



W.P.(MD)No.2575 of 2021

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 05.03.2024

Pronounced on : 28.03.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)No.2575 of 2021

Ajmeer Badhusha

... Petitioner

Vs.

1. The Sub-Registrar,
Melapalayam,
Palayamkottai Taluk,
Tirunelveli District.

2. Syed Abdul Kader Taikasahib

... Respondents

Prayer : This Writ Petition filed under Article 226 of Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for records relating to the impugned refusal check slip of the first respondent dated 24.05.2019 and quash the same and consequently direct the first respondent to register the sale deed dated 09.03.2019 executed by the second respondent in favour of the petitioner within the time fixed by this Court.



WEB COPY



W.P.(MD)No.2575 of 2021

For Petitioner : Mr.H.Arumugam
For R1 : Mr.S.R.A.Ramachandran
Additional Government Pleader
For R2 : No appearance

ORDER

The present Writ Petition has been filed seeking to quash the impugned refusal check slip dated 24.05.2019 which came to be issued by the first respondent and consequently direct the first respondent to register the sale deed dated 09.03.2019 which was executed by the second respondent in favour of the writ petitioner.

2. The case of the writ petitioner is that the housing plot No.9, Annai Kathija Nagar (Alaihivashlam) situated in Survey No.73/2 at Melapalayam Village, Palayamkottai Taluk, Tirunelveli District, was owned by the wife of the second respondent, namely, Jasmin Begam vide sale deed dated 15.02.2010, that subsequently the said Jasmin Begam had gifted the same orally (Hiba) to her husband/second respondent herein, in the presence of two witnesses viz., Mohammed Kani and P.M.Jain Ulabdeen and also handed over the possession of the property, that the



W.P.(MD)No.2575 of 2021

WEB COPY

said Hiba was also confirmed through a document dated 05.05.2017 and the second respondent has become absolute owner of the property and was in possession and enjoyment of the same, that the said Jasmin Begam died in an accident on 01.11.2017 leaving behind her husband/second respondent and four minor children, that the second respondent, in order to discharge the debts, offered to sell the said property to the writ petitioner and the writ petitioner also accepted the same and paid the entire sale consideration, that the second respondent has executed a sale deed dated 09.03.2019 in favour of the writ petitioner and the same was presented for registration before the first respondent on 24.05.2019, that the first respondent has refused to register the document by issuing the impugned check slip and that therefore, the writ petitioner was constrained to file the present writ petition challenging the said check slip dated 24.05.2019.

3. It is not in dispute that the first respondent has issued the refusal check slip on 24.05.2019 citing the following reasons for refusal:

1. *Death Certificate and Legal Heir Certificate were not produced;*
2. *All the persons connected with the document were not present;*



WEB COPY



W.P.(MD)No.2575 of 2021

3. *No title deed has been produced but only unregistered document was produced; and*
4. *Patta has not been produced.*

4. The learned counsel appearing for the writ petitioner would submit that death certificate and legal heir certificate of the deceased Jasmin Begam and all the legal heirs did not join in the execution of sale deed are totally irrelevant since the sale deed was not executed on the basis of succession but on the strength of oral Hiba dated 25.02.2017, followed by the document of confirmation of Hiba, that the second respondent has executed the sale deed in the capacity of absolute owner of the property and not as legal heir of his wife and that the writ petitioner has clearly canvassed that the second respondent had obtained the property through the oral gift (Hiba) by his wife and by surrendering possession of the property and the same was followed by executing a document of confirming the Hiba, but the reason assigned that unregistered document alone was produced and no title deed was produced is totally against law as oral Hiba is permitted in Mohammedan Law. However, he would further submit that they are ready to produce the death certificate and legal heir certificate of the second respondent's wife before the first respondent.



W.P.(MD)No.2575 of 2021

WEB COPY

5. The learned counsel appearing for the writ petitioner would further submit that the property in dispute is a housing plot and as such, there is no patta for the vacant house site and more importantly, the original sale deed stand in the name of the wife of the second respondent and that they are ready to show the original sale deed in the name of the wife of the second respondent.

