



W.P(MD)No.27928 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.01.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.27928 of 2022

and

W.M.P(MD)No.22018 of 2022

1.A.Raseetha Begam

2.K.Kabiba

... Petitioners

Vs

1.The District Registrar (Admin),
Madurai North,
Madurai District.

2.The Sub Registrar,
Chokkikulam,
Madurai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the first respondent vide his proceeding in No. 6577/Aa1/2022 dated 26.10.2022 and consequential impugned order passed by the second respondent vide his proceedings in RFL/Chokkikulam/11/2022 dated 29.09.2022 and quash the same as illegal and consequently direct the second respondent to register the Sale Deed dated 29.09.2022 presented by the petitioners for registration and release the same to



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the petitioners within a time stipulated by this Court.

For Petitioners : Mr.S.Thangaraj

For Respondents : Mr.N.Satheeskumar
Additional Government Pleader

ORDER

Heard the learned counsel on either side.

2.The property in question belonged to one Sikkander Rowther. He mortgaged the same in favour of one Santhammal Aachi on 05.06.1967. The original document was handed over to her. During the lifetime of Sikkander Rowther mortgage was not redeemed. Sikkander Rowther died leaving behind six legal heirs. The petitioners are children born through one of the legal heirs namely Fathima. The petitioners claim that they have 1/6 th undivided share in the property. The petitioners now want to alinate the same in favour of Mohammed Mohaideen and the documents were not entertained by the registering authority. The impugned refusal check slip was issued. Aggrieved by the same, the petitioners preferred an appeal before the first respondent. The first respondent by the impugned order dated 26.10.2022 confirmed the stand taken by the registering authority. Questioning the same, the present writ petition has been filed.



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3. After hearing the learned counsel on either side, I am of the view that the writ petition can very well be allowed. This is for more than one reason. Another co-sharer namely Subaitha Beevi filed W.P(MD)No.2369 of 2021 before this Court and the said writ petition was allowed on 18.03.2022 in the following terms:

“4. The issue involved in this Writ Petition has been considered by another learned Single Judge of this Court in the case of Sivanadiyan Vs. The Sub Registrar, Pudukottai, reported in 2021 (2) CTC 526. In similar circumstances, this Court held that production of original title deeds is not mandatory and the registering authority is not empowered to insist for production of original documents (parent documents) in the absence of a specific provision under the Registration Act. The learned Single Judge has held that the circular issued by the Inspector General of Registration, Chennai, cannot have legal sanctity unless the power of issuance of such a circular is authorised under the provisions of the Act.

5. In the case on hand also, the Registration Act does not empower the registering authority to refuse registration just because the petitioner has not produced the original title deed (parent document), though she has produced the certified copy of the same. This Court is in agreement with the view taken by the learned Single Judge in the aforementioned decision.

6. Therefore, this Court is of the considered view that by



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total non-application of mind, the impugned refusal check slip has been issued by the second respondent and accordingly, the impugned refusal check slip dated 12.01.2021 issued by the second respondent is quashed. The second respondent is directed to admit the sale deed dated 02.12.2020 presented by the petitioner for registration and register the said document, if it is otherwise in order, within a period of two (2) weeks from the date of receipt of a copy of this order.”

4.That apart, the recent amendment made vide G.O(Ms)No.129 Commercial Taxes and Registration dated 05.09.2022 introducing Rule 55(A) will come to the petitioners' rescue. Amended Rule 55(A) is as follows:

“55A. (i) The registering officer before whom a document relating to immovable property is presented for registration, shall not register the same, unless the presentant produces the previous original deed by which the executant acquired right over the subject property and an Encumbrance Certificate pertaining to the property obtained within ten days from the date of presentation.”

5.In this case, the mortgage deed executed by Sikkander Rowther lapsed after 30 years. Therefore, registering authority can very well register the document. Of course, the petitioners will have to recite in their sale deed about the execution of mortgage and the fact that it has become time barred and that right to foreclose the same by the mortgagee had become time barred.



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6.In this view of the matter, the orders impugned in the writ petition are quashed. This writ petition is allowed. The petitioners are at liberty to re-present the document in question by incorporating the recital mentioned above. In that event, the second respondent shall entertain the same, register it and release it subject to the fulfilment of the other usual formalities. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

11.01.2023

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

To

1.The District Registrar (Admin),
Madurai North,
Madurai District.

2.The Sub Registrar,
Chokkikulam,
Madurai.



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G.R.SWAMINATHAN, J.

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