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W.P.No.22342 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2024

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.22342 of 2024

P.Muthukumar

... Petitioner

VS.

1.The District Registrar (Salem West),
No.313, 3rd Floor,
District Registration Office Campus,
Salem Collectorate Building,
Kottai Main Road, Salem – 636 001.

2.The Sub Registrar,
Magudanchavadi Sub Registrar Office,
Sankari Taluk, Salem District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned Refusal Check Slip of the 2nd Respondent in Refusal No.RFL/Magudanchavadi/266/2023 dated 12.10.2023 and quash the same as illegal and arbitrary and consequently direct the 2nd Respondent S.R.O, Magudanchavadi, Sankari Taluk, Salem District to Register the Partition Deed dated 18.08.2023 presented for Registration in Pre-Registration Token Receipt No.TP/162131865/2023 dated 12.10.2023, within a stipulated time as fixed by this Court.

For Petitioner : Mr.N.Vijaya Basker
for M/s.Law Vision
For Respondents : Mr.M.Shajahan



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Special Government Pleader

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ORDER

The petitioner herein challenges the order passed by the 2nd respondent refusing the registration of the Partition Deed presented by the petitioner in Check Slip No.RFL/Magudanchavadi/266/2023 dated 12.10.2023 and consequently, to direct the 2nd respondent to register the Partition Deed dated 18.08.2023 presented for registration in Pre-Registration Token Receipt No.TP/162131865/2023 dated 12.10.2023, within a stipulated time as fixed by this Court.

2. According to the petitioner, the property with an extent of 68 cents comprised in Survey Nos.7/2A and 7/2B, an extent of 17 cents comprised in Survey No.7/3C1 and an extent of 20 cents comprised in Survey No.7/1A totally to an extent of 1 acres 5 cents situated at Kannantheri Village, Sankari Taluk, Magudanchavadi, Salem District, originally belonged to petitioner's grandfather namely Muthusamy. It is the case of the petitioner that his grandfather executed an Unregistered Will dated 30.12.2004 bequeathing the above said property in favour of the petitioner's father namely Palanisamy and petitioner's paternal uncle namely Marimuthu. The petitioner's grandfather-Muthusamy died on 22.02.2005. After his death, the



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petitioner's father Palanisamy and his brother Marimuthu had cultivated the property and they exercised complete possession and enjoyment over the same. Thereafter, the petitioner's father Palanisamy was also died on 26.04.2011 leaving behind his wife-Vasanth, son-Muthukumar (the petitioner herein) and daughter-Jayamani as his legal representatives entitled to succeed to his estate.

3. Now, the legal representatives of Palanisamy and Marimuthu entered into a Partition Deed on 18.08.2023 and the same was presented for registration before the 2nd respondent by Application No.TP/162131865/2023, dated 12.10.2023. The parties to the Partition Deed are tracing their title over the property under an Unregistered Will executed by Muthusamy. The 2nd respondent by impugned order dated 12.10.2023 refused the registration on the ground that the Will produced by the petitioner was Unregistered one and hence, the document cannot be considered for registration. Aggrieved by the same, the petitioner has come by way of this writ petition.

4. It is settled law that registration of Will is only optional and Unregistered Will can also convey good title to the beneficiary under the



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Will. Therefore, the order of refusal passed by the 2nd respondent on the ground that Will produced by the petitioner was Unregistered is untenable in law. It would be appropriate to refer to the order passed by this Court in W.P.No.15261 of 2024, dated 14.06.2024 in this regard. Paragraph No.5 of the said order reads as follows:-

“5. A perusal of the impugned Order clearly indicate that the same is against the fundamental principles of law and hence, no counter is required. At the outset, this Court is of the view that as far as the Will is concerned, the registration of a Will is optional. The property can be bequeathed by a Will and the Will can be either registered or unregistered one. Since, the Will being document which also convey title of the property, after the death of the testator, the authority cannot insist that the Will has to be a registered one. Such a finding is nothing but perverse and non application of mind. In such view of the matter, the Order impugned has to be quashed.”

5. In view of the settled law registration of the Will is only optional, the impugned order passed by the 2nd respondent in Refusal Check Slip No.RFL/Magudanchavadi/266/2023, dated 12.10.2023 is liable to be set aside and the same is accordingly set aside. The 2nd respondent is directed to register the Partition Deed dated 18.08.2023 presented by the petitioner, if it



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is otherwise in order.

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6. With the above direction, the Writ Petition stands allowed. No costs.

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Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
dm

To

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S.SOUNTHAR, J.

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