



W.P (MD).No.13109 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.11.2024

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

W.P (MD).No.13109 of 2024

and

W.M.P.(MD)Nos.11620&11621 of 2024

Subramanian

... Petitioner

Vs.

1. The Sub Registrar
Woraiyur Sub Registration Office,
Trichy District.

2. Veerappan,
(R2 is suo motu impleaded vide
Court Order Dated.20.06.2024
in Wp(MD).13109/2024)

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned refusal check slip issued by the respondent dated 16.05.2024 and quash the same as illegal and unconstitutional and also direct the respondent herein to register the partition dated 16.05.2024 presented by the petitioner without insisting to produce the parent document No. 3939/1967 dated 15.8.1967 for registration of release deed.

For Petitioner : Mr.B.Jameelarasu

For Respondents : Mr.D.Sadiq Raja
Additional Government Pleader for R1
: No appearance for R2



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ORDER

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This writ petition has been filed challenging the order, dated 16.05.2024, passed by the first respondent, thereby, refused to register the sale deed, which was presented by the petitioner for registration in respect of the subject property.

2. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3. The property comprised in S.No.234/1, measuring an extent of One Acre, situated at Punganoor Taluk, Trichy District, purchased by the petitioner's father, viz., Chidambaram and his brother (each 50 cents), viz., Sundapudaiyar, vide Document No.3939/1967, dated 15.08.1967. Thereafter, the petitioner's father out of his own income has purchased the remaining extent of 50 cents in the same survey during the year 1980 vide Document No. 4003/1980, dated 11.07.1980. While being so, all the legal heirs have decided to partition the above two properties among themselves and they have entered into a release deed by mutual consent of all the legal heirs. After execution of release deed, the same was presented for registration before the first



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respondent, on 16.05.2024. However, the first respondent refused to register the same on the ground that the original parent document was not produced.

4. This issue has already been dealt with by the Hon'ble Division Bench of this Court recently in ***WA.No.1160 of 2024*** by judgment dated ***27.09.2024***. The relevant portion of the judgment is extracted hereunder:-

“7. The law relating to transfer of immovable property is governed by the substantial enactment namely, The Transfer of Property Act, 1882. The right to hold property and the right to be not deprived of property without reasonable compensation is a constitutional right ensured under Article 300A of the Constitution of India. Being a constitutional right, it is one step superior to even the fundamental rights, as there cannot be a reasonable restriction on the said right and no one can be deprived of the property without reasonable compensation. The right to hold the property also takes in its fold the right to deal with the property. No doubt, the second proviso to rule 55-A of the Tamil Nadu Registration Rules mandates that the original of the antecedent document should be produced to enable registration of a subsequent instrument. Of course, a way-out is provided namely, the production of non traceability certificate from the police department. We should also be conscious of the fact that any certificate from any Government department, as of today, comes only at a price for an ordinary citizen. An elaborate procedure has also been fixed for issuance of non traceability certificate. We have come across several instances where, because of the high pricing of and the complicated procedure involved in



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respect of the rectification of any error regarding the book or the office in which any document has been registered."

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 any 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.*

10. *Adverting to the facts on hand, the document that is sought to be registered is a release deed executed by the sister in favour of the brother. The document recites that the property belonged to the father. The parties are not strangers to each other. They have produced registration copies of the antecedent documents which are registered in the very same office. Unless the Registrar has a doubt regarding the genuineness of the copies issued by his own office, insistence on production of originals is a superfluous*



exercise. As we had already stated, it is a common knowledge and accepted phenomena today that one cannot secure a certificate from a Government office without the price. In such situation, driving executant of documents to obtain a non traceability certificate in case of lost document in every case, will result only in encouraging under hand dealings. When certified copies have been produced and it is not impossible for the Sub Registrar to have it verified with the original record that is available in his own office, insisting upon a non traceability certificate appears to be rather a wasteful exercise. Even in Punithavathy's case referred to supra, we have observed that the Registrars will not refuse registration particularly, when the parties to the documents are relatives and they take the risk of obtaining the document without examining the title. The copies of the documents have already been produced. The Sub Registrar could have verified the same with the original records in his office and register the instrument without dogmatically refusing registration. We, therefore, do not find any substance in the argument of Mr.Ramanlaal, learned Additional Advocate General. We, therefore, set aside the order of the learned Single Judge as well as the impugned check slip. We direct the Sub Registrar, Rasipuram, to register the release deed. We permit the appellant to re-present the release deed within four weeks from today and upon such re-presentation, the Sub Registrar, Rasipuram, will register the instrument without insisting on production of originals within 15 days from the date of presentation.”

5. Therefore, the first respondent cannot insist the petitioner to produce the original parent document for verification. In view of the above, the



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impugned refusal check slip cannot be sustained and is liable to be quashed.

Accordingly, the impugned refusal check slip dated 16.05.2024 is hereby quashed. The petitioner is directed to re-present the sale deed for registration within a period of one week from the date of receipt of a copy of this order along with certified copy of the parent document. The petitioner is also directed to file an affidavit mentioning the reason for non-production of the parent document. On production of the certified copy of the parent document, the first respondent is directed to register the sale deed presented by the petitioner, without insisting for production of the original document in respect of the subject property and release the document, forthwith.

6. Accordingly, this writ petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

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

25.11.2024

To

The Sub Registrar
Woraiyur Sub Registration Office,
Trichy District.



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G.K.ILANTHIRAIYAN, J.

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