



WEB COPY

W.P.No.22173 of 2021
and W.M.P.No.23408 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.22173 of 2021
and W.M.P.No.23408 of 2021

G.Kumar

...

Petitioner

versus

1.The District Registrar,
O/o.The District Registrar,
102, State Bank Road,
Gopalapuram,
Coimbatore - 641 018.

2.The Sub Registrar,
O/o.Sub Registrar Office,
33, Manikarampalayam,
Ganapathipudur,
Coimbatore - 641 006.

...

Respondents

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 impugned orders of the second respondent in Registration Refusal Order bearing No.1 of 2021 dated 07.05.2021 and that of the 1st respondent dated 18.08.2021 in Appeal No.AP/12/Aa1/2021 and quash the same and consequently direct the respondents to register the partition deed presented for registration which was accorded pending Document No.P16/2021 dated 05.03.2021.



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For Petitioner : Mr.T.Gowthaman
Senior Counsel
for Mr.S.Roshan

For Respondents : Mr.B.Vijay
Additional Government Pleader

ORDER

This Writ Petition is filed to quash the Refusal Check Slip in Refusal Order No. 1 of 2021 dated 07.05.2021 and consequently, direct the second respondent to register the same.

2. It is the grievance of the writ petitioner that when the partition deed was presented for registration, the second respondent refused to register the same on the ground that the original document has not been filed by the petitioner.

3. Heard learned counsel for the petitioner and the learned Additional Government Pleader for the respondents 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 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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5. Considering the above, the second respondent cannot refuse the registration of the document citing non-production of original. They can very well verify the certificate available with them.

6. Such view of the matter, the Refusal Check Slip in Refusal Order No.1 of 2021 dated 07.05.2021 issued by the second respondent is set aside. The second respondent is directed to register the partition deed dated 02.03.2021 within a period of one month from the date of receipt of a copy of this order.

7. With the above directions, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

24.06.2024

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

sri



To

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N.SATHISH KUMAR, J.

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