



WP(MD)Nos.21605 & 21606 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

WP.(MD).Nos.21605 & 20606 of 2023

D.Baskar

..Petitioner in both
WPs

Vs

The Sub Registrar,
Keeranur,
Dindigul District.

.. Respondent in
both WPs

Prayer in WP(MD) No.21605 of 2023: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the respondent in Refusal Number.RFL/Keeranur/24/2023,dated 10.08.2023 and quash the same as illegal, consequently direct the respondent to register the sale deed, dated 09.08.2023 presented by the petitioner for registration on 10.08.2023 in respect of the properties in Survey Nos.56/1B, 57/1, 58, 59, 60/1, 60/3 & 62/1 for an undivided extent of 5 acre 77.5 cents in the total extent of 18 acres 48 cents



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situated at Balappampatti Village, Oddanchatram Taluk, Dindigul District within a time framed by this Court.

Prayer in WP(MD) No.21606 of 2023:: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the respondent in Refusal Number.RFL/Keeranur/25/2023,dated 10.08.2023 and quash the same as illegal, consequently direct the respondent to register the sale deed, dated 09.08.2023 presented by the petitioner for registration on 10.08.2023 in respect of the properties in Survey Nos.56/1B, 57/1, 58, 59, 60/1, 60/3 & 62/1 for an undivided extent of 5 acre 15.5 cents in the total extent of 18 acres 48 cents situated at Balappampatti Village, Oddanchatram Taluk, Dindigul District within a time framed by this Court.

For Petitioner : Mr.D.Venkatesh
For Respondent : Mrs.D.Farjana Ghoushia
Special Government Pleader
(In both WPs)

COMMON ORDER

The petitioner claims that originally, the properties in 56/1B, 57/1, 58, 59, 60/1, 60/3 & 62/1 belongs to the father of one



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Manimegalai, her sisters and mother. After the demise of her father, the properties devolved upon her, her sisters and her mother. On 09.08.2023, the said Manimegalai executed a draft sale deed in favour of the petitioner, in respect of her undivided share. The said draft sale deed was presented for execution before the respondent on 10.08.2023 and the same was refused to register on the ground that the original partition deed has not been submitted. Aggrieved over the same, these writ petitions are filed.

2.The learned counsel appearing for the petitioner submits a copy of the original partition has been produced before the respondent. However, without considering the same, the respondent has issued the refusal check slips, directing them to produce the original partition deed. However, the petitioner claims that a copy of the partition deed is available with the petitioner's vendor's sister. The learned counsel further submits that registration of a document can be



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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 relevant Rule with Clause 1 of 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 5 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:



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“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 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.



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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.

4. In view of the above, these writ petitions are allowed.

The respondent shall proceed with the registration of the document presented for registration, after obtaining an affidavit of undertaking from the petitioner's vendor, based on the certified copy of the partition deed produced by her. No costs.

05.09.2023

NCC : Yes / No.
Index : Yes / No.
Internet : Yes
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To
The Sub Registrar,
Keeranur,
Dindigul District.



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B.PUGALENDHI, J.

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Common Order made in
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