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W.P.No.32031 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2024

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THE HONOURABLE MR. JUSTICE S. SOUNTHAR

W.P No.32031 of 2024

Thirumangai

...Petitioner

Vs.

1. The District Registrar, (Administrative),
Syrian church Road,
Coimbatore - 641 018.
2. The Sub Registrar,
Anaimalai Taluk,
Coimbatore District - 642 104.
3. Gobi Krishnan
4. Kiruthika
5. Mohan Raj
6. Rajalakshmi
7. Madhu Aravind
8. Uma
- ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling records relating to the refusal check slip RFL/Anaimalai/131/2024 on 26.09.2024 on the file of second respondent and quash the same and consequently direct the second respondent to register the settlement deed dated 24.09.2024 presented by the petitioner for registration without insisting upon the production of the original



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W.P.No.32031 of 2



parent document.

For Petitioner : Mr.K.Sudhakar

For Respondents : Mr.M.Shahjahan
Special Government Pleader

ORDER

Aggrieved by the impugned Refusal Check Slip bearing Refusal No.RFL/Anaimalai/131/2024, 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 parent documents, the petitioner has come up by way of this writ petition.

2. It is the case of the petitioner that the subject property originally belongs to the petitioner's paternal grandfather namely Masa Naicker and he died intestate leaving behind his only son namely Thandapani. The petitioner's father Thandapani executed a registered Will dated 31.01.2006 bequeathing the property in favour of his legal representatives. Subsequently, the petitioner's father Thandapani died on 21.02.2006. After his demise the said registered Will came into force and the original Will executed by the father is in the custody of the petitioner's brother. Now the petitioner executed a settlement



deed setting the subject property in favour of her daughter and the document was presented before the second respondent for registration. The second respondent issued impugned refusal slip refusing registration on the ground of non production of original will executed by the petitioner's father. Aggrieved by the same, the petitioner is before this Court.

3. The learned counsel for the petitioner submitted that the failure to produce the original title documents namely Will executed by her father is not a valid ground for rejection of the document.

4. Mr.M.Shahjahan, learned Special Government Pleader, who takes notice for the respondents 1 & 2, 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.

5. 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 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



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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.
... ..”*

6. 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-



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*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



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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."

7. 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:-

"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."

8. In view of the law laid down in the above mentioned cases, this court is of the opinion that the impugned refusal slip issued by the second respondent on the ground that the petitioner failed to produce the original Will is not sustainable in law, especially, when the original Will handed over to the petitioner's brother / third respondent, who is not in good relationship with the petitioner.

9. In view of the same, 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 her failure to produce original documents standing in her favour and certified copy of Will. 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.



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

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28.10.2024

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

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WEB COPY

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S. SOUNTHAR, J.

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WEB COPY



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