



W.A.(MD) No.856 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.06.2023

CORAM:

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

W.A.(MD) No.856 of 2023

1.M.Ariyanatchi

2.R.Kannusamy

... Appellants

-VS-

1.The Inspector General of Registration
Santhome High Road
Santhome, Chennai

2.The Joint Sub-Registrar No.IV
Madurai South, Madurai

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 24.04.2023, passed in W.P.(MD) No.9525 of 2023, on the file of this Court.

For Appellants : Mr.C.Jeyaprakash

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.]

This writ appeal is directed against the order of the Writ Court, which came to be passed under the following circumstances:

- (i) One Shanmugam Ambalam had purchased certain immovable properties under a registered sale deed dated 27.01.2003. Consequent upon the said purchase, the revenue records were also mutated in his name and a patta was issued to him in Patta No. 467 for an extent of 0.60.00 Hectares in Survey No. 53/2 and 0.26.00 Hectares in Survey No.54/2B.
- (ii) The said Shanmugam Ambalam died on 27.05.2008, leaving behind four daughters and three sons.
- (iii) One of the sons of Shanmugam Ambalam, namely, Chelladurai predeceased him after having been married.
- (iv) Two of the daughters of Shanmugam Ambalam along with their legal heirs had executed a sale deed in respect of their 2/8th undivided share in favour of the appellants on 15.11.2022.



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- (v) When the said document was presented for registration, the jurisdictional Sub-Registrar refused registration, on the ground that the original deed of sale in favour of Shanmugam Ambalam has not been produced.
- (vi) The said order was challenged by the appellants in the writ petition and in the supporting affidavit, it was mainly contended that insistence of production of original document is against the provisions of the Registration Act, 1908. It is also stated that the original document is not available with the vendors of the appellants. It was also claimed that the said document was with the male members of the family and they were reluctant to part with it.
- (vii) The Writ Court had worked out a via media by requiring the appellants to produce the document for perusal of the Registrar, since it was claimed that the said document was with the male members of the family and they were reluctant to part with it. Hence, this writ appeal.



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2. We have heard Mr.C.Jeyaprakash, learned counsel appearing for the appellants and Mr.M.Prakash, learned Additional Government Pleader, appearing for the respondents.

3. Mr.M.Prakash, learned Additional Government Pleader appearing for the respondents, would contend that based on the recommendations of a Division Bench of this Court in W.A.No.1989 of 2019, dated 30.04.2021, Rule 55-A of the Registration Rules, 1949 (for brevity, “the Registration Rules”) was introduced and the provisions that were contained in a Circular issued by the Inspector General of Registration were made part of the Registration Rules. It is stated that the Rules were introduced based on the recommendations of the very High Level Committee dated 27.12.2022.

4. Whatever be the directions of the Division Bench or the Committee, the same will not preclude us from deciding upon the vires of the Rules that have been incorporated. If the Rules, which are subordinate legislations are in conflict with substantive law, the substantive law alone would prevail and not the Rules.



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5. Rule 55-A of the Registration Rules, which was introduced by way of an amendment on 05.09.2022, in our opinion, has been introduced only with an end object of facilitating realisation of illegal gratification. While Rule 55-A(i) provides that the original document should be produced, the third proviso to Rule 55-A(i) requires the presentant of the document to produce a non-traceable certificate, if the original document is lost. We have been made alive to the fact that a non-traceable certificate comes for a particular price. We cannot but ignore the happenings around us.

6. Adverting to the facts of this case, the original owner, namely, Shanmugam Ambalam died leaving behind four daughters and three sons. Another son, by name, Chelladurai, who was married, had predeceased him. Therefore, each one of the sons and daughters would get a eighth share in the estate. Two of the daughters want to sell away their 2/8th share. The sons are not cooperating. The legislature thought it fit to empower the daughters by even removing Section 23 of the Hindu Succession Act, 1956, which prevented the daughters from claiming a share in the dwelling house until the male heirs decided to have it partitioned. This intended empowerment of the daughters stands negated by the insertion of Rule 55-A of the Registration Rules



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requiring the daughters to produce the original parent document, which will be in the hands of the sons only.

7. Mr.M.Prakash, learned Additional Government Pleader, would rely upon a machinery provided by a circular of the Inspector General of Registration, wherein a provision has been made under Clause (f), which reads as follows:

“If the property is purchased by the Father/Mother and after his/her intestate demise, if his/her legal heirs claim that the original document is with one of the legal heirs and he/she is refusing to handover the original deeds, then on a petition being made to that effect, an enquiry shall be conducted by an Officer not below the rank of the District Registrar by calling all the legal heirs concerned. In such cases even if any of the legal heirs fail to attend the enquiry or refuses to divulge the possession of original document, then the Enquiry officer shall permit registration on getting sworn affidavit from the presentant and others who attend enquiry to that effect. The same exercise of getting sworn affidavit can be followed in cases where all the legal heirs submit that the original documents is not in possession of any others.”



