

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

RESERVED ON : **11.06.2026**
[W.P.(MD)No.7415, 6183 & 9526/2026]

RESERVED ON : **17.06.2026**
[W.P.(MD)No.16387/2026]

DELIVERED ON : **23.06.2026**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

AND

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

W.P.(MD)Nos.7415, 6183, 9526 & 16387 of 2026
and W.M.P.(MD)Nos.6087, 7591, 7592 & 12226 of 2026

W.P.(MD)No.7415 of 2026

M/s.Dugars,
Represented by its Partner,
Manjo Kumar Dugar,
Son of Amar Chand Dugar,
Door No.6, Plot No.8,
MM Street,
Kodaikanal-624 101.

... Petitioner

Vs.

1.The State of Tamilnadu,
Represented by its Secretary to Government,
Registration Department,
Secretariat,
Fort St.George,
Chennai-600 009.

1/117



WEB COPY

2.The Secretary to Government,
Law Department,
Secretariat,
Fort St.George,
Chennai-600 009.

3.The Inspector General of Registration,
Office of the Inspector General of Registration,
Santhome High Road,
Chennai-600 100.

4.The Sub Registrar,
Office of the Sub Registrar,
Kodaikanal,
Dindigul District.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, to declare Section 34-C of the Registration Act, 1908, inserted vide the Registration (Tamil Nadu Amendment) Act, 1908 (T.N.Act 1 of 2026) as manifestly arbitrary and violative of Articles 14, 21 and 300-A of the Constitution of India.

For Petitioner : Mr.Sharath Chandran,
for Mr.Sakthi Siddharth, S.

For Respondents : Mr.T.Gowthaman,
Addl. Advocate General
assisted by Mr.M.P.Senthil,
Counsel for State
Mr.Srinath Sridevan,
Senior Counsel to Assist the Hon'ble Court.

W.P.(MD)No.6183 of 2026

K.Uthira Kumar

... Petitioner

2/117



WEB COPY

Vs.

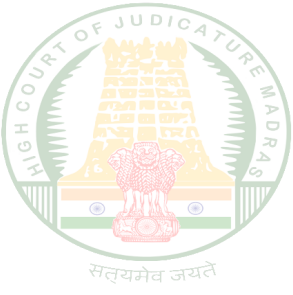
1. The Sub Registrar,
Beach Road, near the Bus Stand,
Thondi, Ramanathapuram-623 409.
2. The Secretary to Government,
Law (Legislative) Department,
Government of Tamil Nadu,
Fort St. George, Chennai-600 009.
3. The Inspector General of Registration,
100, Santhome High Road,
Mullima Nagar, Mandavelipakkam,
Raja Annamalaipuram,
Chennai-600 028.
4. The District Registrar,
Byepass Road,
Oyyakondansiruvayal,
Karaikudi-630 002.

... Respondents

[R2 to R4 are impleaded vide order dated 23.03.2026]

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, declaring Section 34-C of the Tamil Nadu Registration (Amendment) Act, 2025 (L.A. Bill No.8 of 2025), and (Act No.1 of 2026) as ultra vires the Constitution of India, arbitrary and violative of Articles 14 and 300A of the Constitution of India, and consequently issue a writ of mandamus calling for the records relating to the refusal Check Slip No.RFL/Thondi/2/2026 dated 18.02.2026 issued by the fourth respondent, quash the same and direct the fourth respondent to register the gift deed dated 16.02.2026 presented by the petitioner on the basis of the available certified copies and in accordance with law.

3/117



WEB COPY



For Petitioner : Mr.E.Balaji
For Respondents : Mr.T.Gowthaman,
Addl. Advocate General
assisted by Mr.M.P.Senthil,
Counsel for State

W.P.(MD)No.9526 of 2026

The Federation of All India
Real Estate Association (FAIRA),
Rep. by its State Secretary,
Mr.Pandy ... Petitioner

Vs.

- 1.The State of Tamilnadu,
Represented by its Secretary to Government,
Registration Department,
Secretariat,
Chennai-600 009.
- 2.The State of Tamil Nadu,
Rep. by the Secretary to Government,
Law Department,
Secretariat,
Chennai-600 009.
- 3.The Inspector General of Registration,
Office of the Inspector General of Registration,
Santhome High Road,
Chennai-600 100.
- 4.The District Registrar,
O/o.The District Registrar,
Madurai.
- 5.The District Registrar,
O/o.the District Registrar,
Ramanathapuram.

4/117



WEB COPY

6.The District Registrar,
O/o.the District Registrar,
Tirunelveli.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Declaration to declare Section 34-C of Registration Act, 1908 inserted vide the Registration (Tamil Nadu Amendment) Act, 2025 (Act 1 of 2026) as unconstitutional and ultra vires of Articles 14, 21 and 300A of Constitution of India within the period that may be stipulated by this Court.

