



W.P(MD)No.1301 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.02.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.1301 of 2023

B.Sridhar

... Petitioner

Vs.

The Sub Registrar,
Melapalayam Sub Registrar Office,
Tirunelveli 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 in the impugned check slip RFL/Melapalayam/90/2022 dated 30.12.2022 on the file of the respondent and quash the same as illegal and consequently, direct the respondent to register release deed of the petitioner dated 30.12.2022.

For Petitioner : Mr.S.Kumar

For Respondent : Mr.N.Sathees Kumar
Additional Government Pleader



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ORDER

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Heard the learned counsel on either side.

2. The subject property belonged to the petitioner's father. The petitioner executed the petition mentioned release deed in favour of his brother and presented the same before the respondent. Since the title deed could not be produced, the respondent declined to entertain the document and issued the refusal check slip. Questioning the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to quash the impugned refusal check slip and grant relief as prayed for. He placed heavy reliance on the order dated 02.02.2023 made in W.P.No.2498 of 2023 (Ananthi Vs. The District Registrar, Vellore District) and the order dated 08.02.2023 in W.P.No.2758 of 2023 (The Federal Bank Ltd., The Sub Registrar). He called upon this Court to grant relief as prayed for.

4. Per contra, the learned Additional Government Pleader appearing for the respondents submitted that the impugned refusal check slip does not call for interference.



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5. I carefully considered the rival contentions and went through the materials on record.

6. The stand of the respondent is obviously based on the third proviso to Rule 55(A) of the Registration Rules. Rule 55(A) is 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.

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:



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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.

(iii) 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.

(iv) 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).”

7. It is true that the Hon'ble Judge in Paragraph No.23 of the order dated 08.02.2023 in W.P.No.2758 of 2023 has observed as follows:-

“23. Similarly, the third proviso also defies logic. If the original is lost, it is not understood as to why a certified copy of that document obtained from the file of the concerned SRO cannot be produced. When the best evidence is not available, the best course is to produce a certified copy which is the next



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best available alternative. Instead, the third proviso requires the executant to obtain a non-traceable certificate and effect paper publication.”

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8. However, what was eventually struck down was only the first proviso to Rule 55 A. In other words, the learned Judge has not struck down the remaining two provisos. As on date, the third proviso to Rule 55 A is very much holding the field. The respondent therefore cannot be faulted for calling upon the petitioner to adhere to the procedure set out in the third proviso. I decline to interfere with the impugned refusal check slip. However, relief is granted to the petitioner in the following terms:-

(I) The petitioner is directed to lodge a complaint before the Inspector of Police, Melapalayam Police Station, Tirunelveli complaining of the loss of the original deed. The jurisdictional police shall issue non-traceable certificate after following the usual norms.

(II) The petitioner shall also cause paper publication regarding loss of the previous original deed.

(III) The petitioner shall re-present the document in question by adhering to the procedure set out in the third proviso. In the document, there shall also be a recital that the previous original deed has not been deposited by way of mortgage.

(IV) Subject to the petitioner fulfilling the requirement, the respondent shall receive the document and register it and release it.



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G.R.SWAMINATHAN, J.

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9. The Writ Petition is disposed of accordingly. No costs.

23.02.2023

Index : Yes / No

Internet : Yes/ No

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To

The Sub Registrar,
Melapalayam Sub Registrar Office,
Tirunelveli District.

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