



W.A.No.1160 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2024
(Reserved on 30.07.2024)

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

W.A.No.1160 of 2024

P.Pappu

... Appellant

vs.

The Sub Registrar,
Rasipuram SRO,
Rasipuram,
Namakkal District.

... Respondent

Prayer : Appeal filed under Clause 15 of the Letters Patent, against the order dated 09.01.2024 made in W.P.No.242 of 2024.

For Appellant : Mr.N.Manokaran
For Respondent : Mr.R.Ramanlaal,
Additional Advocate General
assisted by Mr.L.S.M.Hasan Fizal

JUDGMENT

(Judgment of the Court was made by **R.SUBRAMANIAN, J.**)

Aggrieved by the dismissal of the writ petition challenging the refusal check slip issued by the Sub Registrar, Rasipuram dated 30.11.2023, the



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petitioner/appellant had moved this Court in W.P.No.242 of 2024. The refusal check slip was issued on the ground that the petitioner has not produced the original of the antecedent title deeds. The petitioner/appellant had sought to register a release deed dated 30.11.2023 in and by which, she sought to relinquish her rights over certain immovable properties in favour a brother. It is not in dispute that those properties belonged to the family and were allotted to the father of the executant / petitioner under the partition deed dated 04.10.1960 and the sale deed dated 18.01.1966. The revenue records that stood in the name of the father were also produced. The Sub Registrar, however, relied upon the second proviso to rule 55A(i) of the Tamil Nadu Registration Rules, refused to register the document and issued the impugned check slip. The petitioner, however, produced certified copies of those documents which were also issued by the very same office namely, Sub Registrar, Rasipuram. Since the prayer of the petitioner was rejected by the Writ Court, the petitioner has come up with this appeal.

2. We have heard Mr.N.Manokaran, learned counsel appearing for the appellant and Mr.R.Ramanlal, learned Additional Advocate General assisted by Mr.L.S.M.Hasan Fizal, learned Additional Government Pleader appearing for the respondent.



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3. Mr.Manokaran, learned counsel appearing for the appellant would vehemently contend that Rule 55A of the Tamil Nadu Registration Rules itself is against the provisions of the parent Act namely, the Registration Act, 1908. He would submit that it runs counter to various provisions of the substantive law relating to transfer of immovable property namely, The Transfer of Property Act, 1882. If a State legislature intends to enact the law which will be inconsistent with the central enactment in respect of matters enumerated in List III of Schedule 7 of the Constitution of India, Article 245 of the Constitution of India requires that the State law should be reserved for the assent of the President and upon such assent being granted after the President is apprised of the inconsistency, the State law would prevail in that State. He would point out by placing Rule 55A of the Tamil Nadu Registration Rules in the subordinate legislation that the State has circumvented the provisions of Article 245 of the Constitution of India. He would therefore submit that the very rule which lays down several conditions for registration of instruments of transfer of immovable property being inconsistent with the Transfer of Property Act, 1882, it cannot be invoked by the Sub Registrar indiscriminately to deny registration of instruments.



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4. The learned counsel would further point out that mechanical application of rule 55A of the Tamil Nadu Registration Rules, will only lead to even a genuine transfer instruments being refused registration. He would also draw our attention to two Division Bench judgments of this Court to which one of us (**R.SUBRAMANIAN, J.**) was a party. The first judgment relied upon by him is **M.Ariyanatchi and another vs. The Inspector General of Registration, Chennai, and another [W.A(MD)No.856 of 2023, dated 27.06.2023]**, wherein, this Court had taken note of the very same provision and held that production of original documents, where it is claimed that it is lost, need not be insisted upon in all cases across the board without application of mind. Reliance is also placed on the judgment in **Punithavathy vs. Inspector General of Registration, Chennai and three others [W.A.No.1571 of 2024, dated 05.06.2024]**, where, again a refusal check slip issued by the Registrar on the ground of non production of original documents, was quashed. The learned counsel would also draw our attention to the judgment of the learned Single Judge of this Court in **The Federal Bank Ltd., vs. The Sub Registrar, Pollachi, [W.P.No.2758 of 2023, dated 08.02.2023]**, where, it was pointed out that the entire rule 55-A violates the constitutional right enshrined under Article 300A of the Constitution of India.

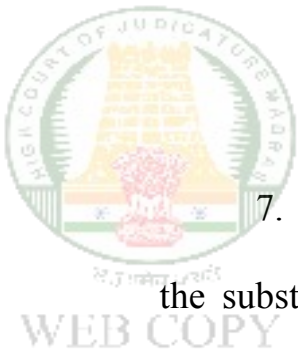


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5. Contending contra, Mr.R.Ramanlaal, learned Additional Advocate General appearing for the respondent would submit that the judgment in Federal Bank Ltd's case has been appealed against and the appeal is pending. He would also claim that the provision namely, Rule 55-A has been introduced only to prevent fraudulent transactions and creation of multiple encumbrance over the property which leads to multiplicity of legal proceedings. The learned counsel would also submit that there is no absolute bar on registration of documents which are not accompanied by the originals of the parent document. It is always open to the presentant or the executant to produce a non traceability certificate issued by the jurisdictional police along with the publication and get the instrument registered. Several clarifications have also been issued by the Inspector General of Registration taking into account various issues that crop up in implementation of Rule 55-A. The learned counsel would also point out that in one such circular, the need for production of non traceability certificate has been dispensed with if it is shown that the original document is a partition deed which is in the custody of somebody else.

