



W.P(MD)No.26122 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.02.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.26122 of 2023

and

W.M.P(MD)No.22476 of 2023

A.Esakkiyammal

... Petitioner

Vs.

1.The District Registrar,
Office of the District Registrar,
Palayamkottai,
Tirunelveli District.

2.The Sub Registrar,
Saththankulam,
Palayamkottai Registration District,
Thoothukudi District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order passed by the first respondent in Na.Ka.No.4826/Aa/2023 dated 28.08.2023 confirming the order passed by the second respondent in RFL/Saththankulam/16/2023 dated



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03.05.2023 and quash the same as illegal, arbitrary and non-application of mind and consequently direct the second respondent to register the sale deed dated 03.05.2023 presented by the petitioner.

For Petitioner : Mr.V.Angusamy

For Respondents : Mr.S.Shanmugavel
Additional Government Pleader

ORDER

Heard both sides.

2.The petitioner had executed sale deed dated 03.05.2023 in favour of one Thangathai conveying her 1/3rd undivided share in the petition mentioned property. It was returned by the registering authority by issuing the impugned refusal check slip dated 03.05.2023. The registering authority took the stand that in the absence of production of the parent document in original, the sale deed cannot be accepted for registration. Challenging the same, the petitioner filed an appeal before the first respondent. The first respondent confirmed the order of the second respondent and also gave an additional reason. The first respondent doubted the petitioner's title to present the document in



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question. Challenging the impugned order dated 28.08.2023 passed by the first respondent confirming the order of the second respondent, the present writ petition came to be filed.

3.The learned counsel appearing 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 order and grant relief as prayed for.

4.The learned counsel appearing for the petitioner placed reliance on the order dated 11.02.2021 made in W.P(MD)No.19749 of 2020 (Sivanadiyan Vs The Sub Registrar, Pudukottai, Pudukottai District) and the decision reported in 2018 SCC OnLine Mad 3898 (C.Moorthy Vs Sub Registrar, Aruppukkottai) in support of his contention.

5.Per contra, the learned Additional Government Pleader relied on the order dated 04.01.2024 made in W.A(MD)No.346 of 2016 (The Inspector General of Registration & Another Vs V.Prabu). He contended that the registering authority is very much entitled to call upon the



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persons presenting the sale deed to produce the parent document. He insisted on dismissal of the writ petition.

6.I carefully considered the rival contentions and went through the materials on record.

7.There is no dispute as regards the fact that the property originally belonged to Malaiyammal. The title as well as the revenue record stood in her favour. Malaiyammal had three daughters which included the petitioner's herein. It appears that the property was mortgaged and it was redeemed by one of the grandsons of Malaiyammal. The original documents appear to be in his custody. But these are not aspects which should bother the registering authority. The petitioner is only conveying her 1/3rd undivided share in the property and nothing else. It is true that Rule 55(A) insists on production of the original document. It also sets out the procedure to be followed that the original document is missing. In this case, the original document is not missing, it is in the custody of the petitioner's nephew. A learned Judge of this Court vide order dated 18.11.2021 in W.P(MD)No.19950 of 2021 (Selvam Vs The Joint Sub



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Registrar No.I, Karaikudi, Sivagangai District) had held that in certain situations, the original document will be in custody of one of the co-owners and that if the custodian is refusing to par with the document, the other co-owner cannot be expected to produce the same.

8.In this case, the petitioner is admittedly one of the co-owners of the property. The property belonged to Malaiyammal. There are several co-owners as of now in respect of the said property. The petitioner is having 1/3rd undivided share therein. The document is with the petitioner's nephew who is one of the co-owners. Due to some dispute between the petitioner on the one hand the nephew on the other, the nephew is declining to produce the document. This cannot come in the way of the petitioner from alienating her 1/3rd share in the property.

9.I therefore hold that failure to produce the original document cannot be put against the petitioner in the facts and circumstances of this case. In this view of the matter, I hold that the decision of the Hon'ble Division Bench rendered in W.A(MD)No.346 of 2016 (The Inspector General of Registration & Another Vs V.Prabu) is distinguishable. The



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impugned refusal check slip as well as the order passed by the first respondent are set aside. The petitioner is permitted to re-present the document. It shall be received, registered and released subject to the fulfilment of the other usual formalities.

10.This writ petition is allowed accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

26.02.2024

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

To

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G.R.SWAMINATHAN, J.

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