6. The learned Additional Government Pleader appearing for the first respondent would submit that the impugned check slip was issued on the basis of the circular issued by the Office of the Inspector General of Registration dated 02.02.2023, that Rule 55A of the Registration Rules enables registering officers to refuse registration of a document relating to immovable property unless the presentant produces previous original deed by which executant acquired right over the property and an Encumbrance Certificate pertaining to the property etc., and through the said circular, they have decided to dispense with production of original documents in respect of some cases and he relied on the relaxation under (f);

“(f)If the property is purchased by the Father/Mother and after his/her intestate demise, if his/her legal heirs claim that the original document is with one of the legal heirs and



W.P.(MD)No.2575 of 2021

WEB COPY

he/she is refusing to handover the original deeds, then on a petition being made to that effect, an enquiry shall be conducted by an Officer not below the rank of the District Registrar by calling all the legal heirs concerned. In such cases even if any of the legal heirs fail to attend the enquiry or refuses to divulge the possession of original document, then the Enquiry Officer shall permit registration on getting sworn affidavit from the presentant and others who attend enquiry to that effect. The same exercise of getting sworn affidavit can be followed in cases where all the legal heirs submit that the original document is not in possession of any others.”

7. In the case on hand, as rightly contended by the learned counsel appearing for the writ petitioner, the second respondent has claimed ownership over the property in dispute on the basis of the oral gift given by his wife on 25.02.2017 handing over the possession of the property, which was followed by execution of a Hiba confirmation deed dated 05.05.2017 and that therefore, the question of producing previous original deed does not arise. But on the other hand, the writ petitioner has also produced the original sale deed standing in the name of the wife of the second respondent, which is a parent title deed with respect of the property in dispute.



W.P.(MD)No.2575 of 2021

WEB COPY

8. The learned counsel appearing for the writ petitioner has relied on the decision of the Division Bench of this Court in ***W.A.(MD)No.308 of 2023 (Periyadurai Vs. The District Registrar (Admin), Registration Office, Tirunelveli District and another) dated 20.03.2023***, wherein, check slip issued by the registering authority for returning a partition deed on the grounds that the partition document was based on an unregistered Will and that encumbrance certificate was not produced, a learned Single Judge has directed the registering authority to decide whether the Will alleged was true or not and further directed the registering authority to issue notice to the siblings after getting address details from the appellant therein and if no objection is received to proceed with the registration of the document. When the said order was challenged, the Hon'ble Division Bench, while allowing the writ appeal, has observed as follows:

“4. There will be a direction to the Registering Authority to register the document on production of encumbrance certificate alone. The Registering Authority shall not insist upon registration of the Will or shall not embark upon any other enquiry. We are emboldened to hold so, because there are enough and more provisions in the Transfer of Property Act, 1882 and the General Laws, which protect the interest of the persons, who are not parties to the document. Admittedly,



W.P.(MD)No.2575 of 2021

WEB COPY

the siblings of the appellant are not parties to the partition deed and the same is not binding to them, if they choose to challenge it in the manner known to law. We, therefore, will not allow the Sub-Registrar to embark upon the exercise of enquiry and allow the Sub Registrar to decide the genuineness of the Will, which would be against the very provisions of the Transfer of Property Act, 1882. The appellant shall re-present the document along with encumbrance certificate and the Joint Sub Registrar No.II, Thirunagar, Tirunelveli Town, shall register the document without insisting on proof of the Will or registration of the Will or no objection from the siblings, within a period of fifteen days from the date of presentation of the document.”

9. The above decision is squarely applicable to the case on hand.

10. As rightly contended by the learned counsel appearing for the writ petitioner, the registering authority has absolutely no power or jurisdiction to decide about the genuineness or validity or legality of the oral Hiba given to the second respondent by his wife. It is not the case of the registering authority that they have received objection from any other person for registering the sale deed. It is also not their case that they have received objection that the oral gift alleged by the parties is not genuine



W.P.(MD)No.2575 of 2021

and is not valid. Even assuming that such an objection is received, they cannot decide the above aspects.

11. Considering the above, the issuance of impugned check slip is not in accordance with law and as such, the same is liable to be set aside.

12. In the result, this Writ Petition is allowed and the impugned order of refusing check slip dated 24.05.2019 is hereby set aside. The writ petitioner is directed to produce the death certificate and the legal heir certificate of the wife of the second respondent and also to show the original sale deed standing in the name of the wife of the second respondent before the first respondent and on such production and re-presentation of the sale deed, the first respondent is directed to register the document within a period of 15 days from the date of presentation of the above said documents. No costs.

28.03.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm



WEB COPY



W.P.(MD)No.2575 of 2021

K.MURALI SHANKAR,J.

csn

To

1. The Sub-Registrar,
Melapalayam,
Palayamkottai Taluk,
Tirunelveli District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

**Pre-Delivery Order made in
W.P.(MD)No.2575 of 2021**

Dated : 28.03.2024