



**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 23.04.2024**

**CORAM:**

**THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

**W.P.No.10884 of 2024**

Chellamuthu

...

Petitioner

*versus*

The Sub Registrar,  
Office of Sub Registrar,  
Moolanur, Tiruppur District.

...

Respondent

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for records of refusal check slip No.RFL/Moolanur/7/2023 dated 14.09.2023 passed by the respondent herein and quash the same and consequently direct the respondent to register the compromise decree dated 08.12.2022 made in O.S No.351 of 2022 on the file of learned District Munsif, Dharapuram.

For Petitioner : Mr.N.Ponraj

For Respondent : Mr.Yogesh Kannadasan  
Special Government Pleader



## **ORDER**

This Writ Petition has been filed challenging the refusal slip dated 14.09.2023 issued by the respondent whereby he refused to register the compromise decree presented by the petitioner for registration.

2. The registration is refused mainly on the ground that the original document has not been filed by the petitioner.

3. Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondent and perused the materials available on record.

4. I have perused the entire records. A Division Bench of this Court in *N.Ramayee Vs. Sub-Registrar [(2020) 6 CTC 697]*, has held as follows:-

*“15. Rule 22 of the Registration Rules deals with the power of registering officer to proceed with all requirements prescribed in the Act. Rule 23 to 26 deals with corrections, erasures or alterations, accompany of maps, verifying the correct survey numbers, sub-division etc. Rule 27 deals with*



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*the power of Registering officer to collect deficit stamp duty under Section 41 of the Stamp Act.*

*16. Rule 55 states that it is not the duty of the Registering Officer to enquire into the validity of the document. However, he is bound to consider objections in any of the grounds stated in the rules namely:*

*(a) that the parties appearing or about to appear before him are not the persons they profess to be;*

*(b) that the document is forged;*

*(c) that the person appearing as a representative, assign or agent, has no right to appear in that capacity.*

*(d) that the executing party is not really dead, as alleged by the party applying for registration; or*

*(e) that the executing party is a minor or an idiot or a lunatic.*

*17. Rule 162 of the Registration Rules reads as follows:*

*"162. When registration is refused the reasons for refusal shall be at once recorded in Book 2. They will usually come under one or more of the heads mentioned below---*

*I. Section 19.---That the document is written in a language which the Registering Officer does not understand and which is not commonly used in the District, and that it is unaccompanied by a true translation and a true copy.*



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II. Section 20.---That it contains unattested interlineations, blanks, erasures or alterations which in the opinion of the Registering Officer require to be attested.

III. Section 21.---(1) to (3) and Section 22.-- That the description of the property is insufficient to identify it or does not contain the information required by Rule 18.

IV. Section 21(4).---That the document is unaccompanied by a copy or copies of any map or plan which it contains.

V. Rule 32.---That the date of execution is not stated in the document or that the correct date is not ascertainable.

VI. Sections 23, 24, 25, 26, 72, 75 and 77.--- That it is presented after the prescribed time.

VII. Sections 32, 33, 40 and 43.---That it is presented by a person who has no right to present it.

VIII. Section 34.---That the executing parties or their representatives, assigns, or agents have failed to appear within the prescribed time.

IX. Sections 34 and 43.---That the Registering Officer is not satisfied as to the identity of a person appearing before him who alleges that he has executed the document.

X. Sections 34 and 40.---That the Registering Officer is not satisfied as to the right of a person appearing as a representative, assign, or agent so to appear.



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*XI. Section 35.---That execution is denied by any person purporting to be an executing party or by his agent. Note:- When a Registering Officer is satisfied that an executant is purposely keeping out of the day with a view to evade registration of a document or has gone to a distant place and is not likely to return to admit execution within the prescribed time, registration may be refused the nonappearance being treated as tantamount to denial of execution.*

*XII. Section 35.---That the person purporting to have executed the document is a minor, an idiot or a lunatic. Note:- When the executant of a document who is examined under a commission under Section 38 of the Act is reported by the Commissioner to be a minor, an idiot or a lunatic registration may be refused and it is not necessary that the Registering Officer should personally examine the executant to satisfy himself as to the existence of the disqualification.*

*XIII. Section 35.---That execution is denied by the representative or assign of a deceased person by whom the document purports to have been executed. Note:-When some of the representatives of a deceased executant admit and others deny execution, the registration of the document shall be refused in toto, the persons interested being left to apply to the Registrar for an enquiry into the fact of execution.*



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*XIV. Sections 35 and 41.---That the alleged death of a person by whom the document purports to have been executed has not been proved.*

*XV. Section 41.---That the Registering Officer is not satisfied as to the fact of execution in the case of a will or of an authority to adopt presented after the death of the testator or donor.*

