



W.P(MD)No.28485 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.12.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.28485 of 2023

1.Usha

2.S.Arunagiri

3.S.Uma Preethi

... Petitioners

Vs.

1.The Inspector General of Registration,
100, Santhome High Road,
Chennai-28.

2.The District Registrar,
District Registration Office,
Palayamkottai,
Tirunelveli-2.

3.The Sub-Registrar,
Joint II Sub-Registrar Office,
Tirunelveli.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records in impugned check slip dated 27.10.2023 on the file of the 3rd respondent and quash the same as illegal, consequently direct the 3rd respondent to register partition deed dated 27.10.2023 without insisting production of original sale deeds.



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For Petitioners : Mr.S.Kumar

For Respondents : Mr.C.Satheesh
Government Advocate for R1 to R3

ORDER

Heard both sides.

2. Shri.Shanmugavel husband of the first petitioner and father of the petitioners 2 & 3 filed W.P.(MD)No.27927 of 2022 before this Court. The writ petition was disposed of in the following terms:-

“2. The writ petitioner purchased the petition mentioned property vide registered sale deed dated 15.02.1984. The petitioner states that he had kept the document in his father's house. The petitioner's father passed away in the year 2009. The allegation of the petitioner is that his brother Thiru.Ayyasamy had taken away the sale deed dated 15.02.1984 also. The petitioner now wants to execute the settlement deed in favour of his son. The petitioner approached the first respondent for clarification that the document may be registered without production of the parent deed. Such a concession was given by the first respondent vide communication dated 19.09.2022. However, without notice to the petitioner, it was cancelled by the impugned communication, dated 28.09.2022. Challenging the same, the present writ petition has been filed.

3. After hearing the learned counsel on either side, I am more than satisfied that the writ petition has to be allowed. The impugned communication is bad, primarily for the reason that the petitioner was not put on notice before passing the same. That apart, there is a direct decision in favour of the writ petitioner. The learned Judge of this Court vide order dated 18.11.2021 in W.P(MD).No.19950 of 2021 (Selvam Vs., The Joint Sub-Registrar No.I, Karaikudi) had held that in certain circumstances, where there



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are family disputes, it would be highly impossible to get the original copy from the person with whom there is an existing dispute. Therefore, the petitioner has to incorporate appropriate recitals in the settlement deed executed in favour of his son. The petitioner will have to mention in the said settlement deed that the original deed was kept by him in his father's house and it was taken away by his brother following the demise of his father and that the petitioner's brother is refusing to part with document even in spite of demand by the petitioner. The petitioner should make further averment that he has not mortgaged the property or created any other kind of encumbrance. If the petitioner resubmits the settlement deed with such recitals along with certified copy of the sale deed dated 15.02.1984, the third respondent will receive the same, register it and release it subject to the fulfilment of the other usual formalities.”

3. After the disposal of the writ petition on 09.01.2023, Shanmugavel passed away on 15.02.2023. Thereafter, the petitioners herein presented the petition mentioned deed of partition before the third respondent. The 3rd respondent declined to register the document on the ground that the parent deed has not been produced. The impugned refusal check slip is set aside. The Writ Petition is allowed for the very same reason set out in the order dated 09.01.2023 made in W.P.(MD)No.27927 of 2022. The petitioners are permitted to re-present the document. The document should contain the recitals mentioned in the earlier order dated 09.01.2023. The registering authority will verify the same and receive the deed of partition, register it and release it subject to fulfillment of other usual formalities.



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G.R.SWAMINATHAN, J.

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4. The Writ Petition is allowed. No costs.

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Index : Yes / No

Internet : Yes/ No

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To

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