For Petitioner : M/s.H.Jasima Yasmin
for M/s.Ajmal Associates

For Respondents : Mr.T.Gowthaman,
Addl. Advocate General
assisted by Mr.M.P.Senthil,
Counsel for State

W.P.(MD)No.16387 of 2026

Pugalendhi

... Petitioner

Vs.

1.The State of Tamilnadu,
Represented by its Secretary to Government,
Commercial Taxes and Registration Department,
Secretariat, Chennai-600 009.

2.The Joint – II Sub Registrar,
Join – II Sub Registrar Office,
Karaikudi, Sivagangai District.

... Respondents

5/117



WEB COPY

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, declaring that the impugned Amendment Act No.1 of 2026 amended to the Original Provision in Section 34-C to the Registration Act, 1908 as illegal, ultra-virus, unconstitutional and void.

For Petitioner : Mr.RM.Arun Swaminathan

For Respondents : Mr.S.Venkatesh
Counsel for State

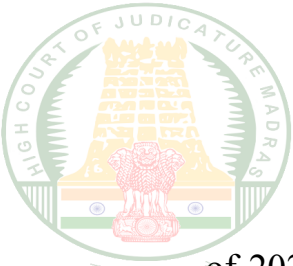
COMMON ORDER

(Judgment of the Court was delivered by **N.SATHISH KUMAR, J.**)

These four Writ Petitions have been filed primarily seeking a declaration that Section 34-C of the Registration Act, 1908, inserted by the Registration (Tamil Nadu Amendment) Act, 2026 (Tamil Nadu Act 1 of 2026), is manifestly arbitrary and violative of Articles 14, 21, and 300-A of the Constitution of India.

2. Although the four Writ Petitions have also been filed seeking directions to the respective Sub-Registrars and challenging the orders of refusal, the principal ground raised in all the petitions is the challenge to the validity of the newly introduced amendment under Tamil Nadu Act 1

6/117



of 2026, namely Section 34-C of the Registration Act, 1908 (hereinafter

WEB COPY

referred to as “the Registration Act”).

3. Challenge has been made mainly on the ground that Section 34-C of the Act is nothing but a re-packaged version of the provisions that have already been held to be bad in law by various decisions of this Court. Therefore, the legislature cannot re-introduce the provisions which have already been held to be incompatible with the scheme of the provisions of the Act. Similarly, the first and second provisos to Section 34-C now introduced, have already been found to be invalid in their earlier form as Circulars by a Division Bench of this Court in the case of *N.Ramayee Vs. Sub-Registrar*, reported in (2020) 8 MLJ 305. Similarly, the third and fourth provisos as well as the main enacting part of Section 34-C also has been held to be invalid in *Federal Bank Vs. Sub-Registrar* reported in (2023) 2 CTC 289. Hence, it is the contention of the petitioners that the entire amendment is ex-facie, arbitrary and unconstitutional. Even assuming the objective is to prevent fraudulent registrations, the measure is excessive, unreasonable and disproportionate, affecting genuine transactions and imposing burdens far beyond what is necessary.

7/117



WEB COPY

4. The impugned provision imposes unreasonable restrictions on the right to hold and enjoy property. Therefore, it violates Article 21 and 300-A of the Constitution. Arbitrary refusal of registration directly interferes with the right to deal with property which is an integral facet of the right to hold and enjoy property. The impugned amendment is fraud on the Constitution and the legislative powers under the Constitution. Where a Constitutional Court had already invalidated these provisions as being contrary to the basic principles of law, the legislature cannot re-introduce them through the backdoor under the guise of primary legislation. The impugned provision is therefore, wholly arbitrary and constitutional and is ultra vires.

5. Counter affidavits have been filed by the respondents in all the Writ Petitions. It is the stand of the respondents that these Writ Petitions are in the nature of academic challenge unsupported by any concrete grievance suffered by any identified member of the Association or by any individual. It is also stated that there is a strong presumption in favour of the constitutionality of every legislation. The burden of proof lies upon the petitioners herein to demonstrate that the impugned legislation is unconstitutional beyond reasonable doubt. Further, it is the



WEB COPY

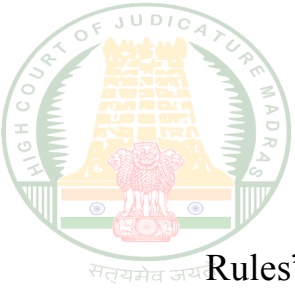
stand of the respondents that legislation passed with Presidential assent.

