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W.P.No.27851 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2024

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THE HONOURABLE MR. JUSTICE S. SOUNTHAR

W.P No.27851 of 2024

Kaliyammal

...Petitioner

Vs.

1. The Inspector General of Registration,
100, Santhome High Road,
Raja Annamalaipuram, Chennai - 28.
2. The District Registrar,
Office of the District Registrar,
Namakkal District.
3. The Sub Registrar,
Office of the Sub Registrar,
Kumarapalayam, Namakkal District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned check slip issued by the third respondent dated 26.07.2024 vide No.RFL/Kumarapalayam/109/2024 and quash the same as illegal and consequently direct the respondent to register the document presented by the petitioner on 26.07.2024 within a time frame to be fixed by this Court.



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For Petitioner : Mr.P.Rajadurai

For Respondents : Mr.M.Shahjahan
Special Government Pleader

ORDER

Aggrieved by the impugned Refusal Check Slip bearing Refusal No.RFL/Kumarapalayam/109/2024, dated 26.07.2024 issued by the third respondent refusing to register the Sale Agreement dated 22.07.2024 executed by the petitioner along with her sister namely Chellammal in favour of one Gopi on the ground that petitioner failed to produce the original parent documents pertaining the subject property, the petitioner has come up by way of this writ petition.

2. It is the case of the petitioner that the subject property originally belonged to her grandfather by name, Palani Gounder. It is further asserted in the affidavit filed in support of this writ petition that the petitioner and her sister entitled to 2/6th share in the family property and they entered into a sale agreement with one Gopi after receipt of an advance amount. When the said agreement was presented for registration, the third respondent refused to register the same on the ground that the petitioner failed to produce the



original title deeds and also there was a Civil suit in O.S.No.60 of 2022 pending on the file of Second Additional District Judge, Trichengode, in respect of the subject property. It is also submitted by the petitioner that during the pendency of the suit, no prohibitory order was passed by the civil court with respect to the subject property. Therefore, the petitioner is before this court challenging the impugned check slip issued by the third respondent.

3. Mr. M. Shahjahan, learned Special Government Pleader, who takes notice for the respondent, by relying on Rule 55-A of the Registration Rules framed under the Registration Act, 1908, submitted that unless the original document is produced, the Registering Authority cannot entertain the document for registration.

4. In the affidavit filed in support of this writ petition, it is asserted by the petitioner that the original title documents were handed over to other co-owner who is not in good relationship with the petitioner. It is also stated that the petitioner produced certified copy before the registering authority.

5. The issue involved in this case regarding non-production of original title documents was already considered by the Division Bench 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*** wherein it was

observed 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 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



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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.
... ”*

6. I had an occasion to consider similar question in ***Venugopal vs. Inspector General of Registration*** (Order made in W.P.No.22270 of 2024 dated 14.08.2024). The relevant observation in the said case reads as follows:-

“16. The Proviso 3 to Rule 55-A does not say Non-Traceable Certificate shall be issued by police within a time



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*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 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 directions. No costs."

7. In view of the law laid down in the above mentioned cases, failure of the petitioner to produce the original title documents before the registering authority, cannot be a ground for refusal of registration. Therefore, the petitioner is directed to file an affidavit before the registering authority with regard to the custody of the original documents with the other co-owner.

8. Admittedly, the suit in O.S.No.60 of 2022 filed by one of the co-owners Radha against the petitioner and others, seeking partition and the same is pending. It is not the case of the respondents that prohibitory order has been passed by the Civil Court restraining the petitioner from alienating the subject property. In the absence of any prohibitory order, the petitioner is entitled to deal with his share in the subject property. In view of the same, the impugned refusal slip issued by the third respondent is quashed.



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9. Consequently, the petitioner is directed to re-present the sale agreement before the third respondent along with an affidavit mentioning the custody of the documents with the other co-owner, within a period of two weeks from the date of receipt of a copy of this order. On receipt of the Sale Agreement along with affidavit, the third respondent shall consider the same for registration, if it is otherwise in order.

10. Accordingly, the Writ Petition stands allowed. No costs.

24.09.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
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To

1. The Inspector General of Registration,
100, Santhome High Road,
Raja Annamalaipuram, Chennai - 28.
2. The District Registrar,
Office of the District Registrar,
Namakkal District.
3. The Sub Registrar,



Office of the Sub Registrar,
Kumarapalayam, Namakkal District.

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S. SOUNTHAR, J.

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