



WEB COPY



W.P. No.22275 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P. No.22275 of 2024

M.S.Manivannan

... Petitioner

Vs

1.The Sub Registrar
Sooramangalam
Salem Taluk and District

2.A.Asaithambi

... 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 1st respondent and quash the refusal slip under reference No.RFL/Sooramangalam/77/2024 dated 27.03.2024 of the first respondent with a consequential relief of directing the first respondent to register the sale deed dated 27.03.2024 executed by the second respondent in favour of the petitioner.

For Petitioner : Mr.K.N.Natarajan

For Respondent : Mr.B.Vijay
Addl. Govt. Pleader for R1

ORDER



W.P. No.22275 of 2024

WEB COPY

Aggrieved by the impugned refusal check slip issued by the first respondent refusing to register the sale deed presented by the petitioner for registration on the ground that original parent deed was not produced, the petitioner has come by way of this writ petition.

2. According to the petitioner, he entered into a sale agreement with the second respondent for purchase of an immovable property measuring about 1235 sq.ft. with a building thereof situate in S. No.46/5 of Meyannur Village, within the Sub Registrar Office, Sooramangalam. Since the second respondent failed to execute a sale deed as per the agreement, the petitioner has filed a suit in O.S. No.171 of 2020. The said suit was compromised and as per the compromise, the second respondent has executed a sale deed on 27.03.2024. The said sale deed was presented for registration before the first respondent. Since the original sale deed was retained by the purchaser of the larger extent of the land, the second respondent could not produce the original title document before the first respondent. Therefore, citing the circular issued by the Inspector General of Registration, the first respondent passed the impugned refusal slip



W.P. No.22275 of 2024

WEB COPY

refusing to register the document on the ground that original parent document was not produced.

3. The issue involved in this writ petition is covered by the decision of this court in ***M.Ariyanatchi and another vs. Inspector General of Registration and another made in W.A.(MD).No.856 of 2023, dated 27.06.2023***. 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 this nature, would only lead to empowering corruption. We must also point out that such refusal to register for non-production of



WEB COPY

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



W.P. No.22275 of 2024

WEB COPY

*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.
... ...?*

4. In view of the settled position, the writ petition is deserves to be allowed and the impugned refusal slip is quashed. The petitioner is directed to re-present the document before the first respondent with an affidavit by the second respondent explaining his inability to produce the original title document. If the sale deed is re-presented with proper affidavit of the second respondent, the same shall be registered by the first respondent, if it is otherwise in order. No costs.

19.08.2024

Index : Yes / No
Neutral Citation : Yes / No
Asr

To

1.The Sub Registrar
Sooramangalam
Salem Taluk and District

2.The Government Pleader
High Court, Madras

S.SOUNTHAR, J.



WEB COPY



W.P. No.22275 of 2024

Asr

W.P. No.22275 of 2024

19.08.2024