



W.P.(MD)No.5565 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **06.11.2024**

CORAM:

THE HONOURABLE **MR.JUSTICE G.K.ILANTHIRAIYAN**

W.P.(MD)No.5565 of 2024

M.K.Abdul Raqueep

... Petitioner

/Vs./

1. The District Registrar
Theni District.

2. The Sub Registrar
Cumbum, Theni District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned check slip in Refusal Number RFL/Cumbum/2/24 dated 15.02.2024 refusing to register the sale deed dated 15.02.2024 quash the same and consequently direct the respondents herein to register the sale deed dated 15.02.2024 executed by the petitioner in respect of Survey No. 263 measuring 74 cents in Cumbum Village, Uthamapalayam Taluk Theni District.

For Petitioner : Mr.K.Appadurai

For Respondents : Mr.D.Sadiq Raja

Additional Government Pleader

ORDER

This Writ Petition has been filed challenging the refusal check slip issued by the second respondent, in Refusal Number RFL/Cumbum/2/24,



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dated 15.02.2024, thereby, refused to register the sale deed, which was presented for registration by the petitioner.

2. The petitioner's father acquired the property in Survey No. 263 ad-measuring 74 cents in Cumbum Village, Uthamapalayam Taluk, Theni District. He derived title over the property by way of settlement deed dated 20.02.1970. He died on 17.10.2015 leaving behind the petitioner and his mother as legal heirs, to succeed his properties. The petitioner's mother is aged about 89 years and she is bedridden due to various ailments. Therefore, his mother had settled her share in the property by oral Hiba in favour of the petitioner. Subsequently, it was also recorded by way of memorandum of recording the gift deed on 29.12.2021 and it was attested by the Notary Public. Thereafter, the petitioner decided to sell the property and had executed a sale deed in favour of the third party on 15.02.2024 and presented for registration before the second respondent. But, the second respondent refused to register the same on the ground that the petitioner failed to produce any document to show that her mother had executed 1/8th share of the subject property in favour of the petitioner.



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3. The learned Additional Government Pleader would submit that the petitioner failed to prove that the share of his mother was settled in his favour. The petitioner was gifted in respect of his mother's share by oral Hiba. On the strength of the unregistered oral Hiba, no document can be registered. The second respondent is duty bound to register the document by examining the identity of the parties, sufficiency of stamp duty, payment of registration of charges, and also production of patta in the name of the vendor. He cannot go into the title over the property, while presenting the document for registration. Further, the property does not come under the provision under Sections 22 A and 22 B of amended Registration Act, to refuse the registration. Admittedly, the petitioner's mother is bedridden and aged about 89 years. Further, the subject property originally belongs to his father and he died leaving behind the petitioner and his mother as his legal heirs, to succeed his properties. However, there is no rival claim over the subject property, after Hiba in respect of 1/8th share of the subject property by his mother. It was recorded by way of memorandum of recording the Hiba by his mother and attested by the Notary Public and witnessed by two witnesses. The Oral Hiba under Mohammedan Law, the oral Hiba does



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not require any registration. Therefore, the petitioner could not be able to produce any document in order to prove the oral Hiba, except the memorandum of recording of gift, attested by the Notary Public.

4. In view of the above, the impugned refusal check slip in Refusal Number RFL/Cumbum/2/24, dated 15.02.2024, cannot be sustained and is liable to be quashed and accordingly, quashed.

5. This Writ Petition is allowed. The petitioner is directed to re-present the sale deed within a period of two weeks from the date of receipt of copy of this order. On receipt of the same, the second respondent is directed to register the document forthwith. No costs.

Index :Yes/No
Internet :Yes/No
NCC :Yes/No
LS

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TO:-

1. The District Registrar
Theni District.
2. The Sub Registrar
Cumbum,
Theni District.



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G.K.ILANTHIRAIYAN, J.

LS

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