



W.P.(MD)No.23547 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 03.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.(MD)No.23547 of 2024

1.Janab.Jainub Ayub
2.Janaba.K.A.Azizur Rahman
3.Janaba.Ummu Habiba
4.Janaba.K.A.Meharunisa

... Petitioners

Vs.

The Sub Registrar,
Melapalayam SRO, Palayamkottai,
Tirunelveli.

.... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned refusal check slip in RFL/Melapalayam/98/2024 dated 07.08.2024 and quash the same and consequently direct the respondent to register the document and release the same within the time fixed by this Court.

For Petitioners	: Mr.H.Arumugam
For Respondent	: Mr.P.Subbaraj Special Government Pleader



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ORDER

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Challenge has been made against the refusal check slip issued by the respondent in RFL/Melapalayam/98/2024, dated 07.08.2024, refusing to register the document submitted by the first petitioner on the ground that parent document has not been produced.

2. Heard Mr.H.Arumugam, learned counsel appearing for the petitioners and Mr.P.Subbaraj, learned Special Government Pleader, who takes notice on behalf of the respondent. By consent, this writ petition has been taken up for final disposal at the admission stage itself.

3. The case of the first petitioner is that the subject property belongs to her husband and during his lifetime, he gifted the said property in her favour. On 09.04.2020, the first petitioner's husband died and thereafter, she is in possession and enjoyment of the said property. In order to discharge some debts, the first petitioner sold the said property to the petitioners 2 to 4. It is the grievance of the first petitioner that when she presented the document for registration, the same was refused by the respondent on the ground that original document and legal heirship certificate have not been produced and also, citing the order passed in CrI.O.P(MD).No.16032 of 2020.



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4. It is the contention of the learned counsel for the petitioners that the first petitioner is no way connected and also not a party to CrI.O.P(MD).No.16032 of 2020. The order passed in the said original petition is only against some third party. Hence, seeks to set aside the impugned order.

5. I have perused the entire materials available on record and it shows that some persons obtained anticipatory bail before this Court in CrI.O.P(MD).No. 16032 of 2020 and while granting anticipator bail, there was a direction to the petitioners therein, not to alienate the property till the appointment of arbitrator. It is also brought to the notice of this Court that appointment of arbitrator subsequently was cancelled by order dated 21.04.2023 and thereafter, no one approached the civil Court.

6. Considering above, as there is no order against the first petitioner and she was also not a party to the said criminal original petition, her right cannot be denied to execute the document. Similarly, as far as the non-production of the original document is concerned, this Court already held that the registering authority cannot insist the party to produce the original document in view of the



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judgment rendered by this Court in the case of **Subramani vs. the Sub Registrar and others** [WP.No.11056 of 2024, dated 26.04.2024], in which it has been held as follows:

“c. With regard to the refusal on the absence of parent document, this Court in the case of K.S. Vijayendran v. The Inspector General of Registration reported in (2011) 2 LW 648, Lakshmi Ammal v. The Sub Registrar, Villivakkam reported in 2015 SCC OnLine Mad 5868 and C. Moorthy v. Sub Registrar Aruppukottai reported in 2018 SCC OnLine Mad 3898, it was held that absence of a parent document is no ground to refuse registration. Pursuant to these judgments, sub-rule XX was introduced in Rule 162 authorizing the Sub-Registrar to refuse registration for non-production of the original title deed as required by Rule 55-A. This Court in the case of Federal Bank v Sub-Registrar, reported in 2023 2 CTC 289 has held that Sub-Rule XX of Rule 162 has no statutory backing. The said order has been followed by a Division Bench of this Court in the case of M. Ariyanatchi v Inspector General made in W.A.(MD).No. 856 of 2023, dated 27.06.2023, wherein, Division Bench of this Court has held that, for instance, the original document is held by one co-owner, the Sub-Registrar can always take an undertaking or a declaration in the form of an affidavit from the vendors to the effect that the original document is with the said person and register the document. Hence, the Sub-Registrar cannot refuse to register a document merely because the original parent deed has not been produced.

Considering the above settled position of law, the Registrar cannot refuse to register the document merely on the ground of non production of parent document.”

In the light of the above settled provision of law, the impugned refusal slip cannot be sustained in the eye of law.



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7. Accordingly, the impugned refusal check slip issued by the respondent in RFL/Melapalayam/98/2024 dated 07.08.2024, is set side and this writ petition is **allowed**. The respondent is directed to register the document presented by the first petitioner within a period of seven days from the date of receipt of a copy of this order. No costs.

03.10.2024

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NCC : Yes/No
Index : Yes/No
Rmk

To
The Sub Registrar,
Melapalayam SRO, Palayamkottai,
Tirunelveli.



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N.SATHISH KUMAR, J.

Rmk

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