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8. Relying heavily upon the above clarification issued, Mr.M.Prakash, learned Additional Government Pleader, would vehemently contend that the District Registrar is empowered to conduct an enquiry.

9. We do not think that would achieve the desired result. There is always a possibility of one of the legal heirs claiming under a testamentary or non-testamentary instrument alleged to have been executed by the deceased owner or there is always a possibility of some of the legal heirs joining together and denying the status of the very executant of the document, thereby compelling the District Registrar to decide on the validity of the testamentary or non-testamentary instrument or on the paternity, which is definitely beyond the scope of the powers of the District Registrar. We really shudder to think of a situation vesting jurisdiction in a Registrar to decide paternity or validity of a testamentary or non-testamentary instrument. Therefore, the machinery that is provided under Clause (f) is wholly unsatisfactory.

10. The object of Rule 55-A(i) of the Registration Rules is said to be to prevent fraudulent registrations. We are sure that Rule 55-A(i) is not a method by which fraudulent registrations could be prevented. Once the status of the executant is accepted and the ownership of the property by the



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predecessor-in-interest is also accepted, insistence upon production of original document, in our opinion, in cases of this nature, would only lead to empowering corruption. We must also point out that such refusal to register for non-production of original document would definitely infringe the rights guaranteed under Article 300A of the Constitution of India.

11. While dealing with the first proviso to Rule 55-A of the Registration Rules, this Court had, in ***the Federal Bank Ltd., vs. the Sub Registrar, Pollachi*** [order dated 08.02.2023 in W.P.No.2758 of 2023], pointed out that if the Rule, which is a subordinate legislation, is in conflict with the substantive law, it will not prevail.

12. Rule 55-A(i), in our opinion, in the given circumstances, would result in infringement of proprietary right guaranteed under Article 300A of the Constitution of India. There is nothing in the substantive law, which prevents the co-owner from dealing with his / her share in the property. If the co-owner, who deals with his / her share in the property, had created encumbrance, such transfer will be subject to such encumbrance. If the other co-owner had created encumbrance, that encumbrance will be confined to the share of the other co-owner only. Therefore, enough and more safeguards are



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already available both under the Transfer of Property Act, 1882 as well as in the Registration Act, 1908.

13. No doubt, requirement to produce the original document would be a safer method by which the Sub Registrar can ensure that the property belongs to the executant. But, that is not the only method. In the case on hand, it is clearly seen that the earlier document was also registered with the very same Sub Registrar and after computerization and digitization, the document is available online for the Sub Registrar to peruse. He can always take an undertaking or a declaration in the form of a sworn affidavit from the vendors to the effect that the original document is with their siblings and register the document. Conduct of an enquiry of the nature that is recommended under Clause (f), extracted supra, would only lead to confusion. If the other legal heirs want to claim exclusive title, it is always open to them to approach the competent Civil Court and if they are able to establish their exclusive right before the Civil Court, the alienation will be invalid. In such circumstances, when the substantive law takes care of and protects any misuse or abuse, we do not think that Rule 55-A of the Registration Rules is the only method by which fraudulent transactions are prevented.



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14. In the light of the above, we do not think that insistence on production of original document, in all cases across the Board, could be sustained. Wherever the vendor is a co-owner and it is claimed that the original document is in the hands of the other co-owners, who are reluctant to part with it, the Registrar can always take a declaration in the form of a sworn affidavit from the co-owner, who is the executant and register the document. If the other siblings dispute the rights of the executant, they can also do so before the Civil Court and there is no law that authorizes the Registrar to conduct a trial to decide title to the property in question. What is sought to be done in the garb of an enquiry is exactly that. We are, therefore, convinced that the order of the Writ Court as well as the check slip issued by the Sub Registrar cannot be sustained.

15. The writ appeal is allowed and the order of the Writ Court, dated 24.04.2023, passed in W.P.(MD) No.9525 of 2023 is set aside. The writ petition in W.P.(MD) No.9525 of 2023 will stand allowed. The check slip issued by the Sub Registrar is quashed. The Joint Sub-Registrar / second respondent is directed to register the document, after getting a declaration in the form of sworn affidavit from the executants of the document that the original sale deed dated 27.01.2003 executed in favour of Shanmugam



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Ambalam is in the hands of the male heirs of Shanmugal Ambalam and on production of the certified copy of the document along with the other documents, namely, Patta, death certificate and legal heirship certificate of Shanmugam Ambalam. The process of registration shall be completed within fifteen days from the date of representation of the document by the appellants. Since we have quashed the rejection of the check slip today, the appellants will have four months time to represent the document for registration from today. No costs.

[R.S.M., J.]

[L.V.G., J.]

27.06.2023

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

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To:

- 1.The Inspector General of Registration,
Santhome High Road,
Santhome, Chennai.
- 2.The Joint Sub-Registrar No.IV,
Madurai South, Madurai.



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