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W.P.No.11081 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.04.2024

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.11081 of 2024

K.Ravichandran

... Petitioner

Vs.

1.The District Registrar,
Registration Department,
District Registration Office,
Gobichettipalayam, Erode District.

2.The Sub Registrar,
Kavundapadi Registration Office,
Bhavani Taluk, Erode District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent in his refusal check slip RFL/Kavundapadi/91/2023 Sub Registrar, Kavundapadi dated 03.11.2023 by the second respondent and quash the same and direct the second respondent to register the document presented by the petitioner for registration of partition deed pertaining to S.No.314/1C and situated at Odathurai Village, Kavundapadi Sub Registrar Office, Gobichettipalayam, Erode District, a total extent of 1 acre 30.5 cents without insisting original document.



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For Petitioner : Mr.SP.Yuvaraj

For Respondents : Mr.Yogesh Kannadasan, SGP

ORDER

This Writ Petition has been filed for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the second respondent in his refusal check slip RFL/Kavundapadi/91/2023 Sub Registrar, Kavundapadi dated 03.11.2023 by the second respondent and quash the same and direct the second respondent to register the document presented by the petitioner for registration of partition deed pertaining to S.No.314/1C and situated at Odathurai Village, Kavundapadi Sub Registrar Office, Gobichettipalayam, Erode District, a total extent of 1 acre 30.5 cents without insisting original document.

2. With the consent of both sides, this Writ Petition is disposed of at the admission stage itself.

3. The impugned order has been passed mainly on the ground that the original document has not been produced. The subject property has



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been purchased by the father of the petitioner by the registered deed.

When the partition deed is entered among the legal heirs and presented the same for registration, the same was refused on the ground that the original document has not been produced.

4. Heard Mr.SP.Yuvaraj, learned counsel for the petitioner and Mr.Yogesh Kannadasan, learned Special Government Pleader for the respondents.

5. This aspect has already been dealt by this Court in the case of **Federal Bank Vs. Sub Registrar and two others** in **W.P.No.2759 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 Property Act which is the substantive law governing the transfer of immovable properties. Hence, the first proviso is clearly *ultra vires* and unconstitutional.”

6. Considering the above and also of the fact the circular cannot override the statutory right and substantive provisions of law, the respondent cannot refuse the registration of the document citing non production of original. They can very well verify the certificate available with them. In such view of the matter, the refusal check slip issued by the second respondent is liable to be set aside.



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7. With the above directions, this Writ Petition is allowed. The impugned order passed by the second respondent dated 03.11.2023 is set aside. The second respondent is directed to register the partition deed without insisting the production of originals within a period of 15 days from the date of receipt of a copy of this Order. No costs.

Index : Yes /No
Speaking / Non-speaking
Neutral Citation : Yes / No
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N.SATHISH KUMAR, J.

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To

1.The District Registrar,
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District Registration Office,
Gobichettipalayam, Erode District.

2.The Sub Registrar,
Kavundapadi Registration Office,
Bhavani Taluk, Erode District.

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