*XVI. Sections 25, 34 and 80.---That prescribed fee or fine has not been paid.*

*XVII. Section 230(A) of the Income Tax Act, 1961 (Act 43 of 1961).--That the prescribed certificates from the Income Tax Officer has not been produced.*

*XVIII. Section 10 of the Tamil Nadu Land Reforms (Fixation of Ceiling of Land) Act, 1961 (Act 58 of 1961).--- That the declaration has not been filed by the transfer.*

*XIX. Section 27 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (Act 24 of 1978).--- That the statement has not been filed by the transferror and transferee.*

*Rule 162 makes it obligatory for the Registering Officer to record in Book No.2 the reasons for refusal to register a document. Interestingly, rule 162 lists out the various heads under which the refusal to register may fall. [Rajambal v. Inspector General (Registration), Government of Tamil Nadu, 2012 (1)CWC 627].*



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18. Conspectus of the various provisions referred above make it clear that the Registering Officer cannot go into the title of the property in respect of which document is presented. However, under various provisions he has power to refuse to accept the document for registration unless mistakes found in the document are set right properly. Except Section 22-A of the Tamil Nadu Act, other provisions referred above do not give any power to the registering officer to refuse to register the document presented by the person executing documents. Rule 60 also states that the registering officer can only enquire about the executant and the claimant of the instrument of sale regarding whose identity he has to satisfy himself. But the provisions does not give absolute power to refuse registration. As already indicated above, the purpose and object of the Act is to give a public notice about any encumbrance in the immovable property.

19. It is also relevant to note that even when the document is undervalued and the Registrar registering the document has reason to believe that the market value of the property has not been truly set out in the document, he has to receive the document and refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon as per Section 47-A of the Stamp Act. Even on such ground also the Registrar has no right to refuse to register the document.



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20. In the light of the above when we deal with the various provisions of the Transfer of Property Act the question arises as to whether the transfer is restricted to one time in respect of the immovable property, unless the previous transfer or any agreement is set aside in the court of law, and other transfer is permissible? The answer is absolutely "No" for the following reasons: The property of any kind may be transferred, except as otherwise provided by the transfer of property Act or by any other law for the time being, as provided in Section 6 of the Transfer of property Act.

21. Every person competent to contract and entitled to transferable property, or authorised to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner allowed and prescribed by any law for the time being in force, as per Section 7 of the Transfer of Property Act. The reading of the above section makes it very clear that even a person not entitled transferable property is competent to transfer such property when he was authorised to dispose of such property.

22. Section 41 of the Transfer of Property Act deals with the power of the ostensible owner to effect the transfer of the property with consent, express or implied of the real owner.

23. From the principle underlined in the Section 41 of the Transfer of Property Act is that the ostensible owner of the



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*property, with the consent express or implied and representing himself as owner of the property though he is not having the title, can deal with the property. Similarly, Section 42 of the T.P. Act deals with the transfer by a person having authority to revoke the former transfer. When a person transfers any immovable property reserving power to revoke the transfer, and subsequently transfers the property for consideration to another transferee, such transfer operates in favour of such transferee subject to any condition attached to the exercise of the power as a revocation of the former transfer to the extent of the power.*

*24. Similarly section 43 of Transfer of Property Act deals with transfer by unauthorised person who subsequently acquires interest in the property transferred. The above section makes it very clear that even a person who has no title over the property purports to transfer to another by deed and when he subsequently acquires any interest in the property, sufficient to satisfy the transfer, the title would pass to the transferee without any further act on the part of the transferor, provided the transferee has not rescinded the transfer and opts for such effectuation. The above principle also makes it very clear even a transfer by unauthorised person is not prohibited. Only the validity of the title would be subject to his acquiring subsequent interest in the property.*



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25. Section 48 of the Transfer of Property Act deals with priority of rights created by transfer, which reads as follows:

48. Where a person purports to create by transfer at different times rights in or over the same immoveable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.

26. The above section determines the priority when there are successive transfers, where the person creates transfer at different times right in or over the same immovable property, such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation bind the earlier transferee and be subject to the rights previously created.”

5. Similarly, this Court in ***Federal Bank Vs. Sub Registrar and two others (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



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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.”



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6. Considering the above and also the fact that when the court decree is presented, it is not the authorities to go into the validity of the decree to verify the documents. In such view of the matter, the respondent cannot refuse to register the document particularly the compromise decree.

7. In the result, this Writ Petition is allowed and the order of refusal slip dated 14.09.2023 is set aside and the respondent is directed to register the compromise decree presented by the petitioner for registration without insisting the production of original, within a period of 15 days from the date of receipt of a copy of this order. No costs.

**23.04.2024**

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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W.P.No.10884 of 2017



To

The Sub Registrar,  
Office of Sub Registrar,  
Moolanur, Tiruppur District.



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**N.SATHISH KUMAR, J.**

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