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WP.No.11940 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2024

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

WP.No.11940 of 2023
and W.M.P.No.11820 of 2023

1.C.Vetriselvan
2.C.Santosh Kumar
Petitioners

..

Versus

The Sub Registrar,
Kurinjiapadi, Kurinjapadi Taluk
Cuddalore District

.. Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the Refusal Check Slip in Refusal Number in RFL/Kurinjiapadi/2/2023 dated 09.03.2023, quash the same and consequently direct the respondent to register the partition deed dated 03.03.2023 entered into between the petitioners.

For Petitioner : Mr.R.Gururaj
for Mr.D.Baskar
For Respondent : Mr.B.Vijay
Additional Government Pleader

ORDER

This writ petition is filed to quash the Refusal Check Slip in Refusal

Number: RFL/Kurinjiapadi/2/2023 dated 09.03.2023 and consequently direct



WP.No.11940 of 2023

the respondent to register the partition deed dated 03.03.2023 entered into between the petitioner.

2. It is the grievance of the writ petitioner that when the partition deed was presented for registration, the respondent refused to register the same on the ground that death certificate and the legal certificate has not been produced and also description of property is not correct.

3. It is the contention of the learned counsel for the petitioner that title has been established in O.S.No.513 of 1980 & 690 of 1989, however, despite the production of those documents, the present document was refused to be registered.

4. Heard learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondent and perused the materials available on record.

5. I have perused entire records. This Court in **Federal Bank Vs. Sub Registrar and two others** in **W.P.No.2759 of 2023 dated 08.02.2023**, has held as follows :



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“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. When the documents are produced on the basis of the right already crystallised in a Civil Court decree, it cannot be said that the original still needs to be produced.

⁷ Such view of the matter, the refusal check slip issued by the



WP.No.11940 of 2023

respondent is set aside. The respondent is directed to register the partition deed dated 03.03.2023 without insisting the production of originals within a period of one months from the date of receipt of a copy of this Order.

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

24.04.2024

dhk

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

To,

The Sub Registrar,
Kurinjapadi, Kurinjapadi Taluk
Cuddalore District



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WP.No.11940 of 2023

N. SATHISH KUMAR, J.

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W.P.No.11940 of 2023

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