



W.P.(MD)No.19283 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.12.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.19283 of 2021

Ulagammai

... Petitioner

Vs.

The Sub Registrar,
Sub Registrar Office,
Madhagupatti,
Sivagangai District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned refusal slip made in RFL/Madhagupatti/42/2021 dated 13.10.2021 issued by the respondent and quash the same as illegal and consequently direct the respondent to register the settlement deed presented by the petitioner without insisting for the production of original parental document within a time stipulated by this Court in the light of the judgment reported in 2021 (2) CTC 526.

For Petitioner : Mr.P.R.Prithviraj

For Respondent : Mrs.D.Farjana Ghoushia
Special Government Pleader



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ORDER

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This Writ Petition has been filed challenging the refusal check slip issued by the first respondent dated 13.10.2021, refusing to register the settlement deed dated 13.10.2021 on the ground that the petitioner was not in possession of the original document and the petitioner has also not produced the non traceable certificate issued by the Police, if in the event the original documents are lost.

2. The case of the petitioner is that she is the absolute owner of the subject property by virtue of two sale deeds dated 31.10.1977 and 23.10.1980 which were registered as Document Nos.65 of 1977 and 1100 of 1980 before the respondent. The petitioner due to her old age wanted to settle the property in favour of her son. She executed a settlement deed dated 13.10.2021 and the same was presented for registration before the respondent. The petitioner was able to present only one original title deed and the other title deed was missing. In view of the same, the respondent issued the impugned refusal check slip dated 13.10.2021 on the ground that the petitioner did not produce the original title deed and that the petitioner has also not produced any non traceable certificate from the Police. Aggrieved over the same, the present Writ Petition has been filed before this Court.



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3. Heard the learned counsel appearing on behalf for the petitioner and the learned Special Government Pleader appearing on behalf of the respondent.

4. The learned counsel for the petitioner submitted that the respondent cannot insist for production of the original documents as a condition precedent for registering the settlement deed. To substantiate this submission, the learned counsel relied upon the judgment before this Court in the case of ***Sivanadiyan Vs Sub-Registrar, Pudukottai*** reported in ***2021 (2) CTC 526***. The learned counsel submitted that the petitioner is now aged about 77 years and she wanted to settle the property in favour of her son and that no third party rights have been created and therefore requested this Court to take into consideration the peculiar facts of this case and pass appropriate orders.

5. Per contra, the learned Special Government Pleader appearing on behalf of the respondent submitted that all the registration offices are uniformly following the practice of insisting either for original documents or in the absence of the same, a non traceable certificate issued by the Police after following the necessary procedure. The learned Special Government Pleader submitted that if this practice is not followed, multiple registration will happen for the same property. If in future, yet another person produces the original



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document pertaining to the same property and seeks for registration, the respondent will be pushed to a very difficult situation. The learned Special Government Pleader further submitted that if any positive orders are passed in this Writ Petition, the same will be taken as a precedent and everyone will approach this Court seeking for a direction to register the document even without producing the non traceable certificate from the Police. The learned Special Government Pleader therefore sought for dismissal of the Writ Petition and for a direction to the petitioner to get a non traceable certificate from the Police and thereafter to present the document for registration.

6. This Court has carefully considered the submissions on either side and material available on records. In the instant case, the respondent through the impugned refusal check slip was not insisting for production of the original documents. In view of the same, the judgment that was cited by the learned counsel for the petitioner will not have any application to the facts of the present case. The respondent had only intimated the petitioner that since one of the original title document is missing, the petitioner has to produce the non traceable certificate issued by the concerned Police. This practice is consistently followed in all cases to avoid multiple registrations pertaining to the same property. Even though, the respondent cannot insist for the production of the



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original document as a condition precedent for the registration, if the party admits that the document has been lost, the Sub-Registrar is expected to insist for a non traceable certificate from the concerned Police. It is in view of the circular issued by the Inspector General of Registration. This practice has to be consistently followed in order to avoid any multiple registrations for the same property. To that extent, this Court is in complete agreement with the submissions made by the learned Special Government Pleader.

7. In the case on hand, a 77 year old lady is attempting to settle her property in favour of her son, since she is getting old and she wants her property to go to her son. The petitioner became the owner of the property by virtue of two sale deeds dated 31.01.1977 and 23.10.1980. The petitioner is in possession of the original sale deed / title document registered as Document No.1100 of 1980. However, 1977 original sale deed which was registered as Document No.65 of 1997 is not available with the petitioner. The petitioner is not trying to create any third party rights and she is only settling the property in favour of her own son. Considering the age of the petitioner, it will be very difficult for the petitioner to follow up with the Police and to get non traceable certificate. That apart, the certified copy of the sale deed registered as Document No.65 of 1977 is available and no further encumbrance has been shown in the



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Encumbrance Certificate. Therefore, this property is intact in the name of the petitioner.

8. Considering the peculiar facts of this case and also considering the age of the petitioner, this Court is inclined to direct the respondent to register the settlement deed that is executed by the petitioner in favour of her son. In the settlement deed, the petitioner shall add a recital to the effect that the original document registered as Document No.65 of 1977 is not able to be traced and that if the same is not traceable while presenting the document, her son will take effective steps to file a complaint before the Police and follow the procedure and get a non traceable certificate. If this clause is added to the settlement deed, even if the son wants to deal with the property in future, the Sub-Registrar can always insist for the non traceable certificate. This will sufficiently take care of the apprehension raised on the side of the respondent. That apart, the order passed in this Writ Petition cannot be taken as a precedent, since this order is passed considering the peculiar facts of this case.

9. In the light of the above discussion, this Writ Petition is disposed of with a direction to the petitioner to add the necessary recital in the settlement deed and to present it for registration before the respondent. The respondent



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shall entertain the document and register the same, if all the other requirements

are satisfied. No costs.

21.12.2023

NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr

To

The Sub Registrar,
Sub Registrar Office,
Madhagupatti,
Sivagangai District.

N.ANAND VENKATESH, J.



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