The Bill received the assent of the Hon'ble President of India under Article 254(2) of the Constitution of India on 09.01.2026 and was subsequently published in the Tamil Nadu Government Gazette Extraordinary No. 30 dated 23.01.2026. Therefore, the legislation stands at the highest pedestal of legislative sanctity.

6. Further it is the stand of the respondents in the counter affidavits that impugned amendment does not deprive any person of any property within the meaning of Article 300-A of the Constitution. It merely regulates the procedure for registration of instruments of transfer. The challenge under Article 300-A of the Constitution is wholly misconceived and proceeds on a fundamental misunderstanding of the distinction between regulation of property and deprivation of property.

7. In order to prevent the fraudulent property registrations, the State of Tamil Nadu has consistently taken the lead in legislative innovation to curb this menace, beginning with the introduction of Section 22-A and 22-B in the Registration Act and thereafter through framing of Rule 55-A of “the Tamil Nadu Registration

9/117



WEB COPY

Rules” (hereinafter referred to as “the Registration Rules”) with effect from 05.09.2022. These measures were introduced in response to repeated and grave instances of fraud reported across the State and were the subject of consistent demand by the public.

8. It is also submitted that to check this menace, the Government of Tamil Nadu issued Circular No.24011/C1/2020 dated 08.10.2020. Subsequently, Rule 55A was inserted in Registration Rules with similar safeguards. Aspects of these executive instruments came up for consideration before this Court in *Ramayee's case* and *Federal Bank's case*, wherein the Court expressed concerns regarding the source of rule making power and held that Rule 55-A of the Registration Rules is inconsistent with the parent Act. Similarly, the Hon'ble Supreme Court in *K.Gobi Vs. The Sub Registrar* reported in (2025) 3 MLJ 97 (SC) held that Rule 55-A of the Registration Rules held to be ultra vires the Registration Act, on the limited ground that the rule-making power under Section 69 of the Registration Act cannot be exercised to introduce substantive conditions inconsistent with the parent statute. Further, the Hon'ble Supreme Court did not hold the substantive content of Rule 55-A of the Registration Rules to be unconstitutional. The judgment was

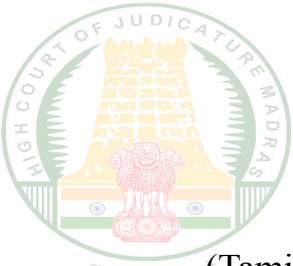
10/117



WEB COPY

confined to the narrow ground that the Inspector General of Registration could not in exercise of subordinate rule making power under the said Section 69 of the Registration Act, introduce safeguards which were not traceable to the parent Act. Hence, it is the stand of the respondents in the counter affidavits that the Hon'ble Supreme Court did not bar the State Legislature from enacting such safeguards in the form of substantive primary legislation.

9. In the counter affidavits, it is further stated that in this constitutional and judicial context, the State Legislature, in its wisdom and in discharge of its constitutional obligation to protect the property rights and prevent fraud, brought into force the Amendment Act, inserting Section 34-C in the Registration Act. The amendment Bill was duly considered by the Legislative Assembly, reserved for the consideration of the Hon'ble President under Article 254(2) of the Constitution and received Presidential assent on 09.01.2026. Therefore, the amendment is traceable to plenary legislative power and not to subordinate rule making. The legislative intent and object underlying the impugned Section 34-C of the Registration Act are clearly discernible from the Statement of Objects and reasons appended to the Registration



WEB COPY

(Tamil Nadu Amendment) Bill, 2025, which formed the foundation for the enactment of TN Act 1 of 2026. The said provision has been incorporated by the Government only in order to protect the interests of the public, who may be affected by fraud, forgery and impersonation in the registration of documents. The amendments was made due to the following compelling considerations of public interest:

“(i) the alarming proliferation of fraudulent and bogus registrations of immovable property in the State, including registration of forged sale deeds, multiple sales of the same property, of subsisting fabricated parent documents, suppression mortgages, and registration of conveyances in defiance of subsisting registered agreements for sale;

(ii) the resulting hardship caused to bona fide owners, banks and financial institutions, lawful purchasers, ancestral co-sharers and innocent third parties, leading to a multiplicity of litigation that has burdened civil courts and this Hon'ble Court alike;

(iii) the necessity of providing a statutory framework for protective safeguards which had earlier been attempted through executive Circulars and Rules but had been held to lack statutory anchor by judicial pronouncements;

(iv) the constitutional duty cast upon the State to protect property rights, prevent fraud, uphold the integrity of

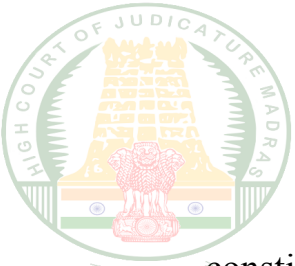


WEB COPY

the property registration system, and safeguard the credit and lending system of the State;

(v) the need to bring the law into conformity with the observations of the Hon'ble Supreme Court that any such protective safeguards must flow from primary legislation enacted by a competent legislature, and not from subordinate rule-making.”

