



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.07.2025

CORAM

THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

WP.No.22636 of 2025 &

WMP.No.25484 of 2025

E.Mahendran
Petitioner

...

Vs

1.The Inspector General of Registration,
100, Santhome High Road,
Chennai 600 028.

2.The Sub Registrar, Joint-I
Office of the Sub-Registrar,
Chennai South

...Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in proceedings vide Notice dated 02.06.2025 and quash the same as illegal, arbitrary and non-est in law and consequently direct the 2nd respondent to register the sale deed dated 19.04.2023 bearing pending document in TP.No.170/2023 within the time stipulated by this Court.

For Petitioner : Mr.B.Vijay

For Respondent : Mr.Abishek Murthy for R1 & R2
Government Advocate



ORDER

WEB COPY

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 praying for issuance of Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in proceedings via Notice dated 02.06.2025 and quash the same as illegal, arbitrary and non-est in law and consequently direct the 2nd respondent to register the sale deed dated 19.04.2023 bearing pending document in TP.No.170/2023 within the time stipulated by this Court.

3. Learned counsel for the petitioner submitted that by the impugned notice dated 02.06.2025, the petitioner's sale deed dated 19.04.2023 was kept pending after registration solely on the ground that the petitioner had not submitted the legal heir certificate. It is further submitted by the learned counsel for the petitioner that the question as to whether it is open to the Registering authority to insist upon production of legal heir certificate has already been considered by the Supreme Court in the case of ***K. Gopi v. Sub-Registrar***, reported in ***2025 SCC OnLine SC 740***.



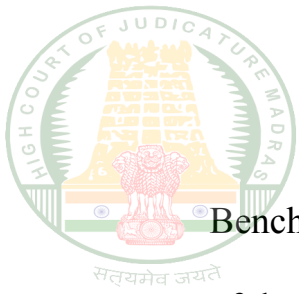
WEB COPY

Before proceeding to refer to the Supreme Court decision, it may be relevant to note that when the writ petition in W.P.No.21934 of 2023 was filed challenging the refusal slip on the premise that all legal heirs were not included in the sale deed, the learned Judge was pleased to pass the following order:

'3. When the Sub-Registrar found that the legal heir certificates are bogus, he had issued the Refusal Check Slip on the ground that the petitioner had not included other legal heirs and when the petitioner states that the subject property is an ancestral property and he had presented a Sale Deed for registration without including all other legal heirs or the persons, who all are entitled for the property in the document, then the Sub-Registrar is empowered to refuse the document for registration.

4. Thus, the petitioner has not established any acceptable reason for the purpose of interfering with the order of refusal issued by the registering authority. For the purpose of registering the document, the petitioner has to necessarily include all the legal heirs, who all are entitled for the property or approach the competent Civil Court of law for the purpose of establishing his right over the subject property.'

4. Against the order of the learned Single Judge, the petitioner preferred appeal in W.A.No.907 of 2024, wherein, the Honourable Division



Bench of this Court, vide order dated 02.03.2024 affirmed the above order of the learned Single Judge.

WEB COPY

5. The matter was carried in appeal before the Hon'ble Supreme Court, wherein, the Apex Court held that the Registering Officer is not concerned with the title held by the Executant. Thus, he has no adjudicatory power to decide whether the Executant has any title or not. It was further observed that even if an Executant who executes the sale deed or lease deed in respect of the land in which, he has no title, the Registering officer cannot refuse to register the document, if all the procedural compliance are made and stamp duty and registration fees are paid.

6. Relying upon the above judgment reported in the case of ***K. Gopi v. Sub-Registrar, reported in 2025 SCC OnLine SC 740***, the learned counsel for the petitioner would submit that the Registering Authority in keeping the document pending only on the ground that legal heir certificate has not been furnished by the petitioner is contrary to the above order of the Supreme Court.

7. This Court finds that there is merit in the submission of the learned



WEB COPY

counsel for the petitioner. Therefore, in the light of the decision of the Apex Court, the impugned proceedings are liable to be set aside. Before parting, it may be relevant to refer the following decision (cited supra) of the Supreme Court which reads as follows:

'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 officer cannot refuse to register the document



WEB COPY



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(i), and since Rule 55A(i) is held to be invalid,the impugned judgments must be quashed and set aside. Ordered accordingly.”

8. In view of the above, the respondent authority shall release the sale deed, if it is kept pending only on the ground that legal heir certificate was not furnished and he would do so within a period of three months from the date of uploading of the web copy without waiting for receipt of



certified copy of this order.

WEB COPY

9. With the above direction, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

10.07.2025

msr

To

- 1.The Inspector General of Registration,
100, Santhome High Road,
Chennai 600 028.
- 2.The Sub Registrar, Joint-I
Office of the Sub-Registrar,
Chennai South

MOHAMMED SHAFFIQ.,J.

msr



WEB COPY

CRL.OP.No.22636 of 2025 &

WMP.No.25484 of 2025

10.07.2025