



W.A.(MD) No.308 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.03.2023

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

W.A.(MD) No.308 of 2023

Periyadurai

... Appellant

-vs-

1.The District Registrar (Admin)
Registration Office
Tirunelveli District
Tirunelveli

2.The Joint Sub Registrar No.II
Thirunagar, Tirunelveli Town
Tirunelveli

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 02.02.2023, passed in W.P.(MD) No.749 of 2023, on the file of this Court.

For Appellant : Mr.H.Arumugam

For Respondents : Mr.M.Prakash
Additional Government Pleader



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J U D G M E N T

[Judgment of the Court was made by R.SUBRAMANIAN, J.]

Mr.M.Prakash, learned Additional Government Pleader, takes notice for the respondents.

2. Challenge before the Writ Court was to the check slip issued by the Joint Sub Registrar No.II, Thirunagar, Tirunelveli Town. The check slip was issued for returning a document for partition presented by the appellant on 26.12.2022. As per the check slip, two objections were raised by the second respondent. The first objection was that the partition document is based on an unregistered Will and the second objection is that encumbrance certificate was not produced.

3. Upon challenge, the Writ Court held that a Will need not be registered, but the Writ Court gave power to decide whether the Will is true or not, to the Sub Registrar by observing that the genuineness of the Will can be tentatively gone into. The Writ Court had gone one step further and held that the appellant will have to give address details of the siblings while re-presenting the document and the Registering Authority will issue notice to the



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siblings and if no objection is received, the Registering Authority will register the document. The next question that would automatically arise is what the Registering Authority will do, if there are objections. Can the Registering Authority decide on the genuineness of the Will or on the objections made by the siblings of the appellant. Both cannot be done. Therefore, the order of the Writ Court will pave a way for an enquiry to be conducted by the Registering Authority outside the Registration Act. Such an exercise cannot be carried out at the instance of the Writ Court.

4. Hence, the writ appeal is allowed and the order of the Writ Court dated 02.02.2023, passed in W.P.(MD) No.749 of 2023, is set aside. The writ petition in W.P.(MD) No.749 of 2023 will stand allowed. There will be a direction to the Registering Authority to register the document on production of encumbrance certificate alone. The Registering Authority shall not insist upon registration of the Will or shall not embark upon any other enquiry. We are emboldened to hold so, because there are enough and more provisions in the Transfer of Property Act, 1882 and the General Laws, which protect the interest of the persons, who are not parties to the document. Admittedly, the siblings of the appellant are not parties to the partition deed and the same is not binding to them, if they choose to challenge it in the manner known to



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law. We, therefore, will not allow the Sub-Registrar to embark upon the exercise of enquiry and allow the Sub Registrar to decide the genuineness of the Will, which would be against the very provisions of the Transfer of Property Act, 1882. The appellant shall re-present the document along with encumbrance certificate and the Joint Sub Registrar No.II, Thirunagar, Tirunelveli Town, shall register the document without insisting on proof of the Will or registration of the Will or no objection from the siblings, within a period of fifteen days from the date of presentation of the document. No costs.

[R.S.M., J.]

[L.V.G., J.]

20.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

Note to Office :

Upload the Judgment in website by 21.03.2023.

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To:

- 1.The District Registrar (Admin),
Registration Office,
Tirunelveli District,
Tirunelveli.
- 2.The Joint Sub Registrar No.II,
Thirunagar, Tirunelveli Town,
Tirunelveli.



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R.SUBRAMANIAN, J.
and
L.VICTORIA GOWRI, J.

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