



W.P.No.17700 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.17700 of 2023

and

W.M.P.Nos.16796, 16797 & 16799 of 2023

1. Veda Mohamed Riza

2. K.P.Subramaniam

... Petitioners

Vs.

1. The Inspector General of Registration,
100, Santhome High Road, Mylapore,
Chennai, Tamil Nadu-600 028.

2. The Sub Registrar, Virugambakkam,
47/5, Arcot Road, Udhayam Colony ,
Lambert Nagar, Virugambakkam,
Chennai, Tamil Nadu-600 092.

... Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus, calling for the records pertaining to Refusal Check Slip bearing refusal Number RFL/Virugambakkam/54/2022 dated 04.08.2022 issued by the Second Respondent to the petitioners and quash the same and consequently direct



W.P.No.17700 of 2023

the Second Respondent to admit the Release Deed dated 04.08.2022 executed between the petitioners herein with regard to Entire Property and register the same in accordance with Registration Act, 1908.

For Petitioners : Mr.G.Vivekanand
For Respondents :
(for R1 & R2) : Mr.T.Arun Kumar, AGP

ORDER

The Refusal Cheque Slip, dated 04.08.2022, issued by the second respondent is sought to be quashed in the present writ petition.

2.The first petitioner states that she is a Doctor by profession and is settled in Dubai, United Arab Emirates, with her family. The second petitioner is a retired person and is presently settled with his family in Chennai. Second petitioner is the maternal cousin of the first petitioner.

3.The petitioners are joint owners of all the piece and parcel of a Two (2) bedroom residential Flat No.F6, Block-F, First Floor, residential complex known in the name and style of “Nethrambigai Apartments”, measuring plinth area of 720 Square Feet and proportionate common area together with Nil car parking, along with 301 square feet undivided share



W.P.No.17700 of 2023

of land out of 0.1722 Acres of thereabouts including the common areas and common amenities, situated at NO.15, Vembuli Amman Koil Street, West Kalignar Karunanidhi Nagar, Chennai-78.

4.The first petitioner, through power of attorney, presented release deed for registration before the Sub Registrar with an intention to release her portion of property in favour of the second petitioner Mr.K.P.Subramaniam. The first petitioner inherited half of the portion of her property, described in the writ petition, from her deceased mother who died intestate. Admittedly, the second petitioner is the co-owner, narrating these facts. It is contended that the refusal of documents by the second respondent is in violation of the provisions of the Registration Act.

5.The learned counsel for the petitioner mainly contended that the first petitioner has produced a death certificate of his mother who died during transit travel from Coimbatore to Mumbai. Therefore, the first petitioner is unable to get legal heir certificate on account of certain difficulties but produced the death certificate of her mother. However, the release deed presented by the first petitioner was returned along with the impugned Refusal Cheque Slip on the ground that the first petitioner has to



W.P.No.17700 of 2023

establish her legal heirship by producing her legal heir certificate.

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6.The learned counsel for the petitioner reiterated that the Rule 155 of the Registration Rules does not obligate the persons presenting the document to produce the legal heir certificate and in the present case the first petitioner has already produced the death certificate of her mother. Thus, no further document is required for registration and the second respondent has erroneously issued the impugned cheque slip. The document presented by the first petitioner would not fall under the conditions stipulated for refusal of documents and thus, the decision is perverse.

7.The learned Additional Government pleader, appearing on behalf of the respondents, raised an objection by stating that the principles in this regard are settled by the Hon'ble Division Bench of this Court in the case of ***N.Ramayee Vs. The Sub Registrar***, reported in **2020 (6) CTC 697**, and paragraphs 28 & 29 of the judgement stated that:

“28. It is also pertinent to note that even if transfer is made during a pending suit, such transfer is not void but is subject to the result of the suit. Section 53 of the Transfer of



W.P.No.17700 of 2023

WEB COPY

Property Act, deals with fraudulent transfer. Even such fraudulent transfer is made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed. Even in such cases the rights of transferee in good faith and for consideration is protected.

29. Section 56 of the Transfer of Property Act deals with marshalling by subsequent purchaser. The above provision also makes it clear that when the owner of two or more properties mortgages them to one person Page 25/36 <http://www.judis.nic.in>, W.P.No.674 of 2020 and then sells one or more of the properties to another person, the buyer is in the absence of a contract to the contrary, entitled to have the mortgage- debt satisfied out of the property or properties not sold to him, so far as the same will extend, but not so as to prejudice the rights of the mortgagee or persons claiming under him or of any other person who has for consideration acquired an interest in any of the properties. The above provision also makes it clear that though there were mortgages already created there is no bar for subsequent transfer of the property. But subsequent transfer is subject to the mortgage earlier created.”

