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W.P.No.26387 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2024

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THE HONOURABLE MR. JUSTICE S. SOUNTHAR

W.P No.26387 of 2024

Ellammal

...Petitioner

Vs.

The Sub - Registrar,
Sub - Registrar Office,
Pennagaram, Dharmapuri.

...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records of the respondent herein pertaining to his proceedings in RFL/Pennagaram/117/2024 dated 19.08.2024 and quash he same and further direct the respondent herein to register the release deed dated 19.08.2024 and return the same to the petitioner.

For Petitioner : Mr.P.Thirumalaivasan

For Respondent : Mr.M.Shahjahan
Special Government Pleader



ORDER

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Aggrieved by the impugned Refusal Check Slip bearing Refusal No.RFL/Pennagaram/117/2024, dated 19.08.2024 issued by the respondent refusing to register the Release Deed dated 19.08.2024 executed by the petitioner in favour of her father on the ground that petitioner failed to produce her original parent documents, the petitioner has come up by way of this writ petition.

2. According to the petitioner, the property situated in Survey No.379/8 and 375/1 to an extent of 16.5 *ares* situated in Parvathanahalli village, Pennagarm Taluk, Dharmapuri District belongs to petitioner's paternal grand father T. Gopal. He executed a registered Will dated 18.04.2016 bequeathing the above mentioned property in favour of the petitioner and her father Krishnan, The above mentioned property is described as 'B' schedule in the will executed by the petitioner's grand father. The original Will was misplaced by the petitioner and a police complaint was lodged in this regard. A CSR receipt issued by the police authorities is enclosed in typed set. The petitioner also issue a public notice on 14..08.2024 in a local daily Newspaper (Makkal Kural) with regard to missing of the document.



3. Now the petitioner executed a Release Deed releasing her 1/2 share in the property in favour of her father. On 19.08.2024, the same was presented before the respondent. The respondent refused to register the same on the ground that the the petitioner failed to produce the original Will executed by the petitioner's grand father.

4. 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 Will in favour of the petitioner was misplaced and in spite of her diligent efforts, it could not be traced. In such circumstances, the respondent is not entitled to refuse registration on the ground that petitioner failed to produce the original title document.

5. Mr. M. Shahjahan, learned Special Government Pleader, who takes 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.



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6. The issue involved in this case regarding non-production of original title document was already considered by the Division Bench of the 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.
... ..”*

7. I had 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 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



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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 law laid down in the above mentioned cases, failure of the petitioner to produce original title documents at the time of registration, cannot be a ground for refusal of registration. The reason for petitioner's failure to produce her original document was the misplacement of original document. Therefore, the respondent is not justified in refusing registration of the release Deed presented for registration. The petitioner is ready to file an affidavit mentioning the misplacement of documents and furnish paper publication effected on 14.08.2024. Therefore, the impugned refusal slip is not sustainable in the eye of law and hence the same is quashed.

9. In view of the same, this Court is inclined to direct the petitioner to



re-present the release deed before the respondent within a period of two weeks from the date of receipt of a copy of this order along with an affidavit narrating the reason for her failure to produce original title Deed in her favour and newspapers publication. On receipt of the settlement deed along with affidavit and newspaper advertisement as indicated above, the respondent shall consider the registration of the document, if it is otherwise in order.

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

10.09.2024

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

The Sub - Registrar,
Sub - Registrar Office,
Pennagaram, Dharmapuri.



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S. SOUNTHAR, J.

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