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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2024

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.22270 of 2024

Venugopal

... Petitioner

VS.

1.The Inspector General of Registration,
No.100, Santhome High Road,
Chennai-600028.

2.The Sub-Registrar,
Office of Sub-Registrar,
Chennimalai, Erode.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 2nd Respondent vide Refusal Check Slip bearing Refusal Number. RFL / CHENNIMALAI / 25 / 2024 dated 30.04.2024 and quash the same and consequently direct the 2nd respondent to register Settlement Deed dated 30.04.2024 without insisting the production of original title document.

For Petitioner : Mr.S.K.D.Rajasekar

For Respondents : Mr.M.Shahjahan
Special Government Pleader



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ORDER

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The writ petition is filed challenging Refusal Check Slip issued by the 2nd respondent refusing to register the Settlement Deed presented by petitioner for registration on the ground that the petitioner failed to produce the original title document of the Settlor by relying on Rule 55-A(i) of the rules framed under Registration Act, 1908.

2. According to the petitioner, the property which is sought to be settled was originally belonged to Chennimalai Gounder and his son Kailasanathan. The petitioner purchased the same under registered Sale Deed executed by the above said persons dated 04.06.1980. The petitioner executed a Settlement Deed in respect of the said property in favour of his wife-Revathi and presented it for registration before the 2nd respondent with the certified copy of the original title deed. It was specifically averred by the petitioner that the original title document which was kept in the safe custody was lost and inspite of his best effort, he could not find out the same. It is asserted by the petitioner that he also approached the Police Officials for tracing the document but in vain. In these circumstances, petitioner



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presented the Settlement Deed executed by him in favour of his wife with certified copy of the Sale Deed in his favour.

3. Mr.S.K.D.Rajasekar, learned counsel appearing for the petitioner assails the order passed by 2nd respondent on the ground that production of original title document is not the *sine qua non* for registration of the subsequent document under the Registration Act, 1908. He further submitted that production of encumbrance certificate from the date of purchase by the petitioner down to the date of settlement would establish the petitioner has not encumbered the property subsequent to his purchase and therefore, insistence on production of original title document is not tenable in law. In support of his contention, the learned counsel relied on the following judgments:-

- (i) ***Federal Bank Ltd., represented by its Senior Manager vs. Sub Registrar and others*** in ***W.P.No.2758 of 2023, dated 08.02.2023.***
- (ii) ***M.Ariyanatchi and another vs. Inspector General of Registration and another*** made in ***W.A.(MD).No.856 of 2023, dated 27.06.2023.***
- (iii) ***S.Sarangapani vs. State of Tamil Nadu and others*** in ***W.P.No.21346 of 2019 and batch of cases, dated 26.04.2024.***



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(iv) ***Subramani vs. Sub Registrar, Office of the Sub-Registrar and another*** in ***W.P.No.11056 of 2024, dated 26.04.2024.***

4. Per contra, Mr.M.Shahjahan, learned Special Government Pleader appearing for the respondents would submit that in ***Federal Bank*** case referred supra, this Court only declared first proviso to Rule 55-A(i) of Registration Rules framed under the Registration Act, 1908 as invalid and ultra vires. The learned Special Government Pleader further submitted that the present case is governed by Rule 55-A(i) and third proviso to said Rule. The learned Special Government Pleader further submitted that if the original deed is lost, it is for the petitioner to follow the mandate under third proviso to Rule 55-A(i) and produce Non-Traceable Certificate issued by Police Department along with the advertisement published in the local Newspaper as to the loss of the original document. He further submitted that the Division Bench of this Court in the order passed in ***Palanisamy and another vs. Sub Registrar*** in ***W.A.No.974 of 2024, dated 25.03.2024*** held that provisions of Rule 55-A are intact in the Rule Books and therefore, it has to be complied scrupulously, whenever documents are presented for registration.



5. The main question to be decided in this writ petition is whether the refusal order passed by 2nd respondent on the ground that petitioner failed to produce original title document is sustainable in law.

6. The said question was considered in ***Federal Bank*** case cited supra, the relevant observation made by this Court in this regard reads as follows:-

“12. It is now necessary to closely examine Rule 55-A as this is the sheet anchor of the case of the respondents for refusing registration of the document presented by the petitioner. Rule 55-A (i) authorizes the Registrar to refuse registration of the document unless the presentant produces the previous original sale deed by which the executant acquired right over the property, and the Encumbrance certificate pertaining to the said property. It is not difficult to foresee that a literal application of this rule would lead to several absurd results. For example, if a person desires to execute a Will and get it registered, and the property is mortgaged to a Bank it is obvious that he would be unable to present the original document. Similarly, where one sharer deals with his interest in joint family property registration can be easily stalled if the other co-sharer refuses to part with the



original parent deed. In fact, in a recent decision [Ananthi v District Registrar, W.P. 2498 of 2023, order dated 02.02.2023], this Court was confronted with a case where the Sub-Registrar had relied on Rule 55-A (i) and refused to register a sale deed only on the ground that the original partition deed had not been produced. Quashing the impugned order, this Court observed as follows:

“While framing such Rule, the Government has not taken into consideration of the fact that the partition deeds are entered among the co-owners. Normally, original partition deed will be retained by anyone of the family member. In fact, there may be a situation, wherein, the person who will be in possession of the original partition deed, may not be willing to produce the documents. If such original is not produced as required under this Rule, the other members of the family cannot deal with the property.”