8.That apart, the Circular dated 02.02.2023, relied on by the petitioners, issued by the Inspector General of Registration, has no



W.P.No.17700 of 2023

application as the facts and circumstances are distinguishable.

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9.The learned Additional Government Pleader states the death certificate alone would be insufficient for consideration of the cheque slip since the person presenting the documents has to establish that he/she is the legal heir of the deceased person. The Sub Registrar may not be in a position to ascertain the identity of the persons in the absence of legal heir certificate and mere production of one certificate would be insufficient for the purpose of completing the registration. There is a possibility of dispute in the future in the event of registering such document without verifying the correct identity of the legal heirs of the deceased person.

10.The learned counsel for the petitioner relied on Rule 162 of the Registration Rules which provides refusal to register. It is contended that production of legal heir certificate is not contemplated or non-production of legal heir certificate is a ground to refuse registration.

11.The learned Additional Government Pleader brought to the notice of this Court that the said Rule 162- (VII) stipulates that the documents are presented by the person who has no right to present it; Rule 162-(VIII) stipulates that the executing parties or their representatives,



W.P.No.17700 of 2023

assigns, or agents have failed to appear, within the prescribed time; Rule 162-(IX) denotes that the registering officer is not satisfied as to the identity of a person appearing before him who alleges that he has executed the document.

12.The very Rule 162 starts by stating that when registration is refused, the reasons for refusal shall be at once recorded in book. The reasons recorded will usually come under one or more heads mentioned above. Therefore, the definition contemplated under Rule 162 is not fully inclusive and there are other possible circumstances which may arise for the purpose of refusal to register. The rule is not definite about the grounds stated for refusal and there are other circumstances which can be derived by the registering authority by way of application of mind and to ensure that the registration is done in a full proof manner and to satisfy the conditions stipulated.

13.Rule 162, sub rule IX, unambiguously stipulates that the Registering Officer is not satisfied as to the identity of a person appearing before him who alleges that he has executed the document, then the documents may be refused. The very phrase that the Registering Officer is



W.P.No.17700 of 2023

not satisfied as to the identity of the person would be applicable in every case where the parties presenting the document is not able to establish their identity for the purpose of registering the document.

14.The identity of the person is to be distinguished. Mere showing an identity card for the registration would be insufficient. Such identity must be to the satisfaction of the registering authority so as to ensure that the documents are presented by the persons who all are the holders of the right to register the documents. Thus, the supportive documents to the satisfaction of the registering authority is warranted and therefore, it is not as if the petitioner can say that they have produced the passport or other identity cards to establish their identity. Such identity cards alone would not provide a right to call registration by filing the writ petition.

15.This Court is of the considered opinion that the petitioner claims that she is the sole legal heir of the deceased Visalam Hariharan. May that as it be. To substantiate the claim of the first petitioner and to register the release deed, she has to submit both the death certificate and legal heir certificate and mere production of death certificate may not be a complete proof to form an opinion that the deceased person died intestate and the



W.P.No.17700 of 2023

first petitioner is the only legal heir. The legal heir certificate is the consequence of the death certificate and therefore, both the certificates are essential for the purpose of determining the identity of a person at the time of presenting the document for registration and therefore, merely misinterpreting the provisions of the Registration Act or the Rules, the petitioner cannot get away with the procedures contemplated nor the registering authority can register the document without determining the identity of the person to his satisfaction. If there is any reason to believe that there is a doubt, then the registering authority may not register and the procedures contemplated are sought to be interpreted pragmatically and practically to implement the same, so as to ensure that the documents are registered by the persons by establishing their identity and their right as the case may be.

16.Thus, the petitioner is at liberty to produce the legal heir certificate or succession certificate or letters of administration, as the case may be, and in the event of producing any one of such documents, the registering authority shall register the document by following the procedures as contemplated.



W.P.No.17700 of 2023

WEB COPY

17. With these observations, the writ petition stands **dismissed**.

No costs. Consequently, connected miscellaneous petitions are closed.

(sha)

19.06.2023

Index : Yes

Speaking Order

Neutral Citation : Yes

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W.P.No.17700 of 2023

S.M.SUBRAMANIAM. J.,

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W.P.No.17700 of 2023

19.06.2023