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W.P.No.31364 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2024

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THE HONOURABLE MR. JUSTICE S. SOUNTAR

W.P No.31364 of 2024

G.Venugopal

...Petitioner

Vs.

1. The District Registrar,
Office of Central Madras,
268, Bharathi Salai, Express Estate,
Royapettah, Chennai,
Tamil Nadu - 600 014.
 2. The Sub-Registrar,
Mylapore, 9, Kavignar Bharathidasan Road,
Seetammal Colony, MIC Colony,
Alwarpet, Chennai,
Tamil Nadu - 600 018.
- ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records of the second respondent pertaining to refusal check slip dated 24.09.2024 bearing refusal Number:RFL/Mylapore/27/2024 and directing the second respondent to entertain and register the settlement deed dated 24.09.2024 executed by the petitioner in favour his daughter without insisting for original document in the



light of the dictum laid down by this Court in MARIYANACHI Vs. Inspector General of Registration reported in (2024) 3 MLJ 55 and Subramani Vs. Sub-Registrar, Office of the Sub-Registrar Rasipuram and another reported in (2024) 3 MLJ 588.

For Petitioner : Mr.R.Chandrasudan

For Respondents : Mr.P.Harish
Government Advocate

ORDER

Aggrieved by the impugned Refusal Check Slip bearing Refusal No.RFL/Mylapore/27/2024, dated 24.09.2024 issued by the second respondent refusing to register the settlement Deed dated 24.09.2024 executed by the petitioner in favour of his daughter on the ground that the petitioner failed to produce the original documents, the petitioner has come up by way of this writ petition.

2. It is the case of the petitioner that the subject property was purchased by him under registered sale deed dated 04.12.1997. He executed a settlement deed in favour of his daughter on 24.09.2024 and presented the same for registration before the second respondent. The registration was refused mainly on the ground that the petitioner failed to produce the original



title documents. Aggrieved by the same, the petitioner is before this Court.

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3. The learned counsel for the petitioner, by taking this Court to the averments found in the affidavit filed in support of this writ petition, submitted that the original title documents of the petitioner were placed in the bank locker, which is being operated jointly by the petitioner and his wife. The key of the locker was entrusted to the petitioner's wife, when the relationship was cordial. Now, the relationship between the petitioner and his wife got strained and they were separated due to matrimonial dispute and the matrimonial proceeding is pending. In such circumstances, the petitioner is unable to produce the original title documents before the registering authority.

4. The learned counsel for the petitioner further submits that now, the petitioner executed a settlement deed in favour of his daughter on 24.09.2024 and presented the same for registration before the second respondent. However, the second respondent refused to register the same on the ground that the petitioner failed to produce the original title documents. The petitioner is inclined to produce a certified copy of the documents with an affidavit narrating the reason for his failure to produce the original document in his favour.



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5. Mr. P.Harish, learned Government Advocate, who takes notice for the respondents, by relying on Rule 55-A of the Registration Rules framed under the Registration Act, 1908, submitted that unless the original document is produced, the Registering Authority cannot entertain the document for registration.

6. The issue involved in this case regarding non-production of the original title documents, was already considered by the Division Bench of this Court in ***M.Ariyanatchi and another vs. Inspector General of Registration and another*** by order ***dated 27.06.2023*** made in ***W.A.(MD).No.856 of 2023***, wherein it was 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



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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



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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.

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 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



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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.”

8. The Division Bench of this Court in **P. Pappu vs. The Sub Registrar,**



Rasipuram SRO, Rasipuram, Namakkal District by order dated 27.09.2024

passed in ***W.A.No.1160 of 2024***, has observed as follows:-

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"9. The power conferred under Section 68 of the Registration Act, 1908, is only a supervisory jurisdiction and it invests the power in the Registrars to issue and order consistent with the Act. As we already observed, the provision of Section 55-A inserted in the rules has no statutory authority. Section 69 of the Registration Act 1908, enables the Inspector General to make rules providing for the matters that are set out in Clauses (a) to (h). The provision namely, Section 69 further provides that the rule so framed shall be consistent with the provisions of the Act. Therefore, the rules made by the Inspector General of Registration exercising the power under Section 69 cannot override the provisions of the Act. Rule 162 of the Registration Rules prescribes the circumstances under which a Registrar can refuse to register an instrument. Clause 20 has been added to Rule 162 to enable the Registrar to refuse registration, if the presentant does not produce the original deed or record specified in Rule 55A. We do not propose to delve into the validity or otherwise of the rule, but we must record that prima facie, the rule overreaches the legislation and it is beyond the powers of the Inspector General of Registration under Section 69."

9. In view of the law laid down in the above mentioned cases, this court is of the opinion that the failure of the petitioner to produce the original



title documents at the time of registration, cannot be a ground for refusal of registration. Therefore, the second respondent is not justified in refusing registration of the settlement deed executed by the petitioner. The petitioner is ready to file an affidavit narrating the reason for his failure to produce the original documents standing in his favour.

10. Therefore, the impugned refusal slip is not sustainable in the eye of law and the same is quashed. Consequently, the petitioner is directed to re-present the settlement deed before the second respondent within a period of two weeks from the date of receipt of a copy of this order along with an affidavit narrating the reason for his failure to produce original documents standing in his favour. On receipt of the settlement deed along with affidavit, the second respondent shall consider the registration of the document, if it is otherwise in order.

11. The Writ Petition stands allowed in the above terms. No costs.

25.10.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
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To

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Office of Central Madras,
268, Bharathi Salai, Express Estate,
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Tamil Nadu - 600 014.
2. The Sub-Registrar,
Mylapore, 9, Kavignar Bharathidasan Road,
Seetammal Colony, MIC Colony,
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Tamil Nadu - 600 018.

S. SOUNTHAR, J.

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