



WEB COPY



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2025

CORAM :

THE HONOURABLE **MR.JUSTICE N.ANAND VENKATESH**

Writ Petition No.10249 of 2025

Sajoja

.... Petitioner

-Vs-

The Sub Registrar
Namagiripettai SRO Office
Namakkal District.

.. Respondent

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned Refusal Check Slip No.RFL/Namagiripettai/155/2024 dated 16.12.2024 of the respondent and quash the same and consequently direct the respondent to register the Sale Deed dated 09.12.2024, which was presented by the petitioner and others.

For Petitioner : Mr.M.Vijaya Raghavan

For Respondent : Mr.U.Baranidharan
Special Government Pleader

ORDER

This writ petition has been filed challenging the impugned refusal check slip dated 16.12.2024, issued by the 1st respondent and for a consequential direction to



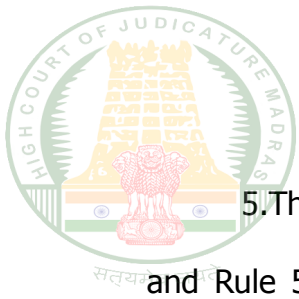
the 1st respondent to register the sale deed dated 09.12.2204, executed by the petitioner and the other co-owner.

WEB COPY

2.The refusal check slip has been issued by the respondent mainly on the ground that the subject property was purchased in the year 1944 by three persons measuring a total extent of 44.75 cents. Accordingly, each of them had 1/3rd share in the property. However, one of the co-owner executed a document in the year 1972 which was registered as Document No.755/1972, he had sold the entire property in favour of one Thangaraj. In view of the same, the present sale deed was not entertained and registered.

3.Heard Mr.M.Vijaya Raghavan, learned counsel for the petitioner and Mr.U.Baranidharan, learned Special Government Pleader for respondent.

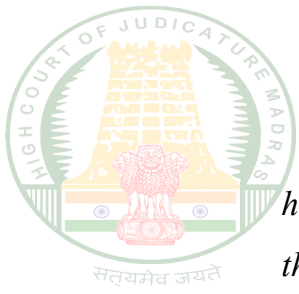
4.In the considered view of this Court, it is not in dispute that the petitioner's father and his two brothers had 1/3rd share in the entire property. Hence, one of the brother who sold the property, could have sold only 1/3rd share in the property. If he had sold the entire property, the petitioner and the other co-owner will not be bound by the said sale insofar as their 2/3rd share is concerned. Hence, the petitioner and the other co-owner can always deal with the remaining 2/3rd share in the property.



5. The respondent cannot enter into serious title dispute involved in the case and Rule 55 A(1) was already held to be invalid by the Apex Court in Civil Appeal No.3954 of 2025 in K.Gopi .V. Sub Registrar and Others, dated 07.04.2025. The relevant portions are extracted hereunder:

14. In short, Rule 55A provides that unless documents are produced to prove that the executant has a right in respect of the property subject matter of the instrument, the registration of the same shall be refused. Thus, if a sale deed is presented for registration, documents must be produced to demonstrate that the executant has acquired ownership of the property. In a sense, power has been conferred on the registering officer to verify the title of the executant. Unless documents are produced evidencing title as required by Rule 55A(i), registration of the sale deed shall be refused.

15. The registering officer is not concerned with the title held by the executant. He has no adjudicatory power to decide whether the executant has any title. Even if an executant executes a sale deed or a lease in respect of a land in respect of which he has no title, the registering officer cannot refuse to register the document if all the procedural compliances are made and the necessary stamp duty as well as registration charges/fee are paid. We may note here that under the scheme of the 1908 Act, it is not the function of the Sub-Registrar or Registering Authority to ascertain whether the vendor has title to the property which he is seeking to transfer. Once the registering authority is satisfied that the parties to the document are present before him and the parties admit execution thereof before



WEB COPY

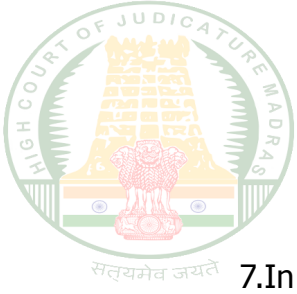
him, subject to making procedural compliances as narrated above, the document must be registered. The execution and registration of a document have the effect of transferring only those rights, if any, that the executant possesses. If the executant has no right, title, or interest in the property, the registered document cannot effect any transfer.

16. Therefore, assuming that there is a power under Section 69 of the 1908 Act to frame the Rules, Rule 55A(i) is inconsistent with the provisions of the 1908 Act. Due to the inconsistency, Rule 55A(i) will have to be declared ultra vires the 1908 Act. The rulemaking power under Section 69 cannot be exercised to make a Rule that is inconsistent with the provisions of the 1908 Act. Rule 55A(i) is accordingly declared as ultra vires the 1908 Act.

17. As the writ petition filed by the appellant was dismissed by the High Court, relying on Rule 55A(i), and since Rule 55A(i) is held to be invalid, the impugned judgments must be quashed and set aside. Ordered accordingly.

18. We, therefore, permit the appellant to lodge the sale deed for registration within a period of one month from today. On procedural compliances being made, the concerned registering officer shall proceed to register the sale deed.

6. In view of the above, the impugned refusal check slip issued by the respondent dated 16.12.2024, is hereby set aside and there shall be a direction to the respondent to entertain the sale deed and register the same if it is otherwise in order.



7. In the result, this writ petition is allowed with the above directions. No costs.

WEB COPY

16.04.2025

Index : Yes/No

NCS : Yes/No

KP

To

The Sub Registrar
Namagiripettai SRO Office
Namakkal District.



WEB COPY



N.ANAND VENKATESH, J.

KP

Writ Petition No.10249 of 2025

16.04.2025