BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.(MD) No.26570 of 2024
and
W.M.P.(MD) No.22527 of 2024

Masanam ... Petitioner

-vs-

1.The Inspector General of Registration
100, Santhome High Road
Raja Annamalaipuram
Chennai-600 028

2.The District Registrar-Admin
Tirunelveli District, Tirunelveli

3.The Sub Registrar
Valliyoor Sub Registration Office
Tirunelveli District ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the records of the third respondent in refusal check slip bearing Refusal Number RFL/Valliyoor/67/2024 dated 28.10.2024 by which the third respondent has refused to register the sale deed dated 28.10.2024 and quash the same as devoid of merits and non-application of mind and consequently direct the third respondent to register the sale deed dated 28.10.2024 within the time stipulated by this Court.

For Petitioner : Mr.M.Varun Pandian

For Respondents : Mr.S.P.Maharajan
Special Government Pleader

O R D E R

Mr.S.P.Maharajan, learned Special Government Pleader, takes notice for the respondents.

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

3. This writ petition has been filed challenging the refusal check slip, dated 28.10.2024, issued by the third respondent, and to direct the third respondent to register the sale deed dated 28.10.2024 presented for registration.

4. The property comprised in Survey No.446/1, present Sub-Division Survey No.446/1B1 of Kannanallur Village, Thisaiyanvilai Taluk, Tirunelveli District, measuring an extent of 2 Acres and 23.5 Cents, was originally belonged to the petitioner's father, by virtue of a sale deed dated 12.08.1982 and registered as document No.1085 of 1982. The petitioner's father died intestate leaving behind the petitioner and his brothers and sisters as legal heirs. Thereafter, the petitioner and his brothers and sisters were issued with a joint Patta bearing No.2224. Subsequently, they decided to sell the said property in favour of one S.Jegadeesan. Accordingly, they executed a sale deed in his favour on 28.10.2024 and presented the sale deed before the third respondent for registration. But, the third respondent refused to register the sale deed, on the ground that the original parent deed, dated 12.08.1982 and registered as document No.1085 of 1982 was not produced for verification of title. Hence, this writ petition.

5. The issue involved in the case on hand i.e., production of original parent document, has already been decided by the Honourable Division Bench of this Court, vide Judgment dated 27.09.2024, in W.A.No. 1160 of 2024 ***[P.Pappu vs. The Sub Registrar]***, wherein the Division Bench of this Court, in Paragraph Nos.7 to 10, has held as follows:

"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 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 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 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 certificed 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."*

6. The above decision squarely applies to the case on hand.

7. The learned Special Government Pleader appearing for the respondents would submit that the petitioner has not even whispered anything about the parent document, which was presented for registration and also not produced the non-traceable certificate.

8. These aspects have already been decided by the Honourable Division Bench in the above cited decision and hence, the third respondent cannot insist upon the production of original parent document to verity the title over the subject property. Therefore, the impugned check slip cannot be sustained and the same is liable to be quashed.

9. Accordingly, this writ petition is allowed and the impugned check slip, dated 28.10.2024, issued by the third respondent, is quashed. The petitioner is directed to re-present the sale deed for registration before the third respondent forthwith and receipt of the same, the third respondent is directed to register the sale deed and release the same as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is closed.

07.11.2024

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

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To:
1.The Inspector General of Registration,
100, Santhome High Road,
Raja Annamalaipuram,
Chennai-600 028.

2.The District Registrar-Admin,
Tirunelveli District,
Tirunelveli.

3.The Sub Registrar,
Valliyoor Sub Registration Office,
Tirunelveli District.

G.K.ILANTHIRAIYAN, J.

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