BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.12.2024

CORAM

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

W.P (MD).No.30577 of 2024
and
W.M.P(MD)No.25672 of 2024

E.Durai Pandi ...Petitioner

Vs.

The Sub-Registrar,
Watrap Sub-Registrar Office,
Virudhunagar District. ...Respondent

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned Refusal check slip issued by the respondent in RFL/Watrap/13/2024 dated 28.11.2024 and quash the same as illegal and unconstitutional and consequently, directing the respondent to forthwith register the settlement deed dated 28.11.2024 in respect of properties in Survey No.581/3, to an extent of 3 Acres 15 cents situated at Aayardharmam Village, Panchayat Union, Virudhunagar District.

For Petitioner : Mr.B.Vinothkumar
For Respondent : Mr.S.P.Maharajan
Special Government Pleader

O R D E R

This writ petition has been filed challenging the refusal check slip issued by the respondent, dated 28.11.2024 thereby, refused to register the settlement deed executed by the petitioner in favour of his wife in respect of the the property comprised in Survey No.575/6 to an extent of 1 acres 84 cents, Survey No.581/3 to an extent of 3 acres 15 cents situated at Aayardharmam Village, Panchayat Union, Virudhunagar District.

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

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

4. The properties comprised in S.No.575/6 to an extent of 1 acre 84 cents and Survey No.581/3 to an extent of 3 acres 15 cents situated at Aayardharmam Village, Panchayat Union, Virudhunagar District owned by the petitioner's father. He bequeathed the property in favour of the petitioner by the un-registered Will dated 04.05.2004. After execution of the Will, his father died on 02.10.2005. The said Will was acted upon by issuance of patta in

respect of the subject property in favour of the petitioner under Patta No.1339. Thereafter, on 28.11.2024 the petitioner had executed the settlement deed in respect of the subject property in favour of his wife and the same was presented for registration, however, the respondent refused to register the same on the ground that the petitioner failed to probate the Will and also failed to produce the original document in which is father derive title over the subject property.

5. In this case, the point to be considered is that whether it is necessary to seek probate or letter of administration in respect of Will in terms of Section 213 of the Indian Succession Act.

6. Section 57 of the Indian Succession Act is applicable where the property and parties are situate in the territories of Bengal, Madras and Bombay. Therefore, it is not necessary to seek probate or letter of administration in respect of such Will they are not located in Bengal, Madras and Bombay. It is also relevant to extract the provision under Section 213 of the Indian Succession Act.

> *"213. Right as executor or legatee when established.— (1) No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in 3 [India] has granted probate of the will under which the right is*

claimed, or has granted letters of administration with the will or with a copy of an authenticated copy of the will annexed.

(2) This section shall not apply in the case of wills made by Muhammadans 2 [or Indian Christians], and shall only apply

(i) in the case of wills made by any Hindu, Buddhist, Sikh or Jaina where such wills are of the classes specified in clauses (a) and (b) of section 57; and

(ii) in the case of wills made by any Parsi dying, after the commencement of the Indian Succession (Amendment) Act, 1962 (16 of 1962), where such wills are made within the local limits of the 3 [ordinary-original civil jurisdiction] of the High Courts at Calcutta, Madras and Bombay, and where such wills are made outside those limits, in so far as they relate to immovable property situate within those limits.] "

7. Section 57 of the Indian Succession Act is extracted hereunder:-

"Section 57. Application of certain provisions of Part to a class of wills made by Hindus, etc.—The provisions of this Part which are set out in Schedule III shall, subject to the restrictions and modifications specified therein, apply—

(a) to all wills and codicils made by any Hindu, Buddhist, Sikh or Jaina, on or after the first day of September, 1870, within the territories which at the said date were subject to the LieutenantGovernor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and

(b) to all such wills and codicils made outside those territories and limits so far as relates to immoveable property situate within those territories or limits,

(c) to all wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of January, 1927, to which those provisions are not applied by clauses (a) and (b):]

Provided that marriage shall not revoke any such will or codicil.]"

8. Thus, it is clear that the probation of the Will does not require to Wills made outside the Bengal and the local jurisdictional limits of the High Courts as Madras and Bombay except where such wills relate to immovable property situated within those territories. Therefore, the Will executed by the petitioner's father does not require any probation or declaration under the letter of administration. In fact, the Will executed in favour of the petitioner was already acted upon. Immediately, after the demise of the executant on 02.10.2005, the petitioner was issued with patta under the Patta No.1339 in respect of the property which is bequeathed in favour of the petitioner. Further, the subject property was bequeathed in favour of the petitioner by the Will, therefore, absolutely there is no question of production of legal heirship certificate or no objection from other legal heirs. The petitioner's father derive

title over the subject properties by the registered sale deed dated 05.07.1985 vide document No.648 of 1985, however, the petitioner could not able to present the original document since it was lost. However, the petitioner produced the certified copy of the said document.

9. This issue has already 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:-

> *"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."*

10. Therefore, the respondent cannot insist the petitioner to produce the original parent document for verification. In view of the above, the impugned refusal check slip cannot be sustained and is liable to be quashed. Accordingly, the impugned refusal check slip dated 28.11.2024 is hereby quashed. The petitioner is directed to re-present the settlement deed for registration along with certified copy of the parent document. The petitioner is also directed to file an affidavit mentioning the reason for non-production of the parent document. On production of the certified copy of the parent document, the respondent is directed to register the settlement deed presented by the petitioner, without insisting for production of the original document in respect of the subject property and release the document, forthwith, if it is otherwise in order.

11.Accordingly, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is also closed.

Internet : Yes
Index : Yes/No
Speaking/Non Speaking order
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18.12.2024

To

The Sub-Registrar,
Watrap Sub-Registrar Office,
Virudhunagar District.

G.K.ILANTHIRAIYAN, J.

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W.P (MD).No.30577 of 2024

18.12.2024