



W.P.No.25752 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2024

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.25752 of 2024

S.Vasantha

... Petitioner

VS.

Sub-Registrar,
Office of the Sub-Registrar, Ponneri,
NGO Nagar Extension,
Ponneri, Tiruvallur District – 601204.

... Respondent

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 of the Respondent relating to the Refusal Check Slip bearing Refusal Number: RFL/Ponneri/250/2023 dated 16.11.2023, issued by the Respondent and quash the same and directing the Respondent to register the Settlement Deed dated 15.11.2023, presented for registration by or on behalf of the petitioner for settling the Property consisting of Nanja Lands, measuring an extent of 1 Acre and 51 Cents, comprised in Survey No.396/2C1, situated in Village No.38, Kadapakkam Village, Ponneri Taluk, Tiruvallur District, having Patta bearing Patta No.475, located within the erstwhile Registration District of North Chennai, presently Registration District of Tiruvallur, and Sub-Registration District of Ponneri, to and in favour of her daughter Mrs.S.Saritha wife of Mr.Sivalingam and return the said Settlement Deed back to the Petitioner after completing all the formalities of the registration.

For Petitioner

: Mr.J.V.Sakthi Baalakrishnan



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For Respondent

: Mr.M.Shahjahan
Special Government Pleader

ORDER

Aggrieved by the impugned Refusal Check Slip bearing Refusal No.RFL/Ponneri/250/2023, dated 16.11.2023 issued by the respondent refusing to register the Settlement Deed executed by the petitioner in faovur of her daughter dated 15.11.2023 on the ground that petitioner failed to produce her original title deed, the petitioner has come by way of this writ petition.

2. According to the petitioner, she purchased the property covered by the Settlement Deed presented for registration under a Sale Deed dated 03.07.1995 from one Hemavathiammal and she has been in possession and enjoyment of the same. The petitioner out of love and affection wanted to settle the property in favour of her daughter and executed the Settlement Dated 15.11.2023. When the same was presented for registration, the respondent refused registration on the ground that the petitioner failed to produce original Sale Deed in her favour. Aggrieved by the same, the



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petitioner has come by way of this writ petition.

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3. The learned counsel appearing for the petitioner by taking this Court to the averments contained in the affidavit filed in support of the writ petition, stated that the original Sale Deed in favour of the petitioner had been removed by the petitioner's sons and in this regard, the petitioner lodged a police complaint before the Minjur Police Station on 20.04.2023 and CSR was also issued in CSR No.367 of 2023 based on the said complaint. It is also stated by the petitioner that at the time of registration, she produced certified copy of the title document before the Sub-Registrar. However, the registration was refused on the ground that petitioner was failed to produce the original document.

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

5. The issue involved in this case regarding non-production of original



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title document was already considered by the Division Bench in Madurai 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 the Division Bench 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 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 occasion to consider similar question in ***Venugopal vs. Inspector General of Registration*** (Order made in W.P.No.22270 of 2024)



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dated 14.08.2024). The relevant observation in the said case law 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 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 case laws, failure of the petitioner to produce original Sale Deed at the time of registration, cannot be a ground for refusal of registration. The reason for petitioner's failure to produce her original document is beyond her control and therefore, the respondent is not justified in refusing registration of the Settlement Deed presented for registration. Hence, the impugned refusal slip is quashed.



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8. In view of the same, this Court is inclined to direct the petitioner to represent the document before the respondent within a period of two weeks from the date of receipt of a copy of this order along with affidavit narrating the reason for her failure to produce original Sale Deed in her favour. On representation of the document along with affidavit as indicated above, the respondent shall consider the registration of the document, if it is otherwise in order.

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

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Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
dm



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To

Sub-Registrar,
Office of the Sub-Registrar, Ponneri,
NGO Nagar Extension,
Ponneri, Tiruvallur District – 601204.



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S.SOUNTHAR, J.

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