BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.12.2024**

CORAM:

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

W.P.(MD)No.30170 of 2024
and
W.M.P.(MD)No.25389 of 2024

1.L.Arunachalam
2.A.Velayutham ... Petitioners

-Vs-

The Joint Sub Registrar,
No.2, Karaikudi,
Sivagangai District. ... Respondent

PRAYER**:** Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the order passed in refusal No. 31/2024 dated 22.11.2024 by the respondent herein and to quash the same as illegal and consequently directing the respondent to register the cancellation deed dated 22.11.2024 filed by the petitioners herein.

For Petitioners : Mr.C.Sundaravadivel

For Respondent : Mr.D.Sadiq Raja, Government Pleader

ORDER

This writ petition has been filed challenging the refusal check slip issued by the respondent dated 22.11.2024, thereby refusing to register the document presented by the petitioners on the ground that all the persons, who had originally executed the power deed were not present and the original parent document was not produced.

2.Mr.D.Sadiq Raja, learned Government Pleader takes notice for the respondent.

3.By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

4.The first petitioner is the father of the second petitioner. The property in Survey No.119/34, R.S.No.119/2A1A and New Survey No. 119/34A1 measuring an extent of 0.17.25 hectares belonged to one Lakshmana Chettiar. He died on 10.12.2012 leaving behind his wife, two sons, namely the first petitioner and one L.Palaniappan and three daughters. Thereafter, the mother of the first petitioner died and the sisters of the first petitioner relinquished their shares in the subject property in favour of the first petitioner and his brother. Thereafter, the first petitioner and his brother have entered into a registered partition deed dated 11.05.2015. Accordingly, the first petitioner and his brother were allotted with 51.88 cents each in the property of their father and they have kept the remaining 20.24 cents in common possession and enjoyment.

5.After entering into the partition deed, the first petitioner executed a registered settlement deed in favour of his son/ the second petitioner herein in respect of his share. Subsequently, the second petitioner had also executed a settlement deed in favour of the first petitioner in respect of the said property. The petitioners along with the brother of the first petitioner developed the subject properties into 21 plots, out of which the petitioners are entitled to plot Nos.1 to 11 and the brother of the first petitioner is entitled to plot No.12 to 21 and they executed a power of attorney deed in favour of one Alamelu in respect of the entire property vide registered power deed dated 07.03.2024. Thereafter, the petitioners did not want to continue with the power of attorney executed in respect of their share in the subject property. Hence, they executed a cancellation of power deed in respect of their share alone in the subject property. When the petitioners presented the said deed for registration, the same was refused to be registered on the ground of non production of original document and absence of other executants.

6.The issue with regard to non production of original document has already been elaborately dealt with by the Hon'ble Division Bench of this Court in ***WA.No.1160 of 2024*** by judgment dated ***27.09.2024***. The relevant portion of the judgment is extracted hereunder:-

> *"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 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.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."*

7.Further, the petitioners wanted to cancel the power deed executed by them in respect of their share alone in the subject property. Hence, the same cannot be refused to be registered for the absence of the other executants of the original power deed.

8.In view of the above, the impugned refusal check slip cannot be sustained in the eye of law and the same is liable to be quashed. Accordingly, the impugned refusal check slip dated 22.11.2024 is hereby quashed. The petitioners are directed to re-present the cancellation deed within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the respondent is directed to register the cancellation deed presented by the petitioners without insisting production of the original parent documents in respect of the subject property forthwith. Accordingly, this Writ Petition is allowed. No costs.

16.12.2024

Index : Yes / No
NCC : Yes / No

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Note: Issue order copy on 18.12.2024

To

The Joint Sub Registrar,
No.2, Karaikudi,
Sivagangai District.

G.K.ILANTHIRAIYAN, J.

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W.P.(MD)No.30170 of 2024

16.12.2024
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