2025 LiveLaw (SC) 402

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
ABHAY S. OKA; J., UJJAL BHUYAN; J.
CIVIL APPEAL NO. 3954 OF 2025; April 07, 2025
K. Gopi *versus* **The Sub-Registrar & Ors.**

Registration Act, 1908; Section 69 – Registration of transfer document cannot be refused on ground that vendor's title deeds aren't produced or established. It is not the function of the Sub-Registrar or Registering Authority to ascertain whether the vendor has title to the property. The Act does not authorize the Registering Authority to deny registration of a transfer document on the ground that the vendor's title documents are not produced or that their title is unproven. Even if a person executing a sale deed or lease does not have title to the property, the registering authority cannot refuse to register the document, provided all procedural requirements are met and applicable stamp duty and registration fees are paid. *(Para 11 & 15)*

Registration Act, 1908; Section 69 – Registration Rules (Tamil Nadu); Rule 55A(i) - As per Rule 55A(i), the person seekig registration of a document was mandated to produce the previous original deed as per which he acquired title and encumbrance certificate. Unless this Rule is complied with, the document will not be registered. It was not within the mandate of the Sub-Registrar or Registering Authority under the 1908 Act to verify whether the vendor has valid title. Therefore, the Court struck down as unconstitutional Rule 55A(i) of the Tamil Nadu Registration Rules as inconsistent with the provisions of the Registration Act, 1908. Impugned High Court judgments relying on Rule 55A(i) quashed. Sale deed to be registered upon procedural compliance within one month. Appeal allowed. *(Para 16 - 19)*

For Appellant(s): Ms. Qurratulain, AOR

For Respondent(s): Mr. P.S.Raman,AG, Sr. Adv. Mr. Sabarish Subramanian, AOR

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL ASPECTS

1. This appeal takes an exception to the impugned judgment dated 20th March, 2024, passed by a Division Bench of the High Court of Judicature at Madras. On 02nd September, 2022, a sale deed was executed by one Jayaraman Mudaliyar in favour of the appellant in respect of the property mentioned therein. The Sub-Registrar refused to register the sale deed. The appellant filed a writ petition to challenge the refusal. However, the writ petition was dismissed. Thereafter, the appellant preferred an appeal to the District Registrar against the Sub-Registrar's order refusing to register the sale deed. The appeal was allowed by the order dated 04th September, 2023, and the District Registrar directed the Sub-Registrar to reconsider his decision. By a letter dated 05th September, 2023, the Sub-Registrar directed the appellant to resubmit the document along with proof of the vendor’s title to transfer the property. On 03rd October, 2023, the appellant again submitted the sale deed for registration. However, by the order passed on the same day, registration was refused. A writ petition was filed against the order of refusal. The writ petition was rejected. A writ appeal was preferred against the rejection of the writ petition by the learned Single Judge, which has been dismissed by the impugned order.

2. The writ appeal was dismissed by the impugned judgment by holding that under Rule 55A of the Registration Rules under the Registration Act, 1908 (for short 'the 1908 Act) framed by the Government of Tamil Nadu, the Sub-Registrar was entitled to refuse the registration of the sale deed on the ground that the appellant's vendor has not established his title and ownership. The relevant part of the impugned judgment reads thus:

"2. The petitioner presented Sale Deed for registration under the Registration Act, 1908. The Sub-Registrar refused to register the document on the basis that the petitioner had not established his title and ownership, as required under Rule 55-A of the Registration Rules. Even on earlier occasion, the Writ Petition filed by the petitioner was rejected on the ground that he has to impleaded the legal heirs, since the petitioner claims title based on the unregistered Will. In the event of any doubt regarding title, the registering authority is empowered to return the document under the provisions of the Act. In the present case, the petitioner was granted liberty to workout his remedy in the manner known to law. When doubt arises and the legal heirs are not impleaded, the parties are to be relegated to approach the Civil Court and in the present case, the Writ Court has rightly done so. Thus, we do not find any infirmity in respect of the order impugned."

3. By the order dated 14th November, 2024, this Court permitted the appellant to amend the present Petition for Special Leave to Appeal to incorporate a challenge to the validity of Rule 55A(i) of the Registration Rules. Accordingly, the SLP was amended. The first respondent, the Sub-Registrar, has filed a counter-affidavit on behalf of the State Government in response to the amended petition.

