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W.P No.26961 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2024

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P No.26961 of 2024

Deepa Sekar

...Petitioner

Vs.

The Sub-Registrar,
Joint-1 Sub Registrar Office,
Tambaram,
Chennai 600 059.

...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondent to register the General Power of Attorney Deed dated 23.08.2024 in respect of the property measuring an extent of 36 cents (or) 15681 Sq.ft. along with constructed building extent of 600 Sq.ft., in front side of land used as clinic and 600 Sq.ft., constructed building in the middle portion of land used as residence an ACC Shed extent of 400 Sq.ft., premises used as service quarters, comprised in Old Survey No.183/5, situated at Door No.147, Suddhananda Barathi Street,



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Irumbuliur Village, Tambaram Taluk, Chengalpattu District, without insisting on production of the original settlement deeds and by accepting the certified copies of the same.

For Petitioner : Mr.R.Jayaprakash

For Respondents : Mr.M.Shah Jahan
Special Government Pleader

ORDER

The petitioner herein seeks a direction to the respondent to register the general power of attorney dated 23.08.2024 in respect of the property comprising an extent of 36 cents with building comprised in Old S.No.183/5, at Door.No.147, Suddhananda Barathi Street, Irumbuliur Village, Tambaram Taluk, Chengalpattu District, without insisting production of original settlement deed.

2. It is the case of the petitioner that the above mentioned property was originally owned by the petitioner's father Dr.Thirumurthy. He purchased the same under a registered sale deed dated 27.09.1974. The petitioner's father died instate on 23.07.2014 leaving behind her mother Kousalya and her brother



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Dinesh and the petitioner. Subsequently, the petitioner's mother Kousalya

executed a registered settlement deed on 12.09.2014 settling her 1/3rd share in favour of the petitioner. The petitioner's brother Dinesh also executed a registered settlement deed dated 01.09.2015 settling his 1/3rd share in favour of the petitioner. Thus, the petitioner claims absolute right over the above said property. Now, the petitioner executed a power deed in favour of her husband to give power to deal with the property. The document was presented for registration before the respondent. However, the respondent orally refused to register the document on the ground that the petitioner failed to produce the original settlement deed executed by her mother and brother in her favour. It is asserted that the original settlement deeds executed by her mother and her brother were misplaced and the petitioner is willing to produce the certificate copy of the settlement deed before the respondent.

3. The learned counsel for the petitioner submits that failure to produce the original title document is not a ground for rejection of the document presented for registration. The learned counsel also submits that the petitioner is ready to file an affidavit regarding the misplacement of the document.



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4. The learned Special Government Pleader, who takes notice for the respondent, by relying on Rule 55-A framed under Registration Act, submitted that unless the original title documents are produced, the respondent cannot register the documents.

5. The issue involved in this writ petition regarding the failure to produce the original title documents at the time of registration was covered by the decision of this Court in the case of ***Venugopal Vs The Inspector General of Registration in W.P.No.22270 of 2024***. The relevant observations of this Court 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



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*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.



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*18. Therefore, the Writ Petition stands allowed
with the above directions. No costs.”*

6. Therefore, the respondent is not entitled to refuse to register the document on the ground that the petitioner failed to produce the original title documents before the respondent. If the petitioner is ready to file an affidavit regarding misplacement of the original document, the respondent can consider registration of the document. In view of the settled position, the impugned order passed by the respondent is set aside and the petitioner is directed to represent the document within a period of two weeks from the date of receipt of copy of this order along with his affidavit mentioning the misplacement of the document and the inability to produce the original document as indicated above. He shall also file News paper advertisement regarding missing of documents. Accordingly, the respondent is directed to consider the document presented by the petitioner, and the respondent shall register the same if it is otherwise in order.

7. With these observations, the writ petition stands allowed. No



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

The Sub-Registrar,
Joint-1 Sub Registrar Office,
Tambaram,
Chennai 600 059.



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S.SOUNTHAR, J.

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