



W.P.No.26422 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2024

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.26422 of 2024

P.Karuppanan Gounder @ Karuppanan

... Petitioner

VS.

1.The District Registrar,
Namakkal District,
Namakkal.

2.The Sub Registrar (In-Charge),
Namagiripettai,
Namakkal District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order made in pending Document No.21/2024 dated 16.07.2024 passed by the 2nd respondent, quash the same and consequentlhy direct the 2nd respondent to register the settlement deed dated 20.05.2024 and pass such further or other suitable orders.



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For Petitioner : Mr.A.Saravanan

For Respondent : Mr.M.Shahjahan
Special Government Pleader

ORDER

Aggrieved by refusal check slip issued by the second respondent refusing to register the settlement deed presented by the petitioner for registration, the petitioner has filed the present writ petition.

2. According to the petitioner, he acquired right over the subject property under partition deed dated 03.05.1971 entered between the petitioner, his father and brothers. The subject property was allotted to the share of the petitioner under 'B' schedule to the partition deed. Now the petitioner executed the settlement deed in favour of his grandson viz., Naveen Kumar on 20.05.2024 and presented the same for registration before the second respondent. The second respondent passed impugned refusal check slip refusing to register the settlement deed on the ground that the petitioner failed to produce the original partition deed dated 03.05.1971. Aggrieved by the same, the petitioner is before this Court.



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3. The learned counsel appearing for the petitioner submits that failure to produce the original partition deed is not a ground to reject the document. The learned counsel by taking this Court to the averment contained in the affidavit filed in support of the writ petition stated that the original document not available with him. According to him it was available with his father and could have been handed over to his brother and now the petitioner is not having custody of the documents.

4. The learned Special Government Pleader who is taking notice for the respondent by relying on Rule 55A Rules framed by the Registration Act submitted that unless the original title document of the petitioner is produced the second respondent cannot consider the document for registration.

5. The issue involved in this writ petition with regard to the production of the original title document was also considered by the Division Bench of this Court in *M.Ariyanatchi and another vs. Inspector General*



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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



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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.”



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6. In view of the law laid down by the Division Bench in the above mentioned case, the impugned check slip is quashed and the writ petition stands allowed. The petitioner is directed to represent the document within a period of two weeks along with affidavit mentioning non availability of original title document with him and present custody of document. The second respondent shall register the document to be represented for registration along with affidavit as indicated above, if it is otherwise in order.

7. Accordingly, this writ petition stands allowed. No costs.

06.09.2024

Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
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To
11. The District Registrar,
Namakkal District,
Namakkal.

2. The Sub Registrar (In-Charge),



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Namagiripettai,
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S.SOUNTHAR, J.

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