copies in respect of the above said property before the respondent. However, it was refused by him stating that as per Circular No. 18339/C-1/2012, dated 25.04.2012, of the Inspector General of Registration, Chennai, and Circular No.25600/C-12/2018, dated 01.11.2018, the petitioner has to produce the original parent document and original death certificate and legal heirship certificate of her father and in the schedule of property, the survey number has to be mentioned in words.

4.The learned counsel appearing for the petitioner submits that now the original document is not with the petitioner and therefore, she is not in a position to produce the same.

5.Usually, the Court will advise the parties to give a police complaint regarding missing of parent document and after receipt of non-traceable certificate from the police authorities, to issue a publication in a newspaper regarding the same and afterwards, get the certified copy of the original and submit all the three documents to the concerned Sub-Registrar and the said Sub-Registrar shall consider the same and thereafter, register the document.



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6.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



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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."



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7. In view of the above, this Court is of the view that unless and until the petitioner produces the police complaint, non-traceable certificate, a paper publication regarding missing of original parent document and certified copy of the document, the Sub-Registrar will not register the same. Hence, the petitioner is directed to produce all those documents before the respondent to enable him to register the settlement deed and also to produce death certificate and legal heirship certificate of her father and rectify the other defects. On receipt of such documents, the respondent is directed to consider the same and register the settlement deed, within a period of eight weeks from the date of receipt of a copy of this order.

8. With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes/No

23.09.2022

To

The Sub-Registrar,
Office of Sub-Registrar,
Budhalur, Thanjavur District.



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V.BHAVANI SUBBAROYAN, J.

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Order made in
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