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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-06-2025

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

WP NO. 20018 of 2025

Viknesh

... Petitioner

Vs

The Sub Registrar,
Kavindapadi Sub Registrar Office,
Kavindapadi,
Erode District – 638 455.

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the respondent's refusal slip No.RFL/Kavindapadi/19/2025 dated 30.04.2025 and quash the same and consequently direct the respondent to register the settlement deed dated 30.04.2025 executed between petitioner in favour of his wife Sangeetha within time frame.

For Petitioner(s) : Mr.Anandhamurthy for
Mr.J.Ranjith Kumar

For Respondent(s) : Mr. Abishet Murthy
Government Advocate



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ORDER

By consent of learned counsel on both sides, this writ petition is taken up for final disposal at the admission stage itself.

2. The writ petition is filed challenging the refusal slip dated 30.04.2025, way back, the respondent has refused to register the settlement deed executed by the petitioner in favour of his wife on the following premises:

(a) That there is a mismatch between the signature in the partition deed and the Will, by which the petitioner claims to derive title:

(b) There is no evidence to show this is the last Will executed by the petitioner's grand father.

3. It is submitted by the learned counsel for the petitioner that the subject property was originally owned by his grand father Kolandhasamy Gounder. Thereafter, the subject properties were settled through a Will dated 05.08.1991 in favour of his wife Pavathal, who is petitioner's paternal grand mother. In terms of the said Will, petitioner's grand mother Pavathal was granted life estate and thereafter the property was bequeathed to the



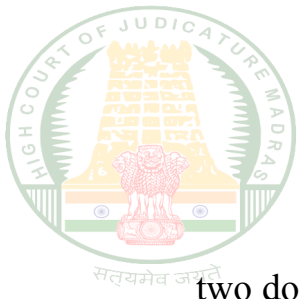
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petitioner as his absolute property. The Will was not registered. The said Kolandhasamy Gounder passed away on 07.09.1991, while his grand mother passed away on 23.04.1999. It is submitted by the petitioner that he is in possession of the subject property till date without any encumbrance. In the circumstances, the petitioner decided to execute settlement deed in favour of his wife in respect of subject property. When the settlement deed dated 30.04.2025 was presented for registration, the same was rejected on the premise that;

(a) That there is a mismatch between the signature in the partition deed and the Will, by which, the petitioner is stated to derived title:

(b) There is no evidence to show this is the last Will executed by the petitioner's grand father.

4. It is submitted by the learned counsel for the petitioner that both the above reasons for refusing registration of the settlement deed cannot be sustained and is contrary to the decisions of this court. In this regard, reliance was sought to be placed on the judgment of this Court in WP.No.2561 of 2025, dated 29.01.2025, (*P.Senthil Kumar Vs. The Sub Registrar*), wherein, there is a mismatch of signatures between the signature found in



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two documents. On the ground that there is a mismatch of signatures in two different documents, it was held as under:

'7. It is not the role of the first respondent to go into the roving enquiry as to whether the said Rajalakshmi had died intestate or otherwise, particularly when the Will was not placed for the first respondent's scrutiny for its genuineness. That apart, the first respondent cannot do the role of an expert to compare the signatures. The first respondent is not a competent expert as contemplated under sec.45 of the Evidence Act. No doubt, the suit in O.S.No.984 of 2023 was filed by the second respondent for partition and separate possession, and admittedly, no interim orders are being passed by the Court restraining the authorities from registering the documents in relation to the properties in dispute in the suit. Even assuming that the second respondent would succeed in the suit, the registration of the settlement deed would be subject to the outcome of the suit and ultimately the settlee would be entitled to what the settlor namely the petitioner herein would be entitled to.'

5. In so far as the 2nd reason there is nothing to show that this is the last Will, the petitioner would submit that such a reason has been held by this Court to be inadequate for refusal of registration. In this regard, reliance was sought to be placed in the order of this court in ***WP.No.14688 dated 07.06.2024 (C.Malarkodi Vs. The District Registrar (Administration) and another.*** The relevant portion is extracted hereunder:



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'4. *The reasons assigned for refusal for registering the Settlement Deed are to the effect that there is no evidence to show that the will executed by the petitioner's father is his last will and the mortgage of the year 1975, is in existence. As this very order is against fundamental and substantive law of the Country, this Court is of the view that no counter is required and the order can be interfered with for the administration of justice. It is not the duty of the Registrar to find out whether this is the last will of the Testator and only the family members are competent to challenge any will executed by any member of the family. That apart, even assuming that the mortgage is in existence, the same is not a bar for subsequent transfer and even if any transfer takes place, such transfer is always subject to the mortgage, which issue has already been decided by this Court in N.Ramayee v Sub-Registrar [(2020) 6 CTC 697]. The same view is also reiterated in G.Rajasulochana vs. The Inspector General of Registration and Others (W.P.No.29706 of 2022 decided on 16.04.2024 and so also in Subramani Vs. The Sub Registrar, Rasipuram and Another (W.P.No.11056 of 2024 decided on 26.04.2024)*

6. It may also be relevant to refer the judgment of the supreme Court



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reported in 2025 SCC Online Sc 740 (K.Gopi vs. Sub Registrar), wherein,

while dealing with the power of registering authority, it was held as under:

'13. In contrast, Rule 55A empowers the registering officer to refuse registration unless the presentant produces the original deed by which the executant acquired rights over the subject property and an encumbrance certificate pertaining to the property, obtained within ten days from the date of presentation,. If the original deed is not available due to its antiquity, the registration of the presented document will be refused unless the presenter produces a revenue record that evidences the executant's right over the subject property. If the original deed is lost, the document cannot be registered unless a non-traceable certificate is issued by the police department along with an advertisement published in the local newspaper giving notice of the loss of the previous original deed.

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



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officer cannot refuse to register the document if al the procedural compliances are made and the necessary stamp duty as well as registration charges/fee are pai. 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 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, Rule55A(i) will have to be declared ultra vires the 1908 Act. The rule-making power under section 69 cannot be exercise to make a Rul 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(), and since Rule 55A(i) is held to be invalid,the impugned judgments must be quashed and set aside. Ordered accordingly.”

7. Learned Govt. Advocate appearing for the respondent, on this being pointed out, would submit that the petitioners may represent the settlement deed and the same would be registered if it is otherwise in order , which was



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agreed to by the learned counsel for the petitioner.

8. In view of the above, the petitioner is directed to represent the Settlement Deed for registration and on such representation, the respondent shall register the same if it is, otherwise in order. If for any reason, the respondent is of the view that registration of the sale deed ought to be refused, the refusal slip would be issued after assigning reasons therefor.

9. With the above direction, this writ petition is disposed of. No costs.

18.06.2025

Index:yes/no
Internet:yes/no
msr
To

The Sub Registrar,
Kavindapadi Sub Registrar Office,
Kavindapadi,
Erode District – 638 455.



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MOHAMMED SHAFFIQ, J.

msr

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