SUBMISSIONS

4. The learned counsel appearing for the appellant submitted that the Sub-Registrar, who is empowered to register a document under the 1908 Act, is not empowered to go into the question of the title of the person executing the document for transferring the property. Learned counsel submitted that the Registration Rules have been framed in accordance with the powers under Section 69 of the 1908 Act. Firstly, Section 69 does not empower the Inspector General to frame Rules providing power to refuse registration of a sale deed or transfer deed in the event the vendor has failed to prove his title. Moreover, the Rules can be framed which are consistent with the Act. In the 1908 Act, there is no provision to refuse registration on the ground that the vendor has not proved his title. Therefore, Rule 55(A)(i) is *ultra vires* the provision of the 1908 Act and therefore, Rule 55(A)(i) is invalid.

5. The Learned Advocate General for the State of Tamil Nadu appeared for the respondents and submitted that, without going into the legal controversy, the state is prepared to take steps for the registration of the sale deed. He submitted that the validity challenge in respect of Rule 55A(i) is pending before the High Court, and therefore, in this SLP, for the first time, a validity challenge cannot be entertained. He submitted that in this case, the issue of validity may be academic. He submitted that Rule 55A has been framed to give effect to the object of preventing registration of bogus transactions. He urged that the Rule has been framed well within the Rule-making power conferred under Section 69 of the 1908 Act. He urged that Rule 55A has been enacted to give effect to Sections 22-A and 22-B of the 1908 Act incorporated by the State amendment. Therefore, no interference is called for.

CONSIDERATION OF SUBMISSIONS

6. Rule 55A of the Registration Rules reads thus:

"55A (i) **The registering officer before whom a document relating to immovable property is presented for registration, shall not register the same, unless the presentant produces the previous original deed by which the executant acquired right over the subject property and an Encumbrance Certificate pertaining to the property obtained within ten days from the date of presentation;**

Provided that in case an encumbrance as to mortgage, orders on attachment of property, sale agreement or lease agreement exists over the property, the registering officer shall not register such document if the time limit for filing of suit is not lapsed or No Objection Certificate is not granted by the appropriate authority or raising of the attachment is not done, as the case may be; Provided further that in case the previous original deed is not available as the property being an ancestral one, the registering officer shall not register such document, unless the presentant produce any revenue record evidencing the executant's right over the subject property such as patta copy issued by Revenue Department or tax receipt;

Provided also that if the previous original deed is lost, the registering officer shall register such document only on production of non-traceable Certificate issued by the Police department alongwith the advertisement published in the local Newspaper as to the notice of loss of the previous original deed;

Provided also that production of the previous original deed shall not be necessary where the Government or a Statutory body is the executant of the document or for such class of documents as may be notified by the Inspector General of Registration, from time to time

(ii) The registering officer, on being satisfied that the description of the property contained in the document presented for registration conforms with the description of the property found in the previous original deed produced by the presentant as provided under this rule, he shall inscribe the word 'verified' on a conspicuous portion of the first page of such title deed and affix his signature with date and thereafter cause scanning of page containing such inscription as a reference document

(iii) In case where revenue records are produced under this rule, the same shall be scanned as the main document and where Non-Traceable Certificate and the advertisement published in the local Newspaper are submitted by the presentant, the same shall be scanned as reference documents;

Provided that such verification and scanning of the previous original deed or record in the manner provided under this rule, shall not be construed to be an act of ascertaining the validity of the document presented for registration and also the same shall not absolve or deprive any person from the provisions contained in Parts XIV and XV of the Registration Act, 1908 (Central Act XVI of 1908)**"**

(emphasis added)

7. In substance, Clause (i) of Rule 55A mandates that when a document relating to an immovable property is presented for registration before a registering officer, the same shall not be registered unless the presentant produces the previous original deed by which the executant acquired the right over the subject property and an encumbrance certificate obtained within ten days of the date of presentation. It is also provided that, in the event of an encumbrance such as a mortgage, attachment, sale agreement, or lease agreement, the registering officer shall not register such a document if the time limit for filing a suit for specific performance has not lapsed or the appropriate authority has not granted a No Objection Certificate.