13. It appears that on the very same day ie., 02.02.2023, the Inspector General of Registration issued Circular No 22482/CI/2022, dispensing with the production of the original documents in certain situations indicated in the guidelines. In the considered opinion of this Court, the very fact that several exemptions had to be granted by a circular clearly demonstrates the unworkability of Rule 55-A(i). However, a very intriguing aspect lies in the amendment to



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Rule 162 inserting Clause XX which reads as follows:

“Clause XX Rule 55A. – That the presentant of the document fails to produce the original deed or record specified in rule 55A.”

13.a The newly introduced Clause XX is preceded by Clauses I-XIX authorizing the Registrar to refuse registration on the grounds set out therein. More importantly, each of the clauses authorizing the Registrar to refuse registration from Clauses I to XIX specifically refers to a substantive provision of law in the Registration Act or in some other legislation like the Income Tax Act, 1961 as the source of power. Clause XX on the other hand, does not refer to any substantive provision of law. Strangely and most curiously it authorizes the Registrar to refuse registration for nonproduction of original deed or record as specified in Rule 55-A. Normally, a subordinate legislation like a rule is authorized by a substantive provision of law. However, this is a unique case where a rule is authorized by another rule. This Court is of the considered opinion that in the absence of any substantive provision of law in the parent legislation, Clause XX is clearly beyond the powers of the Inspector General of Registration. The scheme of Rule 162 particularly Clauses 1 to XIX make it



very clear that the grounds for refusal must be traceable to a substantive provision of law in the Registration Act or other legislation.” (Emphasis supplied by this Court)

7. The view of the learned Single Judge in **Federal Bank** case was affirmed by the Division Bench of this Court in **M.Ariyanatchi** case cited supra. In the said judgment, the Division Bench after referring to **Federal Bank** case opined that Rule 55-A(i) would result in infringement of proprietary right guaranteed under Article 300A of the Constitution of India. After observing so, the Division Bench directed the Registering Authority to register the document, after getting a declaration in the form of sworn affidavit from the executants that the original title deed was in the hands of other parties. The relevant observation of the Division Bench in this regard would read as follows:-

“10. The object of Rule 55-A(i) of the Registration Rules is said to be to prevent fraudulent registrations. We are sure that Rule 55-A(i) is not a method by which fraudulent registrations could be prevented. Once the status of the executant is accepted and the ownership of the property by the predecessor-in-interest is also accepted, insistence upon production of original document, in our opinion, in cases of



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this nature, would only lead to empowering corruption. We must also point out that such refusal to register for non-production of original document would definitely infringe the rights guaranteed under Article 300A of the Constitution of India.

*11. While dealing with the first proviso to Rule 55-A of the Registration Rules, this Court had, in the **Federal Bank Ltd., vs. the Sub Registrar, Pollachi** [order dated 08.02.2023 in W.P.No.2758 of 2023], pointed out that if the Rule, which is a subordinate legislation, is in conflict with the substantive law, it will not prevail.*

12. Rule 55-A(i), in our opinion, in the given circumstances, would result in infringement of proprietary right guaranteed under Article 300A of the Constitution of India. There is nothing in the substantive law, which prevents the co-owner from dealing with his / her share in the property. If the co-owner, who deals with his / her share in the property, had created encumbrance, such transfer will be subject to such encumbrance. If the other co-owner had created encumbrance, that encumbrance will be confined to the share of the other co-owner only. Therefore, enough and more safeguards are already available both under the Transfer of Property Act, 1882 as well as in the Registration Act, 1908.



13. No doubt, requirement to produce the original document would be a safer method by which the Sub Registrar can ensure that the property belongs to the executant. But, that is not the only method. In the case on hand, it is clearly seen that the earlier document was also registered with the very same Sub Registrar and after computerization and digitization, the document is available online for the Sub Registrar to peruse. He can always take an undertaking or a declaration in the form of a sworn affidavit from the vendors to the effect that the original document is with their siblings and register the document.”

8. In ***S.Sarangapani vs. State of Tamil Nadu*** while dealing with refusal to register the document on the ground of non-production of original title deed, this Court observed as follows:-

“17. c. With regard to the refusal on the absence of parent document, this Court in the case of K.S. Vijayendran v. The Inspector General of Registration reported in (2011) 2 LW 648, Lakshmi Ammal v. The Sub Registrar, Villivakkam reported in 2015 SCC OnLine Mad 5868 and C. Moorthy v. Sub Registrar Aruppukottai reported in 2018 SCC OnLine Mad 3898, it was held that absence of a parent document is no ground to refuse registration. Pursuant



to these judgments, sub-rule XX was introduced in Rule 162 authorizing the Sub-Registrar to refuse registration for non-production of the original title deed as required by Rule 55-A. 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 followed 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.

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.”

