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W.P.No.30539 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2024

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.30539 of 2024

V.Thirumurthy

... Petitioner

VS.

The Sub Registrar,
Nambiyur Sub-Registrar Office,
Nambiyur,
Erode District.

... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records and Quash the Refusal Check Slip No: RFL/Nambiyur/23/2024 dated: 16-08-2024 and direct the respondent to register the Gift deed presented by the petitioner within a time frame as may be fixed by this Court.

For Petitioner : M/s.I.M.Siddartha Ramarajan

For Respondent : Mr.B.Vijay
Additional Government Pleader

ORDER



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WEB COPY 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. Aggrieved by the impugned Refusal Check Slip in No.RFL/Nambiyur/23/2024, dated 16.08.2024 issued by the respondent refusing to register the Gift Deed presented for registration, the petitioner has come before this Court.

3. It is the case of the petitioner that the subject property was originally purchased by his father-Vengadasalam and his grandfather-Avinashiappa Goundar jointly under a registered Sale Deed dated 02.05.1977. Later petitioner's grandfather bequeathed his half share of 2.02 acres in favour of petitioner under a Will dated 19.05.2014. The petitioner's grandfather expired on 17.07.2018. The petitioner claiming absolute right over the subject property (2.02 acres subject matter of the Will) executed a Gift Deed in favour of his sons and presented the same for registration before the respondent. The same was refused registration by the respondent



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on the ground that the petitioner failed to produce original parent document.

The impugned order further says that the unprobated Will submitted by the petitioner could not be taken into consideration. Aggrieved by the same, the petitioner is before this Court.

4. The learned counsel appearing for the petitioner submits that the original parent title document in favour of the petitioner's father and grandfather was misplaced and its whereabouts is not known and the petitioner is ready to reproduce the certified copy of the Sale Deed in favour of his grandfather. The learned counsel further submits that subject property is situated in Polavapalayam Village, Nambiyur, Gobichettipalayam Taluk, Erode District. Hence, the probate of the Will is only optional and respondent is not justified in refusing registration on the ground that Will produced by the petitioner was not probated.

5. Mr.B.Vijay, learned Additional Government Pleader, who is taking notice for the respondent, by relying on Rule 55-A of the Registration Rules, submits that unless original parent document is produced by the petitioner, the Registering Authority cannot entertain the document presented for



registration.

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6. Failure to produce the original parent title document is not a ground to refuse registration as held 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*, and 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.

*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 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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7. 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*



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Rule 55-A.

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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.”

8. As far as Will is concerned, the property covered by the Will is situated outside the City of Madras and hence, probate of the Will is not compulsory one. Therefore, the respondent is not justified in rejecting the



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document on the ground that Will relied on by the petitioner was unprobated one. In view of foregoing discussions, the impugned order is liable to be set aside and accordingly, the Writ Petition stands allowed.

9. The petitioner is directed to represent the document for registration before the respondent along with affidavit mentioning the misplacement of the original title document in favour of his grandfather and newspaper advertisement as indicated above, 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. No costs.

18.10.2024

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



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To

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The Sub Registrar,
Nambiyur Sub-Registrar Office,
Nambiyur,
Erode District.



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S.SOUNTHAR, J.

dm

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