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W.P.(MD)NO.171 OF 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.02.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.171 of 2023

Ragunathamoorthy

... Petitioner

Vs.

The Sub Registrar,
Manapparai Sub Registrar Office,
Trichy District.

... Respondent

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, calling for the records relating to impugned refusal check slip in RFL/Manapparai/24/2022 dated 21.11.2022 issued by the respondent and quash the same and consequently direct the respondent to register the mortgage deed dated 21.11.2022 executed by the petitioner in favour Nallaperumal, S/o.Sevanthan on re-presentation within the stipulated time fixed by this Court.

For Petitioner : Mr.A.Thiyagarajan

For Respondent : Mr.S.Shanmugavel,
Additional Government Pleader.

* * *

**ORDER**

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Heard the learned counsel on either side.

2. The writ petitioner is the owner of the property. He had executed a lease deed in favour of one Murugesan. It was registered vide document No.1011 of 2019 on the file of the respondent. Now the petitioner wants to mortgage the property. The registering authority declined to entertain the document and issued refusal check slip on the ground that unless the earlier encumbrance is removed, the mortgage deed will not be registered. The stand of the respondent is founded on the first proviso to Rule 55A of the Registration Rules. The said Rule reads as follows:-

“ 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:



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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



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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



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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)."

3. The Principal Seat of the Madras High Court vide



order dated 08.02.2023 made in ***W.P.No.2758 of 2023 (The***

***Federal Bank Ltd., Rep. By its Senior Manager,
Coimbatore V. The Sub Registrar, Pollachi and others)***

has struck down the first proviso to Rule 55A of the Registration Rules. Paragraph No.26 of the aforesaid judgment reads as follows:-

“ 26. In view of the above, as this Court has held that the first proviso to Rule 55-A has been found to be invalid and ultra vires, the respondent cannot refuse to register the document placing reliance on the aforesaid proviso. ”

4. In this view of the matter, the impugned refusal check slip is quashed. The petitioner is permitted to re-present the document in question. The registering authority shall register it and release the same subject to fulfilment of the other usual formalities. This writ petition stands allowed. No costs.

16.02.2023

NCS : Yes / No
Index : Yes / No
Internet : Yes / No
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Note : Issue order copy on 21.02.2023.

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To:

The Sub Registrar,
Manapparai Sub Registrar Office,
Trichy District.



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G.R.SWAMINATHAN,J.

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