



WP(MD)No.17246 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.17246 of 2023

P.Saravanan

.. Petitioner

v.

1.The Inspector General of Registration,
Door No.100,
Santhome High Road,
Foreshore Estate,
Pattinapakkam,
Chennai – 600 028.

2.The Sub Registrar,
Velipattinam,
Ramanathapuram District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned refusal check slip in RFL / Velipattinam / 25 / 2023 dated 10.07.2023 passed by the second respondent and quash the same and consequently, directing him to register the sale deed dated 30.06.2023 executed in favour of the petitioner.



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For Petitioner : Mr.J.Barathan

For Respondents : Mr.M.Sarangan,
Additional Government Pleader

ORDER

The petitioner has submitted a sale deed for registration and the same was refused by the second respondent on the ground that the petitioner has not submitted the original previous document along with the sale deed. As against the refusal check slip, the petitioner has filed this writ petition.

2.According to the petitioner, the subject land was sought to be acquired during the year 1995 and at that point of time, the original sale deed dated 03.12.1996 was submitted before the revenue officials during the award enquiry. The acquisition proceedings was challenged in WP.No. 12952 of 1995 and this Court, by order dated 16.07.2002, has quashed the notification issued u/s.4(1) of the Land Acquisition Act. The appeal preferred by the Department in WA.No.1748 of 2004 was also dismissed and the land acquisition proceedings was dropped. The petitioner's vendor has failed to collect the documents back from the authorities.



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3.Learned Counsel for the petitioner submitted that the impugned order has been passed under Rule 55A of the Tamil Nadu Registration Rules, which, itself, has been quashed by this Court in ***Federal Bank Ltd v. Sub Registrar [2023 SCC OnLine Madras 878]***. Therefore, the respondents are not justified in insisting for the original document.

4.Learned Additional Government Pleader for the respondents submitted that in ***Federal Bank's*** case (supra), this Court has quashed the first proviso to Rule 55A of the Rules and it does not mean that the entire Rule 55A has been quashed. He further submitted that if the petitioner claims that the original document is with the revenue officials, then he can get a certified copy of the same from the concerned authority or at least, produce an acknowledgment from the officials for having handed over the original documents.

5.This Court paid it's anxious consideration to the rival submissions and also to the materials placed on record.



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6.The sale deed produced by the petitioner was refused by referring to Rule 55A of the Registration Rules and a Circular issued by the Inspector General of Registration in Letter No.22482/C1/2021 dated 14.09.2022. According to the above, in case of missing documents, the petitioner ought to have approached the police for missing of documents and ought to have obtained a 'non-traceable certificate'.

7.A Division Bench of this Court in ***M.Ariyanatchi and Another v. Inspector General of Registration and Another*** [WA(MD)No.856 of 2023, decided on 27.06.2023], by relying upon the decision in ***Federal Bank's*** (supra), has held as follows:-

“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 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.

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.”

8. In view of the above, the impugned refusal check slip dated 10.07.2023 is set aside. The petitioner and his vendor shall file an affidavit that the original document is with the revenue officials and produce the



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certified copy of the missing previous document. Based on the same, the second respondent shall proceed with the registration.

Accordingly, this writ petition stands disposed of. No costs.

Index : Yes / No
NCC : Yes / No
Internet : Yes
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28.07.2023

To

1.The Inspector General of Registration,
Door No.100,
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Chennai – 600 028.

2.The Sub Registrar,
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B.PUGALENDHI, J.

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