



Writ Petition No.2550 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 2/2/2023

C O R A M

THE HONOURABLE Mr.JUSTICE N. SATHISH KUMAR

Writ Petition No.2550 of 2023

a n d

W.M.P.No.2644 of 2023

1. Ramijan
2. Kader Basha
3. Barkath @ Barkathullah
4. Yasvin @ Yashmin
5. Reshma

...

Petitioners

Vs

The Sub-Registrar
Registration Department
Soolagiri
Krishnagiri District.

...

Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records relating to the impugned Refusal Check Slip bearing No.RFL/Soolagiri/2/2023 dated 4/1/2023 on the file of the respondent, quash the same and consequently direct the respondent to register the partition deed dated 4/1/2023 executed between the petitioners.



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For Petitioners ... Mr.K.Govi Ganesan
For respondent ... Mr.Yogesh Kannadasan
Special Government Pleader

ORDER

This writ petition has been filed to quash the Refusal Check Slip, bearing No.RFL/Soolagiri/2/2023, dated 4/1/2023, on the file of the respondent and consequently, direct the respondent to register the partition deed, dated 4/1/2023, executed between the petitioners.

2. The case of the petitioners is that ancestral property of the petitioners measuring 1.18 ½ acres, 1.84 acres in S.F.Nos.12/1A and 12/1D, situate at Hosahalli Village, Soolagiri Taluk, Krishnagiri District. When the petitioners had decided for partition, they presented the partition deed, on 4/1/2023 with the respondent. But the respondent refused to register the same stating that one Basheer Nazeer and Abdul Majeed filed an application for restoring the chitta in their names. Hence, the petitioners had filed the instant writ petition praying for the relief as stated therein.

3. Heard Mr.K.Govi Ganesan, learned counsel for the petitioners.



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4. Mr.Yogesh Kannadasan, learned Special Government Pleader takes notice for the respondent.

5. In view of the limited relief sought for and on the consent expressed by the learned counsel appearing on either side, this petition is taken up for final disposal.

6. Learned counsel appearing for the petitioners submitted that neither the Registration Act nor the Rules envisage that the registration could be refused if the said title deed is under challenge.

7. The Government of Tamil Nadu, in Amendments to the Registration Rules under the Registration Act, 1908, has passed G.O. (Ms.)No.129, Commercial Taxes and Registration (J2) 5th September 2022, No.SRO.A-16(a)2022. 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,



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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.

8. It is not in dispute that the property is an ancestral property and evidencing the right and title, the Revenue Authorities have issued patta bearing No.739 in the names of the petitioners and hence the respondent ought to have relied on that patta and registered the partition deed. Once the revenue authorities have issued patta in the name of the petitioners, the respondent cannot insist for the original documents. Merely because the



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third parties have given a petition before the revenue authorities to change the names, same cannot be a ground for refusal to register the document. It is for the third party to establish their right in the manner known to law and not before the Sub-Registrar/respondent.

9. In the result, writ petition is allowed and the impugned Refusal Check Slip bearing No.RFL/Soolagiri/2/2023 dated 4/1/2023, on the file of the respondent is set aside. The respondent is directed to register the document, within a period of one month from the date of receipt of a copy of this order. It is well open to the third parties to file a Suit, if so advised. No costs. Consequently, the connected Miscellaneous Petition is closed.

2/2/2023

Index : Yes / No
Internet: Yes
Speaking/non speaking order
Neutral Citation: Yes/No

mvs.



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To

The Sub-Registrar, Registration Department
Soolagiri, Krishnagiri District.



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