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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **30.01.2025**

CORAM:

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

W.P.(MD)No.2710 of 2025

Govinthammal ... Petitioner

/Vs./

1. The District Registrar,
   Pudukkottai,
   Pudukkottai District.

2. The Sub Registrar,
   Alangudi,
   Pudukkottai District. ... Respondents

PRAYER**:** Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned Refusal Check Slip issued by the 2nd respondent in RFL/Alangudi/299/2024 dated 10.12.2024 and the order passed by the 1st respondent in O.Mu.No. 4467/Aa1/2024, dated 09.01.2025 by confirming the order of the 2nd respondent and quash the same and consequently direct the 2nd respondent to register and release the gift deed dated 28.11.2024.

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For Petitioner : Mr.D.Rameshkumar

For Respondent : Mr.D.Sadiq Raja
Additional Government Pleader

ORDER

This writ petition has been filed challenging the impugned refusal check slip dated 10.12.2024 issued by the second respondent, thereby refused to register the gift deed on the ground that the petitioner failed to produce the original parent document in respect of the subject property.

2. By consent of both parties, this writ petition is taken up for final disposal at the stage of admission itself. Heard the learned counsel on either side and perused the materials placed before this Court.

3. The petitioner presented the gift deed for registration before the second respondent. However, the second respondent refused to register the same on the ground that the petitioner failed to produce the parent deed in respect of the subject property.

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4. The learned Special Government Pleader appearing for the respondents 1 & 2 submitted that the Hon'ble Division Bench of this Court in W.A.No.271 of 2024 dated 25.03.2024 held that the first proviso to Rule 55 A of the Tamil Nadu Registration Rules, 2000 is not at all declared as ultravires by this Court. The provisos to Rule 55 A are intact in Rule Books and therefore, it is to be complied scrupulously, whenever documents are presented for registration. Further, the second and third provisos to Rule 55A of the Registration Rules enumerates procedures to be followed in the event of non-availability of revenue records to be produced for registration. The presentant of a document is bound to comply with the conditions stipulated in Rule 55A for registering a document under the Registration Act.

5. In the case of ***Federal Bank v. Sub-Registrar*** reported in ***2023 2 CTC 289,*** it is held that it is not open to the Inspector General of Registration to take a contra view and notify a subordinate legislation the effect of which is to completely render nugatory to the interpretation made by this Court. Ex-facie, the first proviso to Rule 55-A (i) is clearly illegal and is vitiated by a clear abuse of power.

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6. In the case of ***N.Ramayee vs. the Sub Registrar***, in ***W.P.No.674 of 2020*** dated ***05.11.2020***, the Hon'ble Division Bench of this Court held as follows:-

> *"29. In the light of the above when we deal with the various provisions of the Transfer of Property Act the question arises as to whether the transfer is restricted to one time in respect of the immovable property, unless the previous transfer or any agreement is set aside in the court of law, and other transfer is permissible? The answer is absolutely "No" for the following reasons:*
>
> *The property of any kind may be transferred, except as otherwise provided by the transfer of property Act or by any other law for the time being, as provided in Section 6 of the Transfer of property Act.*
>
> *30. Every person competent to contract and entitled to transferable property, or authorised to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner allowed and prescribed by any law for the time being in force, as per Section 7 of the Transfer of Property Act. The reading of the above section makes it very clear that even a person not entitled transferable property is competent to transfer such property when he was authorised to dispose of such property.*

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31. Section 41 of the Transfer of Property Act deals with the power of the ostensible owner to effect the transfer of the property with consent, express or implied of the real owner.

32. From the principle underlined in the Section 41 of the Transfer of Property Act is that the ostensible owner of the property, with the consent express or implied and representing himself as owner of the property though he is not having the title, can deal with the property. Similarly, Section 42 of the T.P. Act deals with the transfer by a person having authority to revoke the former transfer. When a person transfers any immovable property reserving power to revoke the transfer, and subsequently transfers the property for consideration to another transferee, such transfer operates in favour of such transferee subject to any condition attached to the exercise of the power as a revocation of the former transfer to the extent of the power.

