



W.P.No.17502 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2025

CORAM

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

W.P.No.17502 of 2019

and

W.M.P.Nos.16998 & 17001 of 2019

1. Murugan
2. Karthikeyan
3. Karunakaran

..... Petitioners

Vs

1. The District Registrar,
Puducherry.

2. The Sub-Registrar,
Bahour, Puducherry.

3. Muraleeswaran
4. Anbukkarasi

..... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorarified Mandamus, to call for the records of the first respondent's order dated 29.01.2019 passed in Appeal No.3 of 2018 and quash the same and consequently to direct the respondents to register the petitioners partition deed dated 03.07.2018 in accordance with law.



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For Petitioner: Mr.Senthilkumar D.

For R1 & R2 : Mr.V.Vasanth Kumar
Additional Government Pleader (Puducherry)

ORDER

This Writ Petition has been filed challenging the order dated 29.01.2019 passed in Appeal No.3 of 2018 by the first respondent and confirming the order passed by the second respondent, thereby refused to register the partition deed.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader (Puducherry) appearing for the respondents 1 and 2. Perused the materials available on record.

3. The property comprised in R.S.No.12/1, Cadastre No.35, admeasuring 38 ares, 50 Centiares situated at Uchimedu Revenue Village bearing R.V.156, No.176/1908, was originally owned by one Sinnassamy Padeayatchy. He had purchased the property from one Aachi Kanammal by a registered sale deed dated 13.08.1908. Since Sinnassamy Padeayatchy had no issues, he adopted Barthasaradi Padeayatchy, vide



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Adoption Deed dated 31.10.1910. The said Barthasaradi Padeayatchy married to one Visalatchi Ammal and they had two sons viz., Ramadanushkody and the father of the petitioners herein. The said Ramadanushkody married one Sarojini and they had no children and both of them died issueless. The father of the petitioners married one Ambujam.

4. On 29.03.2004, the III Additional District Munsif, Puducherry, in O.S.No190 of 2004, declared the petitioners as the legal heirs of the deceased Sarojini. Thereafter, the petitioners decided to effect a partition of the property and executed a partition deed, which was presented for registration before the second respondent on 03.07.2018. However, the second respondent refused to register the document on two grounds : (i) that the parties to the deed had failed to establish linkage title over the property to be partitioned under Rule 54 of Puducherry Registration Rule 1969 ; and (ii) for non-production of original parent document. Aggrieved by the same, the petitioners preferred an appeal before the first respondent and the same was also dismissed and confirmed the order passed by the second respondent.



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5. This very same issue has already been 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



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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:



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“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



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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



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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.”

6. Though the learned counsel appearing for the respondents submitted that the petitioner ought to have approached the Civil Court for appropriate relief as against the order passed under Section 72 of the Registration Act, in view of the settled position, this Court is inclined to set aside the order passed by the first respondent.

7. Accordingly, the order dated 29.01.2019 passed in Appeal No.3 of 2018 by the first respondent and confirming the order passed by the second respondent are hereby set aside. The petitioners are



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directed to re-present the partition deed for registration before the second respondent. On such re-presentation, the second respondent is directed to consider the same and if it is otherwise in order, proceed with registration in accordance with law.

8. In the result, this Writ Petition stands allowed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

03.09.2025

Internet : Yes
Index : Yes/No
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To

1. The District Registrar,
Puducherry.

2. The Sub-Registrar,
Bahour, Puducherry.

G.K.ILANTHIRAIYAN, J.



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