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W.P.No.22823 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.08.2024

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P No.22823 of 2024

1.Angathal
2.Kuppathal
3.Sellamuthu

...Petitioners

Vs.

The Sub-Registrar
Mulanoor Sub-Registrar Office
Tiruppur District

..Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, calling for the records relating to the impugned refusal check Slip dated 25.07.2024 in RFL / Moolanur /18 / 2024 made by the respondent, quash the same as arbitrary and illegal and consequently direct the respondent to register and release the release deed dated 25.07.2024 without insisting for original parent documents.

For Petitioners : M/r.R.Prabakar

For Respondent : Mr.B.Vijay
Additional Government Pleader



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W.P.No.22823 of 2021.

ORDER

Aggrieved by the impugned refusal slip issued by the respondent refusing to register the release deed executed by the petitioners 1 and 2 in favour of their brother, the 3rd petitioner herein, the petitioners have come before this Court by way of this writ petition.

2. According to the petitioners, they have got undivided share in the subject property along with their father's brothers namely Kaliyappa Gounder and Karuppana Gounder. The subject property in S.F.No.74 measuring an extent of 2.52 acres was purchased by petitioners' father along with his brothers Kaliyappa gounder and Karuppana Gounder under a sale deed dated 03.06.1986. The petitioners' father, his brother Kaliyappagounder and one Shanmugam purchased an extent of 3.57 acres in S.F.No.74 under a sale deed dated 24.12.1990. The portion of the property was acquired by petitioners' father and his brothers under partition deed dated 05.11.1969. After death of petitioners' father, the petitioners 1 and 2 executed a release deed releasing their undivided share in the property in favour of 3rd petitioner and the same



was presented for registration. The same was refused registration by the respondent mainly on the ground that the original sale deeds and the partition deed under which the petitioners' father acquired right over the property were not produced before him.

3. The learned counsel for the petitioners, by taking this Court to the averments found in the affidavit filed in support of this petition, submitted that the original documents are in the custody of petitioners' paternal uncle's son, Shanmugam and in spite of demand made by them, he refused to produce the original documents. Therefore, the petitioners are unable to produce the original documents before the registering authority.

4. Failure of the parties to produce the original title documents before the registering authority, in cases where document is in the custody of another co-owner with whom presentants are not having cordial relationship is not a ground to reject the registration. The said view was taken by the Division Bench of this Court in the case of ***M.Ariyanatchi and other Vs The Inspector General of Registration*** in ***W.A.(MD).No.856 of 2023***. The relevant



observation of this Court reads as follows:-

“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. Conduct of an enquiry of the nature that is recommended under Clause (f), extracted supra, would only lead to confusion. If the other legal heirs want to claim exclusive title, it is always open to them to approach the competent Civil Court and if they are able to establish their exclusive right before the Civil Court, the alienation will be invalid. In such circumstances, when the substantive law takes care of and protects any misuse or abuse, we do not think that Rule 55-A of the Registration Rules is the only method by which



fraudulent transactions are prevented.

14. In the light of the above, we do not think that insistence on production of original document, in all cases across the Board, could be sustained. Wherever the vendor is a co-owner and it is claimed that the original document is in the hands of the other co-owners, who are reluctant to part with it, the Registrar can always take a declaration in the form of a sworn affidavit from the co-owner, who is the executant and register the document. If the other siblings dispute the rights of the executant, they can also do so before the Civil Court and there is no law that authorizes the Registrar to conduct a trial to decide title to the property in question. What is sought to be done in the garb of an enquiry is exactly that. We are, therefore, convinced that the order of the Writ Court as well as the check slip issued by the Sub Registrar cannot be sustained. (Emphasis supplied by this Court)

15. The writ appeal is allowed and the order of the Writ Court, dated 24.04.2023, passed in W.P.(MD) No.9525 of 2023 is set aside. The writ petition in



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W.P.(MD) No.9525 of 2023 will stand allowed. The check slip issued by the Sub Registrar is quashed. The Joint Sub-Registrar / second respondent is directed to register the document, after getting a declaration in the form of sworn affidavit from the executants of the document that the original sale deed dated 27.01.2003 executed in favour of Shanmugam is in the hands of the male heirs of Shanmugal Ambalam and on production of the certified copy of the document along with the other documents, namely, Patta, death certificate and legal heirship certificate of Shanmugam Ambalam. The process of registration shall be completed within fifteen days from the date of representation of the document by the appellants. Since we have quashed the rejection of the check slip today, the appellants will have four months time to represent the document for registration from today. No costs."

5. In view of the law laid down by the Division Bench of this Court, the respondent is not justified in insisting the production of the original document which is in the custody of other co-owners. Accordingly, the impugned refusal slip stands quashed and the petitioners are directed to represent the document



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before the respondent, along with their affidavit stating that original documents are in the custody of another co-owner who is not in cordial relationship with the petitioners, within a period of two weeks from the date of receipt of copy of this order. The petitioner shall also produce certified copy of title deed. The respondent is directed to register the document if it is otherwise in order.

6. With the above observations, this writ petition stands allowed. No costs.

30.08.2024
(2/2)

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
nr

To
The Sub-Registrar
Mulanoor Sub-Registrar Office
Tiruppur District



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S.SOUNTHAR, J.
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