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W.P.No.30380 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2024

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.30380 of 2024

M.Samakkal

... Petitioner

vs.

The Joint Sub-Registrar – II,
Office of The Sub-Registrar
Krishnagiri,
Krishnagiri District

... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the Respondent to forthwith register the Sale Deed of the Petitioner dated 19.09.2024 without insisting for the Original Parent Document dated 07.12.1994 (Document No.1260 of 1994), after obtaining an Undertaking from the Petitioner.

For Petitioner : Mr.K.Selvaraj

For Respondent : Mr.T.Chezhiyan
Additional Government Pleader

ORDER



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By consent of both the learned counsel appearing for the petitioner as well as respondent, this writ petition is disposed of at the admission stage itself.

2. The petitioner herein seeks a direction to the respondent to register the Sale Deed dated 19.09.2024 without insisting production of original parent document.

3. It is the case of the petitioner that she along with one M.Venkatammal jointly purchased the property measuring an extent of 1.80 and 1/2 acres of land in Survey No.44/2A, Patta No.955 at Sokkadu Village, Krishnagiri Taluk and District under a registered Sale Deed dated 07.12.1994 vide Document No.1260 of 1994 on the file of the Joint Sub-Registrar-II, Krishnagiri. The undivided share of M.Venkatammal was already sold by her to one M.Shanmugam.

4. Now, the petitioner executed a Sale Deed dated 19.09.2024 in respect of her undivided half share in favour of one M.Sundarammal and



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presented the document for registration before the respondent. However, the respondent was not willing to register the document on the ground that the petitioner failed to produce the original parent title document. It is the specific case of the petitioner that original parent title document was not handed over to the petitioner by other co-owner-M.Venkatammal. Therefore, the petitioner is not in a position to produce the same before the Registering Authority. In these circumstances, the petitioner seeks a direction to the respondent to register the Sale Deed without insisting production of original parent title document.

5. Mr.T.Chezhiyan, learned Additional Government Pleader, who is taking notice for the respondent, on written instructions, would submit that the Sale Deed presented for registration was received by the respondent and the respondent directed the petitioner to attend enquiry before the District Registrar (Administration) regarding availability of parent title document in the hands of co-owner.

6. It is stated that the respondent is not willing to register the document in the absence of original title document. The learned Additional



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Government Pleader appearing for respondent by relying on Rule 55-A of Registration Act, submitted that unless original title document is produced, the document presented for registration will not be considered for registration.

7. 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***, while considering the cases where the original parent title document are in the custody of the co-owners, directed the Registering Authority to register the document by getting affidavit from the executant. The relevant observation reads 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.

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.



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. ”

8. 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 law 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 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."

9. In view of the law settled by above mentioned case laws, the



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respondent is not entitled to refuse registration on the ground of non-production of original title document. The petitioner is directed to represent the document along with affidavit mentioning his inability to produce original title document and newspaper advertisement before the Registering Authority, within a period of two weeks from the date of receipt of copy of this order. The respondent shall consider the same for registration, if it is otherwise in order.

10. With the above direction, the Writ Petition stands disposed of. No costs.

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Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
dm



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To

The Joint Sub-Registrar – II,
Office of The Sub-Registrar
Krishnagiri,
Krishnagiri District.



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S.SOUNTHAR, J.

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