



WEB COPY



WP.No.5205 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2024

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

WP.No.5205 of 2024

N.Ayyaswamy

.. Petitioner

Versus

The Sub Registrar,
Office of the Sub Registrar
Peelamedu, Ground Floor
Kamarajar Road, Redfield, Puliakkulam
Coimbatore – 641 018

.. Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondent, the Sub-Registrar Office of The Sub-Registrar Joint-II, Coimbatore to consider the representation of the petitioner dated 1.12.2023 and direct the respondent to permit the petitioner to register the Settlement Deed in favour of his Second son considering the petitioner's age.

For Petitioner : M/s.S.Kavitha

For Respondent : Mr.L.S.M.Hasan Fizal
Additional Government Pleader



WP.No.5205 of 2024

With the consent of both sides, this Writ Petition is taken up for final disposal at the admission stage itself.

2. This writ petition is filed for a direction, directing the respondent to consider the representation of the petitioner dated 01.12.2023 and direct the respondent to permit the petitioner to register the Settlement Deed in favour of his second son considering the petitioner's age.

3. The case of the writ petitioner is that the petitioner's is old aged and is willing to executed a settlement deed in favour of his second son, however, the original documents are with the first respondent. Hence, the petitioner sent a representation dated 01.12.2023 seeking to register the settlement deed without insisting production of originals, which is pending without consideration till date. Hence, this writ petition.

4. The learned Additional Government Pleader submitted that the document has not been presented, if the same is presented, the document will be registered as per law.

5. Heard learned counsel for the petitioner and the learned Additional



WP.No.5205 of 2024

Government Pleader appearing for the respondent and perused the materials available on record.

6. I have perused entire records. This Court in **Federal Bank Vs. Sub Registrar and two others** in **W.P.No.2758 of 2023 dated 08.02.2023**, has held as follows :

“22. Similarly, the second proviso requires the executant to produce a revenue record to show his “right over the subject property” where the property is ancestral in character and there is no original deed available. Even a tax receipt can be produced under this proviso which is opposed to the fundamental principle of law that revenue records are not documents of title [State of A.P. v Star Bone Mill and Fertilizer Company, 2013 9 SCC 319]. Production of revenue documents to verify the source of title only demonstrates complete ignorance of the settled position of law.

23. Similarly, the third proviso also defies logic. If the original is lost, it is not understood as to why a certified copy of that document obtained from the file of the concerned SRO cannot be produced. When the best evidence is not available, the best course is to produce a certified copy which is the next best available alternative. Instead, the third proviso requires the executant to obtain a non-traceable certificate and effect paper publication.

24. It is also well settled by the decision of the Supreme Court in J.K. Industries Ltd. v. Union of India, (2007) 13 SCC 673 that a subordinate legislation may be struck down as arbitrary or contrary to statute if it fails to take into account vital facts which expressly or by necessary implication are required to be taken into account by the statute or the Constitution. Furthermore, Rule 55-A is a delegated legislation which cannot go beyond the scope of the Parent Act viz., the Registration Act as well the Transfer of



WP.No.5205 of 2024

WEB COPY

Property Act which is the substantive law governing the transfer of immovable properties. Hence, the first proviso is clearly ultra vires and unconstitutional.”

7. Considering the above and also of the fact the circular cannot override the statutory right and substantive provisions of law, the respondent is directed to register the settlement deed executed by the petitioner without insisting of production of original. They can very well verify the certified copies available with them.

8. Such view of the matter, the petitioner shall present the settlement deed within a period of one week from the date of receipt of a copy of this Order and the respondent is directed to register the same within a period of fifteen days thereafter.

9. With the above directions, this Writ Petition stands allowed. No costs.

05.07.2024

dhk

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No



WP.No.5205 of 2024

To

WEB COPY

The Sub Registrar,
Office of the Sub Registrar
Peelamedu, Ground Floor
Kamarajar Road, Redfield, Puliakkulam
Coimbatore – 641 018



WEB COPY



WP.No.5205 of 2024

N. SATHISH KUMAR, J.

dhk

W.P.No.5205 of 2024

05.07.2024