



W.P.(MD)No.26339 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.11.2024**

CORAM:

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

W.P.(MD)No.26339 of 2024

Balasubramaniyan

... Petitioner

/Vs./

1.The District Registrar,
Registration Department,
Madurai District, Madurai.

2.The Sub Registrar,
Vilankudi Sub Register Office,
Vilankudi,
Madurai District.

3.The Inspector of Police,
Anna Nagar Crime Branch Police Station,
Madurai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the 2nd respondent to release the sale deed in Receipt No.5122 of 2024 in Document No.P/ Vilankudi/ 76/2024 on the file of the 2nd Respondent within the time frame as fixed by this Court.



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For Petitioner : Mr.A.Joseph Jerry
For Respondents : Mr.M.Sarangan (R1 & R2)
Additional Government Pleader
Ms.M.Aasha (R3)
Government Advocate (Crl. Side)

ORDER

This writ petition has been filed for a direction to the second respondent to release the sale deed, which was presented for registration vide receipt No.5122/24.

2. By consent of both parties, this writ petition is taken up for final disposal at the stage of admission itself.

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

4. The subject property belongs to the petitioner's mother. After her demise, her legal heirs including the petitioner decided to sell the



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same in favour of a third party. Accordingly, they have executed the sale deed and presented the same for registration and received the receipt No. 5122/2024. However, the petitioner failed to submit the original parent document for verification. Therefore, it is pending on the file of the second respondent.

5. The learned Additional Government Pleader appearing for the respondents 1 and 2 on instructions submitted that though the petitioner and other legal heirs of the deceased mother produced the non traceable certificate in respect of the parent deed of the subject property, it was not issued by the third respondent, as per the Circular issued by the Inspector General of Registration and therefore, non traceable certificate cannot be taken into consideration to register the sale deed presented for registration.

6. This issue has 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:-



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“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 obtaining a non traceability certificate, instances of people obtaining non traceability certificate from the neighbouring States has increased.

8. The fundamental principle of law relating to transfer of immovable property is caveat emptor. A buyer of the



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property is required to be careful in not purchasing certain properties which are already encumbered or from person who does not have title. Even if a person sells a property that does not belong to him, there is no provision in the Registration Act, 1908, to enable the Registrar to refuse registration except Section 22-A and Section 22-B, which have been introduced recently in the year 2022 by the State Legislature insofar as Tamil Nadu is concerned. Even Section 22-A and Section 22-B do not authorise refusal of registration on the ground that the original of the prior's title deed has not been produced. We are unable to resist observing that Rule 55-A has been stealthily introduced as a subordinate legislation only to enable Registrars refuse to register instruments indiscriminately. Neither Section 22-A nor Section 22-B authorise a Registrar to refuse to register instruments on the grounds specified under Rule 55-A. No doubt, Mr.Ramanlaal falls back on the power of Superintendence conferred on the Chief Controlling Revenue Authority and the District Registrars under Section 68 of the Registration Act, 1908. Section 68 reads as follows:

“68. Power of Registrar to superintend and control Sub-Registrars.

(1) Every Sub-Registrar shall perform the duties of his office under the superintendence and control of the Registrar in whose district the office of such Sub-Registrar is situate.

(2) Every Registrar shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act which he considers necessary in respect of any act or omission of any Sub-Registrar



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subordinate to him or in 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*



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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.Ramanlal, learned Additional Advocate General. We, therefore, set aside the order of the learned Single Judge as



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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.”

7. In view of the above, the second respondent is directed to register the sale deed presented by the petitioner without insisting production of the parent deed in respect of the subject property within a period of two weeks from the date of receipt of a copy of this order.

8. With the above direction, this writ petition is disposed of. No costs.

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Index : Yes / No

NCC : Yes / No

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G.K.ILANTHIRAIYAN, J.

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