33. Similarly section 43 of Transfer of Property Act deals with transfer by unauthorised person who subsequently acquires interest in the property transferred. The above section makes it very clear that even a person who has no title over the property purports to transfer to another by deed and when he subsequently acquires any interest in the property, sufficient to satisfy the transfer, the title would pass to the transferee without any further act on the part of the transferor, provided the transferee has not rescinded the transfer and opts for such effectuation. The

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above principle also makes it very clear even a transfer by unauthorised person is not prohibited. Only the validity of the title would be subject to his acquiring subsequent interest in the property.

34. Section 48 of the Transfer of Property Act deals with priority of rights created by transfer, which reads as follows:

> *"48. Where a person purports to create by transfer at different times rights in or over the same immoveable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created."*

35. The above section determines the priority when there are successive transfers, where the person creates transfer at different times right in or over the same immovable property, such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation bind the earlier transferee and be subject to the rights previously created.

36. Reading of the above section makes it clear that there is no bar for successive transfers. However, the rights in later transfer shall always be subject to the rights already created in the earlier transfer.

37. It is also pertinent to note that even if transfer is made during a pending suit, such transfer is not void but is

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subject to the result of the suit. Section 53 of the Transfer of Property Act, deals with fraudulent transfer. Even such fraudulent transfer is made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed. Even in such cases the rights of transferee in good faith and for consideration is protected.

38. Section 56 of the Transfer of Property Act deals with marshalling by subsequent purchaser. The above provision also makes it clear that when the owner of two or more properties mortgages them to one person and then sells one or more of the properties to another person, the buyer is in the absence of a contract to the contrary, entitled to have the mortgage-debt satisfied out of the property or properties not sold to him, so far as the same will extend, but not so as to prejudice the rights of the mortgagee or persons claiming under him or of any other person who has for consideration acquired an interest in any of the properties. The above provision also makes it clear that though there were mortgages already created there is no bar for subsequent transfer of the property. But subsequent transfer is subject to the mortgage earlier created.

39. Section 57 of the Transfer of Property Act deals with the Provision by Court for encumbrances and sale freed there from. The Section also makes it clear that even the properties already encumbered can be brought under

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court sale and the encumbrance can be freed after issuance of notice to the encumberer.

40. It is also relevant to note that even a mortgage is a transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability. Therefore, it cannot be said that once the encumbrance is made by creating a mortgage, the mortgagor is totally prohibited from effecting any further transfer. In fact if any such transfer is made, it is always subject to the mortgage alone. If the analogy is drawn from the judgment of the single judge in W.P. No.33601 of 2019 [Venkattamma v. The Sub-Registrar] that agreement once registered there cannot be any subsequent settlement deed is accepted, such situation even may lead to the contention that even where a simple mortgage is created, the mortgagor cannot transfer the property for any other purpose even for a lease, even though lease is just transfer of right to enjoy the property. The judgment of the learned single Judge in W.P. No. 33601 of 2019 [Venkattamma v. The SubRegistrar] holding that unless there is declaration declaring the agreement for sale is null and void is obtained from civil court no further transfer could be registered, which is, in our view, not according to law. It is also to be noted that in the above case only agreement for sale was registered. It is relevant to extract Section 54 of

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the Transfer of Property Act."

14.a. Dealing with the case of transfers made after the execution of a sale agreement the Division Bench observed:

> *"Section 54 of T.P. Act: "Sale" defined.— "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. Sale how made.—*
> *3 Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. 1In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property. Contract for sale.—A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property."*

41. The contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest or charge on such property. The agreement of sale is merely a document creating right to obtain a document of sale on fulfilment of terms and conditions specified therein and it is only capable of enforcement in the event of breach of contract by the other side. Even to enforce such agreement for specific performance, the agreement holder has to establish not

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only the contract but other grounds viz., ready and willingness on his part to get a decree of specific pereformance provided the suit is filed within time.

