



W.P.No.26648 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.26648 of 2024

Gopalan Kumar Iyer @ Kumar Gopal

... Petitioner

vs.

1.The District Registrar,
Chengalput.

2.The Sub Registrar,
Sunguvarchaththiram.

... Respondents

Prayer: Writ Petition filed under Article 227 of Constitution of India, to issue a Writ of Certiorarified Mandamus, directing the respondents to call for the records of the impugned order dated 08.07.2024 passed by the 1st respondent vide No.3933/Aa1/2018 quash the same and consequently direct the 2nd registrar to register the settlement deed, dated 09.06.2016 with pending document No.P77 of 2016 executed by petitioner in favour of petitioner's wife Mrs.Bhavani Kumarand.

For Petitioner : Mr.S.M.Murali Dharan

For Respondents : Mr.P.Harish
Government Advocate



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ORDER

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Aggrieved by the order passed by the first respondent affirming the order of the second respondent refusing registration of the document presented by the petitioner for registration of settlement deed, the petitioner is before this Court.

2. It is the case of the petitioner that the subject property originally belonged to petitioner's brother Gopalan Neelakantan Iyer, who died as a bachelor on 08.03.2012. He purchased the subject property by a registered sale deed dated 04.01.1995 and during his life time he executed a Will dated 24.09.2011 bequeathing all his properties including subject property in favour of the petitioner. Therefore, in his capacity as testamentary heir of Gopalan Neelakantan Iyer, the petitioner executed a settlement deed in favour of his wife on 09.06.2016 and presented the same for registration.

3. The 2nd respondent refused registration on the ground that Will executed by Gopalan Neelakantan Iyer was unregistered one. The 2nd respondent also refused the registration on the ground that there was an



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objection from Official Liquidator. Aggrieved by the said order, the petitioner filed an appeal before the first respondent and produced no objection letter from the Official Liquidator. The first respondent affirmed the order passed by the second respondent on the ground that Will relied on by the petitioner was unregistered one. Aggrieved by the same, the petitioner is before this Court.

4. The learned counsel appearing for the petitioner submitted that registration of Will is optional and therefore, the respondents are not entitled to refuse registration on the ground that Will relied on by the petitioner was unregistered.

5. In support of his contention, the learned counsel for the petitioner relied on the order passed by this Court in W.P.(MD).No.17237 of 2022.

6. The learned Government Advocate appearing for the respondents submitted that Will is always susceptible to challenge by the



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legal heirs of the testator and hence the respondent rightly refused registration on the ground that Will produced by the petitioner was unregistered one. It is settled law that registration of Will is only optional and even unregistered Will is valid in law unless it is successfully challenged by the legal heirs of testator. In the case on hand, there is no objection before the respondents regarding the entitlement of the petitioner under Will by any of the legal heirs of the testator. In such circumstances, the respondents are not justified in refusing registration on the ground, the Will produced by the petitioner was unregistered one. In this regard, it would be appropriate to refer to the order of this Court in ***W.P.(MD).No.17237 of 2022 in Kuduva T Kasi Viswanathan Vs. The Sub Registrar, Paramakudi, Ramanathapuram District.*** The relevant observation reads as follows:

It is relevant to note that the Sub Registrar has no power to decide the issue whether the Will is valid or not. The Will can be challenged only by the family members and a doubt can be entertained by the family members. When there is no petition whatsoever in this regard, the Sub Registrar going into merits of the Will does not arise at all.



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7. Therefore, it is clear that the respondents have no authority to refuse registration of the settlement deed submitted by the petitioner on the ground that Will produced by the petitioner is unregistered one. In the impugned order, the first respondent directed the petitioner to probate the Will produced by him under the provision of Indian Succession Act. The probate of the Will is compulsory only in cases where property covered by the Will is located within Chennai City. In the case on hand, the property is situated outside Chennai. Therefore, probate of the Will is only optional. It is not for the respondents to insist for probate of the Will especially when there is no objection.

8. In such circumstances, the impugned order passed by the first respondent dated 08.07.2024 affirming the refusal order passed by the 2nd respondent is set aside and the writ petition stands allowed. The petitioner is directed to produce the document before the second respondent within a period of two weeks from the date of receipt of copy of this order and the second respondent shall register the same, if the same is otherwise in order.



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It is needless to say, the registration of the settlement deed presented by the petitioner will no way affect the rights of the other legal heirs of testator, if any. No costs.

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

1.The District Registrar,
Chengalput.

2.The Sub Registrar,
Sunguvarchaththiram.



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S.SOUNTHAR, J.

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