



W.P(MD)No.6337 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 04.04.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.6337 of 2024

M.Abdulla Sahib

... Petitioner

Vs.

- 1.The District Registrar,
Department of Registration,
Ramanathapuram.
- 2.The Sub Registrar,
Keelakarai Sub Registrar Office,
Keelakarai,
Ramanathapuram District.
- 3.Mohammed Mujahid Hussain
- 4.Mohammed Mansoor
- 5.Mohammed Muneera
***(R.3 to R.5 were suo motu impleaded
vide order of this Court dated 15.03.2024)***

... Respondents

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 pertaining to the impugned order / check slip passed by the second



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respondent in RFL/Keelakarai/15/2024 dated 04.03.2024 and quash the same and consequently direct the second respondent to register the General Power deed dated 04.03.2024 and release the same within the time stipulated by this Court.

For Petitioner : Mr.M.Kaliraj

For Respondents : Mr.D.Farjana Ghousia
Special Government Pleader
for R.1 & R.2

Mr.J.Barathan for R.3 to R.5

ORDER

Heard the learned counsel appearing for the writ petitioner, the learned Special Government Pleader appearing for the respondents 1 and 2 and the learned counsel appearing for the private respondents.

2.The petition mentioned property was purchased by the writ petitioner's mother. The private respondents are the nephews / niece of the writ petitioner. The petitioner executed power of attorney dated 04.03.2024 in favour of one G.Vijaya Roopan authorising him to deal with the petitioner's share in the petition mentioned property. The document was presented for registration. It was returned on the ground



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that the petitioner failed to produce the parent document. Challenging the refusal check slip dated 04.03.2024 issued by the second respondent, the present writ petition came to be filed.

3.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. He also relied on quite a few case laws. He called upon this Court to set aside the impugned refusal check slip and grant relief as prayed for.

4.The learned Special Government Pleader appearing for the official respondents states that the impugned order does not warrant interference.

5.The private respondents have filed counter affidavit and the learned counsel took me through its contents.

6.The stand of the respondents is that the petition mentioned property is a Wakf property and that therefore in view of Section 22-A of the Registration Act, 1908, the document in question cannot be rejected. He called upon this Court to dismiss the writ petition.



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7.I carefully considered the rival contentions and went through the materials on record.

8.While the stand of the private respondents is that the property is a Wakf, the refusal check slip does not contain the said reason. According to the registering authority, registration has to be refused on account of non production of the parent document. As regards the reason set out in the impugned order, it is patently unsustainable.

9.The learned counsel appearing for the petitioner draws my attention to the order dated 22.06.2022 made in W.P(MD)No.11863 of 2022 (Rajendran Vs The District Registrar, Madurai and another). I had followed an earlier order of this Court made in W.P(MD)No.19745 of 2020 (Sivanadiyan Vs The Sub Registrar, Pudukottai District) dated 11.02.2021 and held that registration cannot be refused for non production of the parent document. In this case, the parent document is with the private respondents. The Hon'ble Division Bench vide order dated 27.06.2023 in W.A(MD)No.856 of 2023 (M.Ariyanatchi & another Vs The Inspector General of Registration & another) had held as follows:



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“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. Conduct of an enquiry of the nature that is recommended under Clause (f), extracted supra, would only lead to confusion. If the other legal heirs want to claim exclusive title, it is always open to them to approach the competent Civil Court and if they are able to establish their exclusive right before the Civil Court, the alienation will be invalid. In such circumstances, when the substantive law takes care of and protects any misuse or abuse, we do not think that Rule 55-A of the Registration Rules is the only method by which fraudulent transactions are prevented.

14. In the light of the above, we do not think that insistence on production of original document, in all cases across the Board, could be sustained. Wherever the vendor is a co-owner and it is claimed that the original document is in the hands of the other co-owners, who are



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reluctant to part with it, the Registrar can always take a declaration in the form of a sworn affidavit from the co-owner, who is the executant and register the document. If the other siblings dispute the rights of the executant, they can also do so before the Civil Court and there is no law that authorizes the Registrar to conduct a trial to decide title to the property in question. What is sought to be done in the garb of an enquiry is exactly that. We are, therefore, convinced that the order of the Writ Court as well as the check slip issued by the Sub Registrar cannot be sustained.”

Be that as it may, the objection raised by the private respondents is also not sustainable. Section 22-A of the Registration Act, 1908 can be proceed into service only if there is transfer of the property by way of sale, gift, mortgage or exchange or lease. In this case, the petitioner has only executed a power of attorney. This by itself does not effect any transfer of interest in the immovable property. Therefore, Section 22-A of the Act cannot be invoked in the case of registration of power of attorney. Looked at from any angle, the refusal check slip cannot be sustained. It is quashed. The petitioner is permitted to re-present the document. It shall be registered and released by the second respondent subject to the fulfilment of the other usual formalities.



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10.This writ petition is allowed accordingly. There shall be no order as to costs.

04.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
MGA

To

- 1.The District Registrar,
Department of Registration,
Ramanathapuram.
- 2.The Sub Registrar,
Keelakarai Sub Registrar Office,
Keelakarai,
Ramanathapuram District.



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G.R.SWAMINATHAN,J.

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