



W.P(MD)No.14219 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.07.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.14219 of 2024

Sivasubramonia Prasad

... Petitioner

Vs.

The Sub Registrar,
Eraniel Sub Registrar Office,
Kanyakumari,
Kanyakumari District.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of impugned refusal check slip No.RFL/Eraniel/55/2024 issued by the respondent and quash the same consequently directing the respondent to receive and register the settlement deed dated 21.03.2024 executed by the petitioner in favour of the petitioner's son namely Mr.Gireesa Prasad in accordance with law within a time stipulated by this Court.

For Petitioner : Mrs.S.Mahalakshmi

For Respondent : Mr.R.Ragavendran,
Government Advocate.

ORDER

Heard the learned counsel on either side.



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2.The writ petitioner executed settlement deed dated 22.02.2011 in favour of his son / Saravana Prasad settling the petition mentioned property in his favour. Saravana Prasad died on 11.06.2021. He died intestate and he was also unmarried. The petitioner now wants to settle the very same property in favour his other son / Gireesa Prasad. When the document was presented for registration, the registering authority took the stand that without production of the original settlement deed dated 22.02.2011, the present document cannot be entertained. Challenging the same, the present writ petition came to be filed.

3.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned refusal check slip and grant relief as prayed for.

4.The learned Government Advocate for the respondents submitted that the impugned refusal slip is in consonance with Rule 55A(i) of the Registration Rules. He called upon this Court to dismiss the writ petition.

5.I carefully considered the rival contentions and went through the materials on record. Rule 55A(i) of the Registration Rules was inserted vide G.O.(Ms)No.129, Commercial Taxes and Registration Department, dated 05.09.2022. It reads as follows:-



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“55A. (i) The registering officer before whom a document relating to immovable property is presented for registration, shall not register the same, unless the presentant produces the previous original deed by which the executant acquired right over the subject property and an Encumbrance Certificate pertaining to the property obtained within ten days from the date of presentation:”

6.The above rule will not apply in in this case. This is for a simple reason. The rule envisages production of the document under which the executant acquired the title. The document dated 22.02.2011 which is now called upon to be produced is not one such document. Under the said document, the executant divested himself of title over the property in favour of one of his sons. He did not acquired right thereunder. Therefore, invocation of Rule 55A(i) is misplaced.

7.Coming to the facts on hand, it is evident from the materials on record that Saravana Prasad in whose favour the petitioner originally settled the property died intestate. He was a bachelor. As per the schedule to the Hindu Succession Act, 1956, in the absence of there being class I legal heirs, the property will devolve in the manner set out in Section 8 of the Hindu Succession Act. It reads as follows:-



“8. General rules of succession in the case of males.-The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter:-

(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and

(d) lastly, if there is no agnate, then upon the cognates of the deceased.”

8. In this case, the petitioner's wife ie., the mother of Saravana Prasad had already passed away. Class II legal heirs are as follows:-

I. Father.

II. (1) Son's daughter's son, (2) son's daughter's daughter, (3) brother, (4) sister.

III. (1) Daughter's son's son, (2) daughter's son's daughter, (3) daughter's daughter's son, (4) daughter's daughter's daughter.

IV. (1) Brother's son, (2) sister's son, (3) brother's daughter, (4) sister's daughter.

V. Father's father; father's mother.

VI. Father's widow; brother's widow.

VII. Father's brother; father's sister.

VIII. Mother's father; mother's mother.

IX. Mother's brother; mother's sister.



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Explanation.-In this Schedule, references to a brother or sister do not include references to a brother or sister by uterine blood.”

9.I originally wondered if the property settled on Saravana Prasad would devolve on his father and the siblings. Section 8 of the Hindu Succession Act states that only if the father is not there, the property will devolve on the siblings. Thus, by applying the Section 8 of the Hindu Succession Act, 1956, the property devolved on the petitioner following the demise of Saravana Prasad. Now the property is the absolute property of the father. He wants to settle the same in favour of his other son / Gireesa Prasad. No exception can be taken to the petitioner's request. The impugned refusal check slip is quashed and the writ petition is allowed. The petitioner is permitted to re-present the document in question. It shall be received and released subject to fulfilment of other usual formalities. No costs.

01.07.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-
The Sub Registrar,
Eraniel Sub Registrar Office,
Kanyakumari,
Kanyakumari District.



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G.R.SWAMINATHAN, J.

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