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W.P. No.19106 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.19106 of 2024 and
W.M.P. No.20957 of 2024

V.Thirumurthy

... Petitioner

Vs

The Sub Registrar
Nambiyur
Erode District

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the respondent in Refusal Number RFL/Nambiyur/15/2024 dated 11.06.2024 and quash the same as illegal, arbitrary and without authority of law and direct the respondent to register the settlement deed presented for registration on 11.06.2024.

For Petitioner : Mr.A.Chandrasekaran

For Respondent : Mr.L.S.M.Hasan Fizal,
Addl. Govt. Pleader



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ORDER

Challenge has been made to the refusal slip issued by the respondent in RFL/Nambiyur/15/2024 dated 11.06.2024, refusing to register the Settlement Deed dated 11.06.2024 executed by the petitioner.

2. It is the case of the writ petitioner that the petitioner is the owner of the property. When he executed a settlement deed in favour of his wife and when the same was presented for registration before the respondent, the document was refused to be registered on the ground that the Will relied on by the petitioner is not probated. The very order of the respondent shows his non-application of mind. This court has repeatedly held that the Will need not be probated and the Sub Registrar cannot go into the issue of the Will since they have no right to go into the title of the property and other document. The petitioner has derived title on the basis of the title deed. This court has already held in several cases that as far as the partition deed is concerned, the partition deed will be with one of the co-owners. Therefore, insisting the production of original in such cases, is not at all required.



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3. This Court in the case of ***Federal Bank v Sub Registrar***, reported in **2023 (2) CTC 289** has held that Sub Rule XX of Rule 162 has no statutory backing. The said order has been considered by a Division Bench of this Court in the case of ***M. Ariyanatchi v Inspector General*** made in ***W.A.(MD).No. 856 of 2023, dated 27.06.2023***, wherein, Division Bench of this Court has held that, for instance, the original document is held by one co-owner, the Sub-Registrar can always take an undertaking or a declaration in the form of an affidavit from the vendors to the effect that the original document is with the said person and register the document. Hence, the Sub-Registrar cannot refuse to register a document merely because the original parent deed has not been produced.

4. Considering the above settled position of law, the Registrar cannot refuse to register the document merely on the ground of non production of parent document.

5. In such view of the matter, the impugned order stands quashed. The respondent is directed to register the settlement deed presented by the petitioner, within a period of one week from the date of receipt of a copy of this order.



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6. With the above direction, the writ petition is disposed of. No costs.

Consequently, the connected writ miscellaneous petition is closed.

19.07.2024

Index : Yes / No

Neutral Citation : Yes / No

Asr

To

1.The Sub Registrar
Nambiyur
Erode District

2.The Government Pleader
High Court, Madras



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N.SATHISH KUMAR, J.

Asr

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