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W.P. No. 27153 of 2024.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2024

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P. No.27153 of 2024

Thangavadivoo

..Petitioner

Vs.

1. The Inspector General of Registration

O/o. The Inspector General of Registration

Samthome High Road,

Mylapore, Chennai-4.

2. The District Registrar (Administration)

O/o. District Registrar, South Chennai Registration District

Chennai.

3. The Sub-Registrar

O/o. Sub-Registrar, Virugambakkam

Virugambakkam, Chennai

...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records in respect order of third respondent RFL/Virugambakkam/43/2024, dated 31.07.2024 and quash the same and issue a direction to the third respondent to register the release deed dated 31.07.2024 in respect of the petitioners share in property, in S.No. 95/4B and 95/4C1, measuring an extent of 31 cents and 20 cents in Door No.426, PH Road, Maduravoyal Village, within the



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Virugambakkam Sub Registration District and Registration District of South,
Chennai.

For Petitioner
For Respondents 1 to 3

:Mr.D.Chandrasekar
: Mr.T.Chezhiyan
Additional Government Pleader

ORDER

Aggrieved by the impugned refusal slip issued by the 3rd respondent refusing to register the release deed executed by the petitioner in favour of her son on the ground that original title documents were not produced, the petitioner has come before this Court by way of writ petition.

2. According to the petitioner, 31 cents of land in Survey No.95/4B in Door No.426, PH Road, Maduravoyal, Chennai was purchased by the petitioner along with her husband under sale deed dated 25.02.1974. Likewise, 20 cents of land in Survey No.95/4C1 was purchased by petitioner's husband under sale deed dated 06.05.1971. Now, the petitioner's husband passed away. The petitioner has got two sons and two daughters. It is the further case of the petitioner that she wanted to settle her share in the property in favour of her younger son namely Prabhu and executed a release deed on 31.07.2024 and



presented the same for registration before the 3rd respondent. The said document was refused registration on the ground that petitioner failed to produce the original title documents.

3. The learned counsel for the petitioner, by taking this Court to the averments found in the affidavit filed in support of this petition, submits that original documents were taken away by petitioner's elder son namely Babu after death of petitioner's husband. Therefore, the original title documents are not in possession of the petitioner. The learned counsel also, by relying on the order passed by the Division Bench of this Court in *Ariyanatchi case*, submitted that failure to produce the original title documents when the same is in possession of one of the co-owners is not a ground to refuse registration.

4. The learned Additional Government Pleader, who is taking notice for the respondents 1 to 3, by relying Rule 55-A of Registration Act, submits that unless the original title documents are produced, the document presented cannot be considered for registration by the registering authorities.



5. The issue involved in this matter relating to non-production of original title documents in view of its availability with other co-owner was considered by the Division Bench of this Court in the case of ***M.Ariyanatchi and other Vs The Inspector General of Registration*** in ***W.A.(MD).No.856 of 2023***. The relevant observation of this Court reads as follows:-

“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. Conduct of an enquiry of the nature that is recommended under Clause (f), extracted supra, would only lead to confusion. If the other legal heirs want to claim exclusive title, it is always open to them to approach the competent Civil Court and if they are able to establish their exclusive right before the Civil Court, the



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alienation will be invalid. In such circumstances, when the substantive law takes care of and protects any misuse or abuse, we do not think that Rule 55-A of the Registration Rules is the only method by which fraudulent transactions are prevented.

14. In the light of the above, we do not think that insistence on production of original document, in all cases across the Board, could be sustained. Wherever the vendor is a co-owner and it is claimed that the original document is in the hands of the other co-owners, who are reluctant to part with it, the Registrar can always take a declaration in the form of a sworn affidavit from the co-owner, who is the executant and register the document. If the other siblings dispute the rights of the executant, they can also do so before the Civil Court and there is no law that authorizes the Registrar to conduct a trial to decide title to the property in question. What is sought to be done in the garb of an enquiry is exactly that. We are, therefore, convinced that the order of the Writ Court as well as the check slip issued by the Sub Registrar cannot be sustained.



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15. The writ appeal is allowed and the order of the Writ Court, dated 24.04.2023, passed in W.P.(MD) No.9525 of 2023 is set aside. The writ petition in W.P.(MD) No.9525 of 2023 will stand allowed. The check slip issued by the Sub Registrar is quashed. The Joint Sub-Registrar / second respondent is directed to register the document, after getting a declaration in the form of sworn affidavit from the executants of the document that the original sale deed dated 27.01.2003 executed in favour of Shanmugam is in the hands of the male heirs of Shanmugal Ambalam and on production of the certified copy of the document along with the other documents, namely, Patta, death certificate and legal heirship certificate of Shanmugam Ambalam. The process of registration shall be completed within fifteen days from the date of representation of the document by the appellants. Since we have quashed the rejection of the check slip today, the appellants will have four months time to represent the document for registration from today. No costs."



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6. In view of the law laid down by the Division Bench of this Court in the above mentioned case law, if the petitioner is prepared to file an affidavit regarding custody of the document with other co-owner, the same is sufficient to proceed with the registration. Therefore, the impugned refusal slip passed by the 3rd respondent is quashed and the writ petition stands allowed. The petitioner is directed to represent the document before the 3rd respondent within a period of two weeks from the date of receipt of copy of this order along with her affidavit about the custody of the original title documents. On representation of the documents along with the affidavit as stated above, the 3rd respondent shall consider the same for registration if it is otherwise in order.

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Index : Yes/No

Neutral Citation : Yes/No

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