

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2024

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.25895 of 2024

C.Subramaniyan

... Petitioner

vs.

The Sub Registrar,
Kunnathur Sub-Registrar Office,
Kunnathur,
Tiruppur District.

... 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 and Quash and Refusal Check Slip No: RFL/KUNNATHUR/8/2024 dated 02.07.2024 and direct the respondent to register the Gift Deed presented by the petitioner within a time frame as may be fixed by this Court.

For Petitioner : Mr.I.M.Siddartha Ramarajan

For Respondent : Mr.M.Shahjahan
Special Government Pleader

ORDER

Aggrieved by the impugned Refusal Check Slip in No: RFL/KUNNATHUR/8/2024 dated 02.07.2024 issued by the respondent refusing to register the Gift Deed presented for registration, the petitioner has come by way of this writ petition.

2. According to the petitioner, the subject property was purchased by his father and his brother under Document No.391/1974 registered on the file of Sub-Registrar, Kunnathur/the respondent herein. The petitioner's father died on 22.09.2001. The petitioner and legal heirs of deceased brother are his legal heirs. Thus, the petitioner claims 1/4th undivided share in the subject property. The petitioner executed a Gift Deed in respect of his interest in the subject property in favour of his son on 20.06.2024 and presented the same for registration before the respondent. The respondent refused registration on the ground that the petitioner failed to produce the original title document in favour of his father and his brother. The respondent also raised objection that petitioner cannot convey a specified portion of the property

when he has only undivided 1/4th share. Aggrieved by the same, the petitioner is before this Court.

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, submitted that the whereabouts of the original Sale Deed in favour of petitioner's father and his brother is not known and therefore, the petitioner is not in a position to produce the original title document before the respondent. The learned counsel by relying on the decision of this Court in *Venugopal vs. Inspector General of Registration* (Order made in W.P.No.22270 of 2024 dated 14.08.2024), submitted that failure to produce original title document is not a ground to reject the document presented for registration. The learned counsel also submitted that the petitioner is having only undivided 1/4th share in the subject property and therefore, he is willing to make necessary amendments in the document presented for registration so as to gift his undivided share in favour of his son. The said statement is recorded.

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 by the petitioner, the Registering Authority/Respondent cannot consider the document presented for registration. The learned Special Government Pleader also submitted that the petitioner is having undivided 1/4th share in the subject property and therefore, he cannot convey a specified portion by executing a gift deed.

5. As far as the objections raised by the respondent with regard to the entitlement of the petitioner to convey a specified portion in the subject property, the learned counsel appearing for the petitioner fairly submitted that his client is willing to make necessary amendments in the instrument presented for registration to convey only petitioner's 1/4th undivided share in favour of the Donee. The said statement is already recorded by this Court.

6. If the petitioner prepares a new document so as to convey his 1/4th undivided share in favour of Donee, the respondent may not have any objection for considering the same for registration.

7. As far as the objection regarding failure to produce original document is concerned, the said question was settled by this Court in ***Venugopal vs. Inspector General of Registration*** (Order made in W.P.No.22270 of 2024 dated 14.08.2024), the relevant observation 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.”

8. In view of the same, the objection raised by the respondent with regard to failure of the petitioner to produce the original title document is liable to be set aside with a condition that the petitioner should file an affidavit regarding misplacement of document and necessary newspaper advertisement.

9. In view of the discussion made earlier, the impugned order passed by the respondent is quashed. The petitioner is directed to present new Gift Deed covering his undivided 1/4th share in the property and present the same for registration. The petitioner shall also file an affidavit mentioning non-availability of original title document apart from newspaper advertisement as required under Proviso III to Rule 55-A(i). If the petitioner complied all these conditions, the respondent shall consider the document presented for registration, if it is otherwise in order.

10. With the above direction, the Writ Petition stands allowed. No costs.

06.09.2024

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

To

The Sub Registrar,
Kunnathur Sub-Registrar Office,
Kunnathur,
Tiruppur District.

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S.SOUNTHAR, J.

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