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W.P.No.26715 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2024

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THE HONOURABLE MR. JUSTICE S. SOUNTHAR

W.P No.26715 of 2024

T.Karthikeyan

...Petitioner

Vs.

The Sub - Registrar,
Yercaud Sub Register office,
Salem District.

...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 on the file of the respondent impugned Refusal Check Slip No.RFL/Yercaud/37/2024 dated 30.08.2024 quash the same and consequently direct the respondent to register the settlement deed dated 30.08.2024 by verifying the certified copy of the parent document bearing No.937/2018 and encumbrance certificate without insisting for original parent deed.

For Petitioner : Mr.T.N.Rangesh Kanna

For Respondent : Mr.M.Shahjahan
Special Government Pleader



ORDER

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Aggrieved by the impugned Refusal Check Slip bearing Refusal No.RFL/Yercaud/37/2024, dated 30.08.2024 issued by the respondent refusing to register the Settlement Deed dated 30.08.2024 executed by the petitioner in favour of his father on the ground that the petitioner failed to produce his original parent documents, the petitioner has come up by way of this writ petition.

2. According to the petitioner, he purchased the property in Door No.9, Asambur Village, Yercaud Taluk, comprised in survey No.55/1B1, after Sub-Division of survey No.55/1B1A measuring an extent of 2520sq.ft. plot No.21, bearing Survey Nos. 55/55/1B1A and 55/8A and 55/2A in patta No.233 under registered sale deed dated 11.12.2018 from one Amitabhadas. The vendor of the petitioner purchased the subject property under the registered sale deed dated 11.07.2012. It is further stated by the petitioner that when he shifted his house from Salem to Mettur, the title documents got misplaced and inspite of his best efforts he could not trace out the same.



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3. Now, the petitioner executed a Settlement Deed in favour of his father on 30.08.2024 and the same was presented before the respondent for registration. The respondent refused to register the same on the ground that the the petitioner failed to produce the original title documents.

4. 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.

5. 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



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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



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*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.
... ”*

6. 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*



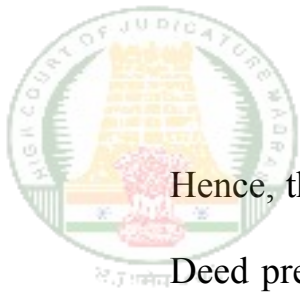
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Court directs the 2nd respondent to register the document on petitioner fulfilling certain conditions, which can be treated as substantial compliance of Proviso 3 to Rule 55-A.

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."

7. 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 his original document was the misplacement of original document.



Hence, the respondent is not justified in refusing registration of the Settlement Deed presented for registration. Therefore, the impugned refusal slip is not sustainable in the eye of law and hence the same is quashed.

8. In view of the same, this Court is inclined to direct the petitioner to re-present the document 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 his failure to produce original title Deed in his 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.

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

18.09.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
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S. SOUNTHAR, J.

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W.P.No.26715 of 2

To

The Sub - Registrar,
Yercaud Sub Register office,
Salem District.

W.P No.26715 of 2024

18.09.2024