6. We have considered the rival submissions.



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7. The law relating to transfer of immovable property is governed by the substantial enactment namely, The Transfer of Property Act, 1882. The right to hold property and the right to be not deprived of property without reasonable compensation is a constitutional right ensured under Article 300A of the Constitution of India. Being a constitutional right, it is one step superior to even the fundamental rights, as there cannot be a reasonable restriction on the said right and no one can be deprived of the property without reasonable compensation. The right to hold the property also takes in its fold the right to deal with the property. No doubt, the second proviso to rule 55-A of the Tamil Nadu Registration Rules mandates that the original of the antecedent document should be produced to enable registration of a subsequent instrument. Of course, a way-out is provided namely, the production of non traceability certificate from the police department. We should also be conscious of the fact that any certificate from any Government department, as of today, comes only at a price for an ordinary citizen. An elaborate procedure has also been fixed for issuance of non traceability certificate. We have come across several instances where, because of the high pricing of and the complicated procedure involved in obtaining a non traceability certificate, instances of people obtaining non traceability certificate from the neighbouring States has increased.



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8. The fundamental principle of law relating to transfer of immovable property is *caveat emptor*. A buyer of the property is required to be careful in not purchasing certain properties which are already encumbered or from person who does not have title. Even if a person sells a property that does not belong to him, there is no provision in the Registration Act, 1908, to enable the Registrar to refuse registration except Section 22-A and Section 22-B, which have been introduced recently in the year 2022 by the State Legislature insofar as Tamil Nadu is concerned. Even Section 22-A and Section 22-B do not authorise refusal of registration on the ground that the original of the prior's title deed has not been produced. We are unable to resist observing that Rule 55-A has been stealthily introduced as a subordinate legislation only to enable Registrars refuse to register instruments indiscriminately. Neither Section 22-A nor Section 22-B authorise a Registrar to refuse to register instruments on the grounds specified under Rule 55-A. No doubt, Mr.Ramanlaal falls back on the power of Superintendence conferred on the Chief Controlling Revenue Authority and the District Registrars under Section 68 of the Registration Act, 1908. Section 68 reads as follows:

68. Power of Registrar to superintend and control Sub-Registrars.

(1) Every Sub-Registrar shall perform the duties of his office under the superintendence and control of the Registrar in whose district the office of such Sub-Registrar is situate.



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(2) *Every Registrar shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him or in respect of the rectification of any error regarding the book or the office in which any document has been registered."*

9. The power conferred under Section 68 of the Registration Act, 1908, is only a supervisory jurisdiction and it invests the power in the Registrars to issue any order consistent with the Act. As we already observed, the provision of Section 55-A inserted in the rules has no statutory authority. Section 69 of the Registration Act 1908, enables the Inspector General to make rules providing for the matters that are set out in Clauses (a) to (h). The provision namely, Section 69 further provides that the rule so framed shall be consistent with the provisions of the Act. Therefore, the rules made by the Inspector General of Registration exercising the power under Section 69 cannot override the provisions of the Act. Rule 162 of the Registration Rules prescribes the circumstances under which a Registrar can refuse to register an instrument. Clause 20 has been added to Rule 162 to enable the Registrar to refuse registration, if the presentant does not produce the original deed or record specified in Rule 55A. We do not propose to delve into the validity or otherwise of the rule, but we must record that *prima facie*, the rule overreaches the legislation and it is beyond the powers of the Inspector General of



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Registration under Section 69.

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10. Adverting to the facts on hand, the document that is sought to be registered is a release deed executed by the sister in favour of the brother. The document recites that the property belonged to the father. The parties are not strangers to each other. They have produced registration copies of the antecedent documents which are registered in the very same office. Unless the Registrar has a doubt regarding the genuineness of the copies issued by his own office, insistence on production of originals is a superfluous exercise. As we had already stated, it is a common knowledge and accepted phenomena today that one cannot secure a certificate from a Government office without the price. In such situation, driving executant of documents to obtain a non traceability certificate in case of lost document in every case, will result only in encouraging under hand dealings. When certified copies have been produced and it is not impossible for the Sub Registrar to have it verified with the original record that is available in his own office, insisting upon a non traceability certificate appears to be rather a wasteful exercise. Even in **Punithavathy's case** referred to supra, we have observed that the Registrars will not refuse registration particularly, when the parties to the documents are relatives and they take the risk of obtaining the document without examining



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the title. The copies of the documents have already been produced. The Sub Registrar could have verified the same with the original records in his office and register the instrument without dogmatically refusing registration. We, therefore, do not find any substance in the argument of Mr.Ramanlaal, learned Additional Advocate General. We, therefore, set aside the order of the learned Single Judge as well as the impugned check slip. We direct the Sub Registrar, Rasipuram, to register the release deed. We permit the appellant to re-present the release deed within four weeks from today and upon such re-presentation, the Sub Registrar, Rasipuram, will register the instrument without insisting on production of originals within 15 days from the date of presentation.

11. The Writ Petition stands allowed on the above terms. No costs.

(R.S.M, J.) (R.S.V, J.)
27.09.2024

Index : Yes
Neutral Citation : Yes
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To

The Sub Registrar,
Rasipuram SRO,
Rasipuram,
Namakkal District.



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R.SUBRAMANIAN, J.
and
R.SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT
MADE IN
W.A.No.1160 of 2024
DATED : 27.09.2024