



W.P(MD)No.29990 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.12.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.29990 of 2023

Selvaraj

... Petitioner

Vs.

The Sub Registrar,
Urayur,
Trichy District.

... Respondent

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 relating to RFL/Urayur/ 79/2023 dated 06.12.2023 - on the file of the respondent herein - quash the same and consequently direct the respondent to register the Sale Deed dated 30.11.2023 presented by petitioner for registration without insisting for the production of previous title deed.

For Petitioner : Mr.P.Samuel Gunasingh

For Respondent : Mr.M.Siddharthan
Additional Government Pleader

ORDER

Heard both sides.



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2. The petition mentioned property was purchased by three persons namely Nachiammal, Krishnan & Arumugam vide Document No.906 of 1982. Nachiammal is none other than the petitioner's mother. She was entitled to 1/3rd share in the property. The petitioner's mother executed a Will dated 28.11.1984 bequeathing her 1/3rd share in favour of the petitioner and his brother Santhalingam. The mother passed away on 09.01.2011. The petitioner's brother also passed away on 19.04.2020. The legal heirs of the petitioner's brother now want to sell the property in favour of the petitioner. In other words, they want to convey their 1/6th share in the property. When the document was presented for registration, the respondent refused registration on the ground that the parent document has not been produced. Challenging the said refusal check slip, the present writ petition came to be filed.

3. As rightly pointed out by the learned counsel for the petitioner, the issue on hand is covered by the decision of this Court rendered in W.P.No.2758 of 2023 dated 08.03.2023. Paragraph No.12 of the said order reads as follows:-

“12. It is now necessary to closely examine Rule 55-A as this is the sheet anchor of the case of the respondents for refusing registration of the document presented by the petitioner. Rule 55-A (i) authorizes the Registrar to refuse registration of the document unless the presentant produces the previous original sale deed by which the executant acquired right over the property, and the



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Encumbrance certificate pertaining to the said property. It is not difficult to foresee that a literal application of this rule would lead to several absurd results. For example, if a person desires to execute a Will and get it registered, and the property is mortgaged to a Bank it is obvious that he would be unable to present the original document. Similarly, where one sharer deals with his interest in joint family property registration can be easily stalled if the other co-sharer refuses to part with the original parent deed. In fact, in a recent decision [Ananthi v District Registrar, W.P 2498 of 2023, order dated 02.02.2023], this Court was confronted with a case where the Sub-Registrar had relied on Rule 55-A (i) and refused to register a sale deed only on the ground that the original partition deed had not been produced. Quashing the impugned order, this Court observed as follows:

“While framing such Rule, the Government has not taken into consideration of the fact that the partition deeds are entered among the co-owners. Normally, original partition deed will be retained by anyone of the family member. In fact, there may be a situation, wherein, the person who will be in possession of the original partition deed, may not be willing to produce the documents. If such original is not produced as required under this Rule, the other members of the family cannot deal with the property.”

4. The petitioner also points out that since three persons had jointly purchased the property, the parent deed in all probability must be with one of the co-owners. Therefore, insistence on production of the parent document in this case does not appear to be justifiable. In this view of the matter, the impugned order is set aside. The petitioner is permitted to re-present the document along with the certified copy of the Document No.906 of 1982. The respondent will receive, register and release it subject to fulfillment of usual formalities.



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G.R.SWAMINATHAN, J.

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5. The Writ Petition is allowed. No costs.

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Index : Yes / No

Internet : Yes/ No

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To

The Sub Registrar,
Urayur,
Trichy District.

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