



W.P.(MD)No.29574 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.(MD)No.29574 of 2023

and

W.M.P(MD).No.25533 of 2023

Vellaichamy

... Petitioner

Vs.

The Sub Registrar No.II,
Ramanathapuram District.

... Respondent

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 refusal check slip No.RFL/Velippattinam/51/2023 dated 21.11.2023 on the file of the respondent and quash the same and consequently directing the respondent to register the mortgage deed dated 21.11.2023 executed by the petitioner.

For Petitioner : Mr.S.Selva Aditya

For Respondent : Mr.P.Subbaraj
Special Government Pleader



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ORDER

This writ petition has been filed to quash the impugned refusal check slip No.RFL/Velippattinam/51/2023, dated 21.11.2023, issued by the respondent with consequential direction to the respondent to register the mortgage deed dated 21.11.2023 executed by the petitioner.

2. It is the case of the petitioner that the property in question originally belonged to his grandfather. After his death, the petitioner's father inherited the said property and thereafter, he executed a sale deed in favour of the petitioner. According to the petitioner, he is in possession and enjoyment of the said property. While that being so, when the petitioner presented the mortgage deed in favour of one Thirumurugan in respect of the said property, the same was refused on the ground that title deed has not been produced.

3. At the outset, this Court is of the view that it is not for the Sub Registrar to go into the title in view of the 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:



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“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.”

4. Besides, it is only a contract between the mortgagor and mortgagee. When the mortgagee satisfied with the title and entered into a contract, the registration of the document cannot be denied merely on the ground of non-production of title deed. In such view of the matter, the impugned refusal check slip issued by the respondent in No.RFL/Velippattinam/51/2023 dated 21.11.2023, is quashed and this



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N.SATHISH KUMAR, J.

Rmk

Writ Petition is **allowed**. The respondent is directed to register the petition mentioned document within a period of seven days from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

17.10.2024

Index : Yes / No

NCC : Yes / No

Rmk

To

The Sub Registrar No.II,
Ramanathapuram District.

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