



W.P(MD)No.28694 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 06.12.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.28694 of 2023

Sahabudeen

... Petitioner

Vs.

1.The Sub Registrar,
Office of the Sub Registrar,
Ilayangudi,
Sivagangai District.

2.Manavara

... 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 pertaining to the impugned refusal check slip in RFL/Ilayankudi/49/2023 issue by the first respondent dated 29.11.2023 and quash the same and consequently direct the first respondent to register the document without insisting for production of original document by considering the petitioner's representation dated 29.11.2023 within the time frame as fixed by this Court.



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For Petitioner : Mr.D.S.Haroon Rasheed
For Respondents : Mr.M.Prakash
Additional Government Pleader
for R.1

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Additional Government Pleader appearing for the first respondent. Issuance of notice to the second respondent is dispensed with.

2.The petitioner wants to sell his undivided share in the petition mentioned property. The parent deed is with the second respondent who is none other than the wife of the petitioner. Their relationship appears to be under strain. The learned counsel appearing for the petitioner clarifies that the petitioner is selling only his share.

3.The question that arises for consideration is whether on account of the non-production of the title document, the title holder can be



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prevented from alienating the property. In this case, the title document is said to be with the second respondent. The petitioner as well as the second respondent appear to be having joint share in the property. Therefore, in such cases, appropriate course of action to be adopted by the registering authority is to issue notice to the second respondent, conduct enquiry and thereafter take a call. Non-production of title document in such cases cannot come in the way particularly when the petitioner asserts that it is with the second respondent. Even if the second respondent states that the document is not with her and that the petitioner is withholding the same, still, the petitioner can be permitted to execute the petition-mentioned sale deed. Without satisfying himself, the registering authority has mechanically issued the impugned refusal check slip. The Inspector General of Registration has issued Circular No.22482/C1/2022 dated 02.02.2023. Clause 7(f) of the said circular deals with a similar situation. It reads as follows:-

“7.For registration of Will.

(f) If the property is purchased by the Father/Mother and after his/her intestate demise, if his/her legal heirs claim that the original document is with one of the . legal heirs and he/ she is refusing to



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handover the original deeds, then on a petition being made to that effect, an enquiry shall be conducted by an Officer not below the rank of the District Registrar by calling all the legal heirs concerned. In such cases even if any of the legal heirs fail to attend the enquiry or refuses to divulge the possession of original document, then the Enquiry Officer shall permit registration on getting sworn affidavit from the presentant and others who attend enquiry to that effect. The same exercise of getting sworn affidavit can be followed in cases where all the legal heirs submit that the original documents is not in possession of any others.”

The second respondent has to conduct an enquiry on the same lines. In this view of the matter, I permit the petitioner to re-present the document. The first respondent shall issue notice to the second respondent. The petitioner through his counsel states that within a week from the date of receipt of a copy of this order, document will be represented. Final order shall be passed by the first respondent within a period of four weeks thereafter.



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4.This writ petition is disposed of accordingly. There shall be no order as to costs.

06.12.2023

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

Note: Issue order copy on 07.12.2023.

To

The Sub Registrar,
Office of the Sub Registrar,
Ilayangudi,
Sivagangai District.



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G.R.SWAMINATHAN, J.

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