



W.P. No.30033 of 2024

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2024

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P. No.30033 of 2024

Selvam

... Petitioner

Vs.

1.The District Registrar,
Registration Department,
Dharmapuri District,
Dharmapuri.

2.The Sub-Registrar,
Palacode Sub-Registration Office,
Dharmapuri District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 2nd Respondent dated 13.08.2024 in Refusal No.RFL/PALACODE/202/2024 and to quash the same and consequently direct the 2nd Respondent to register the sale deed and to return the same.



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For Petitioner : Mr.C.Prabakaran

For Respondents : Mr.T.Chezhiyan
Additional Government Pleader

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ORDER

Aggrieved by the refusal order issued by the Respondent refusing to register the document presented by the petitioner for registration, the petitioner has come before this Court.

2. According to the petitioner, the properties situated in Survey No.84/1 and Survey No.85/1 in Errakuttahali Village, Palacode Taluk, Dharmapuri District originally belongs to one Kuppusamy and his family. The said properties were purchased by Chinnakannu, son of Kuppaegoundar and another Chinnakannu, son of Vengaiyagoundar under a registered sale deed dated 12.02.1973. The joint patta for the property stands in the name of legal heirs of both Chinnakannus in Patta No.285. Chinnakannu, son of Vengaiyagoundar died leaving behind petitioner's vendors namely Madhammal and two others. Now, they executed a sale deed dated 07.08.2024 in respect of their half share of the subject property in favour of the petitioner and the same was presented for registration before the Respondents. The registration of document was refused mainly on the ground that the petitioner failed to produce the original sale deed



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in favour of both the Chinnakannus dated 12.02.1973.

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3. The learned counsel for the petitioner submits that original title document is available with the co-owner namely Chinnakannu, son of Kuppaegoundar and therefore the petitioner produced only the certified copy of the sale deed dated 12.02.1973. The learned counsel for the petitioner further submitted that failure to produce the original title document when the same is available with the other owner cannot be a ground for rejecting the registration of document.

4. The learned Additional Government Pleader appearing for the Respondents by relying on Rule 55A of the Registration Act submits that unless the original document is produced the authorities cannot consider registration of document.

5. The issue involved in the case namely non-production of title document was already decided by the Division 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:-



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“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



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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.”

6. In view of the law laid down by the Division Bench of this Court when the original document is not available with the vendor of the petitioner they cannot be expected to produce the same. The authority shall register the document if the petitioner is ready to produce the certified copy of the document along with the affidavit mentioning that the document is available with the other co-owner. Therefore, the impugned order passed by the 2nd Respondent is quashed and the writ petition is allowed. The petitioner is directed to represent



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the document along with certified copy of the sale deed dated 12.07.1973 and affidavit as indicated in *Ariyanatchi case* cited supra before the 2nd Respondent within a period of two weeks from the date of receipt of a copy of this order. The 2nd Respondent shall register the document, if it is otherwise in order. No costs.

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Speaking (or) Non Speaking Order

Index : Yes/ No

Neutral Citation: Yes/No

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To:

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Registration Department,
Dharmapuri District,
Dharmapuri.
- 2.The Sub-Registrar,
Palacode Sub-Registration Office,
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S. SOUNTHAR, J.

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