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WP.No.16152 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2024

CORAM

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

WP.No.16152 of 2023  
and W.M.P.No.15543 of 2023

Vellaiyan

.. Petitioner

Versus

The Sub Registrar  
Harur  
Dharmapuri District

.. Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records with respect to the impugned proceedings passed by the respondent in the name of Refusal Checkslip in Refusal No.RFL/Harur/59/2023 dated 18.05.2023 and quash the same consequently directing the respondent herein to register the final decree proceedings dated 11.01.2010 passed in O.S.No.27/2008 on the file of the District Munsif cum Judicial Magistrate, Pappireddipatty.

For Petitioner : Mr.J.Pradeep

For Respondent : Mr.L.S.M.Hasan Fizal  
Government Advocate

**ORDER**

This writ petition is filed to quash the Refusal Check Slip in Refusal No.RFL/Harur/59/2023 dated 18.05.2023 and quash the same consequently



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directing the respondent herein to register the final decree proceedings dated 11.01.2010 passed in O.S.No.27/2008 on the file of the District Munsif cum Judicial Magistrate, Pappireddipatty.

2. It is the grievance of the writ petitioner that when the final decree dated 11.01.2010 passed in O.S.No.27/2008 on the file of District Munsif cum Judicial Magistrate, Pappireddipatty was presented for registration, the respondent refused to register the same on the ground that the petitioner failed to produce a revenue record to show his right over the subject property.

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

4. 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 :

*“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.”*

5. Once the Court has already granted the parties right in a partition suit, it is not open to the registering authorities sitting over the judgment of the Courts to verify title. If such power is remained, it will have a serious impact, in fact, further orders or the judgments of the Court will be avoided and the Sub-Registrar will act as an appellate authority that may not be permitted in law.



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6. Such view of the matter, the refusal check slip issued by the respondent is set aside. The respondent is directed to register the final decree proceedings dated 11.01.2010 passed in O.S.No.27/2008 on the file of the District Munsif cum Judicial Magistrate, Pappireddipatty within a period of 15 days from the date of receipt of a copy of this Order.

7. With the above, this Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

**26.04.2024**

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Index : Yes/No  
Internet : Yes/No  
Neutral Citation : Yes/No

To,

The Sub Registrar  
Harur  
Dharmapuri District



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**N. SATHISH KUMAR, J.**

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