8. At this stage, we must also refer to Sections 22-A and 22-B incorporated by the State of Tamil Nadu in the 1908 Act. Sections 22-A and 22-B of the Registration (Tamil Nadu Amendment) Act, 2008 read thus:

"22-A **Refusal to register certain documents** - Notwithstanding anything contained in this Act, the registering officer shall refuse to register any of the following documents namely:-

(1) instrument relating to the transfer of immovable properties by way of sale, gift, mortgage, exchange or lease:

(i) belonging to the State Government or the local authority or Chennai Metropolitan Development Authority established under Section 9-A of the Tamil Nadu Town and Country Planning Act, 1971;

(ii) belonging to, or given or endowed for the purpose of any religious institution to which the Tamil Nadu Religious and Charitable Endowments Act, 1959 is applicable;

(iii) donated for Bhoodan Yagna and vested the Tamil Nadu State Bhoodan Yagna Board established under Section 3 of the Tamil Nadu Bhoodan Yagna Act, 1958; or

(iv) of Wakfs which are under the superintendence of the Tamil Nadu Wakf Board established under the Wakf Act, 1995; unless a sanction in this regard issued by the competent authority as provided under the relevant Act or in the absence of any such authority, an authority so authorised by the State Government for this purpose, is produced before the registering officer;

(2) instrument relating to the transfer of ownership of lands converted as house sites without the permission for development of such land from planning authority concerned; provided that the house sites without such permission may be registered if it is shown that the same house site has been previously registered as house site "

22-B. **Refusal to register forged documents and other documents prohibited by law**- Notwithstanding anything contained in this Act, the registering officer shall refuse to register the following documents, namely:-

(1) forged document;

(2) document relating to transaction, which is prohibited by any Central Act or State Act for the time being in force;

(3) document relating to transfer of immovable property by way of sale, gift, lease or otherwise, which is attached permanently or provisionally by a competent authority under any Central Act or State Act for the time being in force or any Court or Tribunal;

(4) any other document as the State Government may, by notification, specify**"**

9. In the present case, the registration was refused on the ground that the title of the vendor and the appellant was not established. On plain reading of Sections 22-A and 22-B, on the ground of failure to produce documents of title of the vendor, registration could not have been refused.

10. Now, we come to the Rule-making power under Section 69 of the 1908 Act, which reads thus:

"69. Power of Inspector General to superintend registration offices and make rules.—(1) The Inspector General shall exercise a general superintendence over all the registration offices in the territories under the State Government and **shall have power from time to time to make rules consistent with this Act**—

(a) providing for the safe custody of books, papers and documents;

(aa) providing the manner in which and the safeguards subject to which the books may be kept in computer floppies or diskettes or in any other electronic form under sub-section (1) of Section 16-A;

(b) declaring what languages shall be deemed to be commonly used in each district;

(c) declaring what territorial divisions shall be recognized under Section 21;

(d) regulating the amount of fines imposed under Sections 25 and 34, respectively;

(e) regulating the exercise of the discretion reposed in the registering officer by Section 63; (f) regulating the form in which registering officers are to make memoranda of documents; (g) regulating the authentication by Registrars and Sub-Registrars of the books kept in their respective offices under Section 51;

(gg) regulating the manner in which the instruments referred to in sub-section (2) of Section 88 may be presented for registration;

(h) declaring the particulars to be contained in Indexes Nos. I, II, III and IV, respectively; (i) declaring the holidays that shall be observed in the registration offices; and

(j) generally, regulating the proceedings of the Registrars and Sub-Registrars.

(2) The rules so made shall be submitted to the State Government for approval and, after they have been approved, they shall be published in the Official Gazette, and on publication shall have effect as if enacted in this Act.**"**

(emphasis added)

11. None of Clauses (a) to (j) provides for framing Rules conferring power on the registering authority to refuse registration of a document of transfer. No provision under the 1908 Act confers power on any authority to refuse registration of a transfer document on the ground that the documents regarding the title of the vendor are not produced, or if his title is not established. Even Sections 22-A and 22-B, incorporated by way of State amendment, do not have such a provision.

12. Section 22-A is restricted to specific cases. Sub-Section (1) thereof confers power on the registering officer to refuse registration in respect of the properties mentioned in clauses (i) to (iv). Sub-Section (2) of Section 22-A enables the registering officer to refuse registration of instruments relating to the transfer of ownership of lands converted as house sites without the permission for development being granted by the planning authority. Section 22-B enables the registering officer to refuse registration of a forged document. It also confers power on the registering officer to refuse registration of a document in respect of a transaction that is prohibited under either the laws of the State or the Central Government. If any property has been attached either permanently or provisionally by a competent authority under the Central Act or State Act, Section 22-B enjoins the registering officer to refuse registration of a document making a transfer. Sections 22-A and 22-B provide for mandatory refusal of registration of the documents covered by specific categories mentioned therein

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 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 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.

19. The appeal is accordingly allowed in the above terms.