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W.P.No.25335 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2024

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P No.25335 of 2024

Maphari Devi

...Petitioner

Vs.

1.The Inspector General of Registration
100, Santhome High Road
Pattinampakkam
Chennai 600 028.

2.The District Registrar
Erode District.

3.The Joint I Registrar
Joint I/II Sub- Registrar Office
Erode District.

4.E.Sivasakthi

5.Saravanan

6.Dudaram

...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 refusal check slip dated 13.08.2024 in RFL/1 Joint Sub



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Registrar /Erode/53/2024 made by the third respondent quash the same and consequently direct the third respondent to register and release the settlement deed dated 13.08.2024 without insisting production of original parent document.

For Petitioner : Mr.R.Prabakar

For Respondents : Mr.M.Shahjahan for R1 to R3
Special Government Pleader

ORDER

Aggrieved by the impugned refusal check slip issued by the third respondent refusing to register the settlement deed executed by the petitioner, the petitioner is before this Court.

2. According to the petitioner, he purchased the property with an extent of 621 sq.ft., old T.S.No.4P Door No.23, New T.S.No.40, Door No.37, in Resurvey Ward-C, Block-18, Erode Town, from one Dudaram and his wife Keli Devi, by the sale deed dated 01.09.2023 registered with the third respondent. The said sale deed was prepared with the help of document writers. Since the original sale deed in favour of the petitioner was not available with



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her, when the same was presented at the time of registration, the impugned refusal check slip was issued by the third respondent refusing to register the document on the ground that the petitioner failed to furnish the original title deeds. Aggrieved by the same, the petitioner is before this Court.

3. The learned counsel for the petitioner submitted that the original sale deed is not in custody of the petitioner. The petitioner also preferred a police complaint regarding the same. The third respondent ought not to have refused the registration of the document on the ground that the original was not issued. The learned counsel for the petitioner further submitted that she also preferred a complaint before the first respondent seeking action against the document writers and the same is pending on the file of the second respondent.

4. Mr.M.Shahjahan, learned Special Government Pleader, who takes notice for the respondents 1 to 3 by relying Rule 55A of the Registration Rules, submitted unless the original document is produced the third respondent cannot register the document.

5. The issue involved in this Writ Petition relating the inability of



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a person to present the original document during registration was considered by this Court in *M.Ariyanatchi and other Vs The Inspector General of Registration* in *W.A.(MD).No.856 of 2023*.

6. 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*, taken a view that in case the original document is not in the custody of the presenter, the registering authority can get an affidavit from the presenter and go ahead with the registration. The relevant observation of the judgment of Division Bench 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



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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



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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.

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 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."



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7. I had occasion to consider similar question in ***Venugopal Vs***

The Inspector General of Registration in W.P.No.22270 of 2024. The

relevant observation therein 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



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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 the case on hand, it is the specific case of the petitioner that the original sale deed in her favour was received by the document writers respondents 4 & 5 from the office of the third respondent and the same has not been handed over to her. In this regard, the petitioner already preferred a police



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complaint before the Erode District Taluk Police Station in CSR.No.76 of 2024. The petitioner also preferred a complaint before the first respondent on 06.03.2024 seeking action against the document writers.

9. It is also stated that the first respondent forwarded the complaint to the second respondent and the second respondent issued summons on 09.08.2024 to the petitioner as well as the respondents 4 & 5, now the enquiry is pending on the file of the second respondent. In such circumstances, the third respondent is not justified in refusing to register the document on the ground that the petitioner failed to produce the original document at the time of registration. Therefore, the petitioner is directed to represent the document before the third respondent within a period of two weeks from the date of receipt of copy of this order along with affidavit narrating the fact under which the petitioner is unable to produce the original document at the time of registration. The petitioner shall also produce Newspaper advertisement as indicated above. The third respondent is directed to complete the registration of the document if it is otherwise in order.

10. With the above directions, this Writ Petition is disposed of. No costs.



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To

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100, Santhome High Road
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- 2.The District Registrar
Erode District.
- 3.The Joint I Registrar
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