



WP(MD)No.21420 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 05.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

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P.Thangarathinam

... Petitioner

Vs

1.The District Registrar,
Karur District.

2.The Sub Registrar,
Sub Registrar Office,
Kulithalai,
Karur District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for a writ of Certiorarified mandamus, calling for the records relating to the impugned refusal check slip issued by the 2nd respondent vide refusal No.RFL/Kulithalai/28/23, dated 31.07.2023 and quash the same and consequently direct the 2nd respondent herein to register the settlement deed presented by the petitioner dated 31.07.2023 without insisting for production of original parent document.

For petitioner : Mr.T.Antony Arulraj

For Respondents : Mr.M.Sarangan,
No. Additional Government Pleader



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ORDER

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The petitioner's husband K.Panneer Selvam has purchased the property in S.No.95/1 to an extent of 1.04 Acres by way of a registered sale deed dated 06.05.1998. The petitioner's husband Panneer Selvam died on 20.04.2015, leaving his son Vinoth Kumar and daughter Sankari as legal heirs. Even before the death of the said Panneer Selvam, the marriage between the petitioner and Panneer Selvam was dissolved in HMOP.No.4 of 1990 by judgment and decree dated 08.08.1991. After the death of Panneer Selvam, the property devolved upon the petitioner's son and daughter. The petitioner's son Vinoth Kumar also passed away on 02.01.2016. The documents for the land in S.No.95/1 are with one Meena, the wife of her son Vinoth Kumar. The petitioner is now intending to execute settlement deed in favour of his daughter Sankari with regard to her son's share in the property and has submitted a gift deed for registration. However it has been returned that the original document has not been produced. The petitioner claims that she is having right in the property and her daughter-in-law is not returning the original document as she is also having right in the property. The petitioner is



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having legal heir certificate issued by the competent authority the Thasildar. She is also intending to settle the undivided share in the property of Vinoth Kumar.

2.The learned Additional Government Pleader further submits that registration of a document can be refused as per Rule 55 of the Tamil Nadu Registration Rules and the same is extracted as under:-

“55.It forms no part of a registering officer's duty to enquire into the validity of a document brought to him for registration or to attend to any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document; but he is bound to consider objections raised on any of the grounds stated below:-

- (a) that the parties appearing or about to appear before him are not the persons they profess to be;
- (b) that the document is forged;
- (c) that the person appearing as a representative, assign or agent, has no right to appear in that capacity;
- (d) that the executing party is not really dead, as alleged by the party applying for registration; or
- (e) that the executing party is a minor or an idiot or a lunatic.”



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3.The learned counsel for the petitioner by referring the decision already rendered by this Court in ***Federal Bank vs. Sub Registrar, reported in 2023 (2) CTC 289*** submits that the first proviso to Rule 55A has already been quashed by this Court. The relevant paragraphs from the above order has been extracted as under:-

*15. The effect of the first proviso is clearly an arbitrary exercise of power aimed at setting at naught the above declaration of law by the Division Bench of this Court in Ramayee's case. In the considered opinion of this Court, a subordinate legislation issued by the Inspector General of Registration under Section 69 of the Act cannot annul a declaration of law made by the Division Bench. In **Madras Bar Association v Union of India, 2021 SCC Online SC 463**, the Supreme Court quoted Chief Justice John Marshall's classic observation in **Marbury v Madison (28 US 137)**: "It is emphatically the province and duty of the judicial department to say what the law is." The Hon'ble Supreme Court then went on to observe as under:*

"41. It is open to the legislature within certain limits to amend the provisions of an Act retrospectively and to declare what the law shall



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be deemed to have been, but it is not open to the legislature to say that a judgment of a Court properly constituted and rendered in exercise of its powers in a matter brought before it shall be deemed to be ineffective and the interpretation of the law shall be otherwise than as declared by the Court.”

15.a. Thus, when the legal position has already been declared by the Division Bench of this Court and has been affirmed by the Supreme Court it is not open to the Inspector General of Registration to take a contra view and notify a subordinate legislation the effect of which is to completely render nugatory to the interpretation made by this Court. Ex-facie, the first proviso to Rule 55-A (i) is clearly illegal and is vitiated by a clear abuse of power.

26. In view of the above, as this Court has held that the first proviso to Rule 55-A has been found to be invalid and ultra vires, the respondent cannot refuse to register the document placing reliance on the aforesaid proviso.



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4. In view of the above, this writ petition is allowed.

The respondents shall proceed with the registration of the document presented for registration by the petitioner. No costs.

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Internet: Yes / No

Index : Yes / No

NCC : Yes / No

DSK

To

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Karur District.

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B.PUGALENDHI, J.

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