The said view was reiterated in **Subramani** case cited supra.

9. The learned Special Government Pleader appearing for the



respondents brought to the notice of this Court the contrary view taken by another Division Bench in **Palanisamy** case cited supra, wherein after referring to the **Federal Bank** case, the Division Bench observed as follows:-

“13. Even in the concluding paragraph, the learned Single Judge in the said order has not declared that the first proviso to Rule 55-A is ultra vires to the constitution or supplanting the provisions of the Act.

14. Thus, citing the said order, the presentant of a document cannot be pleaded before the Registering Officer that first proviso to Rule 55-A cannot be insisted upon. All the provisos to Rule 55-A are intact in Rule Books. Therefore, it is to be complied scrupulously, when ever documents are presented for registration.”

10. However, the order passed by the Division Bench in **Palanisamy** case was not brought to notice of the subsequent Division Bench which approved the view of the learned Single Judge in **M.Ariyanatchi** case.

11. In **M.Ariyanatchi** case, the original document was in the hands of third party/co-owner. Therefore, the presentant was not able to produce the original title document before the Sub Registrar. There is no way out in Rule



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55-A to deal with a situation where presentant is unable to produce the original title document due to the custody of the same with some other third party not in good relationship with him. In order to find a way out, the Division Bench in that case directed the Sub Registrar to get a sworn affidavit from the presentants with regard to the availability of the original with third party/siblings and proceed with the registration on production of certified copy.

12. In ***Federal Bank*** case as mentioned earlier, this Court categorically held that Clause XX of Rule 162 which enables the Registering Authority to reject the document presented for registration on various circumstances mentioned under Rule 55-A has no backing in the substantial provision of law in the parent legislation and hence, Clause XX of Rule 162 read with Rule 55-A is beyond the power of Inspector General of Registration as the same is not traceable to substantial provision of law. The view expressed by the learned Single Judge in ***Federal Bank*** case was affirmed by the Division Bench in ***M.Ariyanatchi*** case cited supra.

13. In ***M.Ariyanatchi*** case, the Registering Authority was directed to



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register the document presented for registration by obtaining sworn affidavit from the presentant regarding non-availability of the original title document.

14. In the case on hand, the petitioner asserts that his original title document was lost and hence, he could not produce the same. The fact situation in the present case is covered by third proviso to Rule 55-A(i), which reads as follows:-

“Provided also that if the previous original deed is lost, the registering officer shall register such document only on production of non-traceable Certificate issued by the Police department along with the advertisement published in the local Newspaper as to the notice of loss of the previous original deed.”

15. Therefore, failure to produce original title document is not an absolute bar for registration of the document presented for registration. Proviso 3 to Rule 55-A(i) only mandates that the presentant shall produce Non-Traceable Certificate from Police Department along with advertisement



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published in the local Newspaper as to the notice of loss of the previous original deed. In the affidavit filed in support of the writ petition, the petitioner asserted that he approached the Police Officials for tracing the original document but in vain. It is not clear whether the petitioner gave any police complaint. In fact, the petitioner has not produced any copy of police compliant in the typed-set of papers.

16. The Proviso 3 to Rule 55-A does not say Non-Traceable Certificate shall be issued by police within a time frame. We cannot expect the petitioner, who presented the document for registration to wait endlessly expecting Non-Traceable Certificate. Further, Section 23 of Registration Act compels presentant to present the document for registration within four months. Hence, presentant cannot wait indefinitely for non-traceable certificate by Police. The Proviso 3 to Rule 55-A(i) does not mention any time limit for issue of non-traceable certificate. Hence, if Police Authorities failed to issue certificate within time to enable presentant to comply with Section 23 of Registration Act, there is a danger of document being refused as presented out of time. Therefore, following the order passed by the Division Bench of this Court in *M.Ariyanatchi* case, this Court directs the



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2nd respondent to register the document on petitioner fulfilling certain conditions, which can be treated as substantial compliance of Proviso 3 to Rule 55-A.

17. As mentioned earlier, failure to produce original title document is not a ground to refuse registration provided petitioner satisfy third proviso to Rule 55-A(i). Therefore, the impugned Refusal Check Slip issued by the 2nd respondent in RFL / CHENNIMALAI / 25 / 2024, dated 30.04.2024 is quashed and the petitioner is directed to represent the document before the 2nd respondent within a period of two weeks from today, along with an affidavit mentioning the fact of loss of original title document and untraceability of the same. The petitioner shall also enclose newspaper advertisement issued by him in leading Tamil newspapers having wide circulation in Erode District. The Newspaper advertisement shall disclose loss of original title deed and intention of the Seller to convey the property. On fulfilment of these two conditions, the 2nd respondent is directed to register the same.

18. Therefore, the Writ Petition stands allowed with the above



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directions. No costs.

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Index : Yes

Speaking order: Yes

Neutral Citation: Yes

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To

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- 1.The Inspector General of Registration,
No.100, Santhome High Road,
Chennai-600028.
- 2.The Sub-Registrar,
Office of Sub-Registrar,
Chennimalai, Erode.



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S.SOUNTHAR, J.

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