42. In Narandas Karsondas v. S.K. Kamtam [(1977) 3 SCC 247 : AIR 1977 SC 774] the Honourable Supreme Court also considered the nature of the right created on the immoveable property by a contract for sale. It has been stated that contract of sale in view of section 24 of T.P. Act does not of itself create any interest in or charge on the property. The personal obligation created by a contract of sale (as recognised in Section 3 of the Specific Relief Act and section 91 of the Trust Act is described in Section 40 of the T.P. Act) as an obligation arising out of contract. An annexure to the ownership of the property, but not amounting to interest or easement therein.

43. Section 19(b) of Specific Relief Act also protects the subsequent transferee for value and for consideration in good faith without notice of the original contract. Even if a person has no title to the property has entered into a contract for sale, the transferee can seek for specific performance under section 13 of the Specific Relief Act.

44. From a combined reading of various provisions of the Transfer of Property Act as referred above, we are of the view that there is no bar forcreating subsequent transfer of the immovable property. Effect of the subsequent transfer is always subject to the earlier transfer created by the transferor of the immovable property. Therefore, it cannot

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be said that since the agreement for sale is registered the owner viz., the Vendor has no right to execute any document. In Venkatamma's case [W.P. No. 33601 of 2019] in fact settlement deed has been presented for registration by the Vendor after three years of the so called contract. Merely on the basis of the agreement for sale, the registrar refused to register the document which is against the very substantive law of the country. If such approach is accepted a situation may arise in every loan transaction if some contract is registered, merely because it shown in the encumbrance as a registered agreement, the owners of the property would be prohibited from dealing with the property as long as the encumbrance finds place in the encumbrance certificate. Such situation in fact would lead to deprive the right of the owner of the property to deal with the property which is a constitutional right."

7. Therefore, the effect of the first proviso is clearly an arbitrary exercise of power aimed at setting at naught the above declaration of law by the Division Bench of this Court.

8. Unfortunately, it was not brought to the knowledge of the Hon'ble Division Bench of this Court and as such, the Hon'ble Division Bench had no opportunity to deal with the above issue. In view of the

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above, this Court could not able to follow the Hon'ble Division Bench of this Court since the Hon'ble Division Bench of this Court dealt with the issue in the above said manner. It is also endorsed by the learned Single Judge of this Court in the case of ***Subramani vs. The Sub-Registrar*** in ***WP No.11056 of 2024*** dated ***26.04.2024***.

> *"28. It is also pertinent to note that even if transfer is made during a pending suit, such transfer is not void but is subject to the result of the suit. Section 53 of the Transfer of Property Act, deals with fraudulent transfer. Even such fraudulent transfer is made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed. Even in such cases the rights of transferee in good faith and for consideration is protected."*

9. This issue has also 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*

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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

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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

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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

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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,

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Rasipuram, will register the instrument without insisting on production of originals within 15 days from the date of presentation."

10. In view of the above, the second respondent cannot insist the party to produce the original parent document while registration. Therefore, the impugned refusal check slip cannot be sustained and is liable to be quashed. Accordingly, the impugned refusal check slip dated 10.12.2024 issued by the second respondent and the impugned order passed by the first respondent dated 09.01.2025 are hereby quashed. The petitioner is directed to re-present the gift deed within a period of one week from the date of receipt of a copy of this order. On receipt of the same, the second respondent is directed to register the gift deed presented by the petitioner without insisting upon production of the parent deed in respect of the subject property within a period of one week thereafter and release the same forthwith, if it is otherwise in order. Accordingly, this writ petition is allowed. No costs.

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G.K.ILANTHIRAIYAN, J.

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TO:-

1. The District Registrar,
   Pudukkottai,
   Pudukkottai District.

2. The Sub Registrar,
   Alangudi,
   Pudukkottai District.

Order made in
W.P.(MD)No.2710 of 2025

Dated:
30.01.2025

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