10. The classic four-fold test in **Heydon's case** reported in **[(1584) 3 Co. Rep.7a]**, consistently followed by the Hon'ble Supreme Court, requires the Court to consider (a) what the law was before the enactment; (b) what was the mischief or defect for which the existing law did not provide; (c) what remedy the legislature has resolved and appointed to cure the mischief; and (d) the true reason for the remedy. Hence, it is the stand of the respondents in the counter affidavit that Section 34-C of the Registration Act, judged on this test, stands fully justified; it identifies a real and existing mischief (fraudulent registration); it provides a remedy that flows from a competent legislature (primary legislation in lieu of subordinate rule making). The legislation enacted to address a real public mischief and to protect public revenue or public interest enjoys a strong presumption of

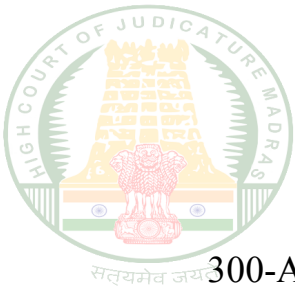


WEB COPY

constitutionality and must be approached by this Court with judicial restraint.

11. It is further stated in the counter affidavits that the Registration Act falls squarely within Entry 6 of the Concurrent List (List III) of the Seventh Schedule to the Constitution of India, which reads “*Transfer of property other than agricultural land; registration of deeds and documents*”. The State Legislature was competent to enact the impugned legislation, and Presidential assent under Article 254(2) of the Constitution of India has also been obtained. Therefore, it cannot be contended that the provision suffers from any constitutional infirmity on that ground.

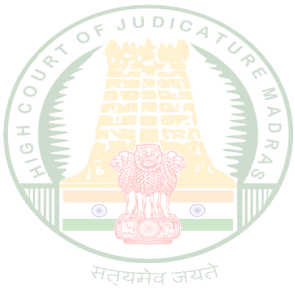
12. Section 34-C applies uniformly to all transactions falling within the specified category and affords protection to all similarly situated mortgagees, agreement holders, and co-sharers in ancestral property. Further, Section 34-C of the Registration Act itself constitutes the “authority of law” contemplated under Article 300-A of the Constitution and has been enacted by a competent legislature. Consequently, the challenge on the ground of violation of Articles 14 and



WEB COPY

300-A of the Constitution is unsustainable. It is the further contention that all other previous judgments viz., Ramayee's case, Federal Bank's case and Gopi's case, did not strike down the substantive content of these safeguards on constitutional grounds and they struck them down on the limited ground that subordinate executive instruments could not introduce conditions for which there was no statutory backing in the parent Act. The judgments thus identified a defect of source, not a defect of substance. It is submitted that the Sub-Registrar is required only to ascertain a clear and objective fact viz., whether a registered agreement for sale subsists and whether the limitation period has lapsed. This is a ministerial determination based on a fixed period of three years from the date specified for performance requiring no adjudication of disputed facts. Such ministerial determinations are routinely made by Sub-Registrars in numerous contexts (eg. Computation of stamp duty, calculation of registration fees, application of market value guidelines under Section 47-A of the Stamp Act) and have never been held to constitute usurpation of judicial power. The proviso prevents only the registration of a competing transfer during the pendency of the right of specific performance. This is a measured, proportionate and time-bound protection and not an injunction in any legal sense.

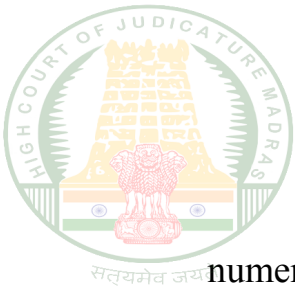
15/117



WEB COPY

13. As far as third proviso, the amendment requires the patta as evidence of identification of the property and as a procedural substitute in the absence of a parent document. Revenue records, while not conclusive of title, are routinely accepted by Courts as relevant material in property disputes. Requiring such collateral material when the very root document is admittedly unavailable is neither absurd nor disproportionate. The legislature has consciously balanced the need to facilitate genuine transactions in ancestral property against the rampant fraud committed by passing off forged documents as substitutes for missing originals. Such a legislative balance is squarely within the domain of the State Legislature and is not amenable to judicial second guessing.

14. As far as fourth proviso is concerned, it requires only a non-traceable certificate from the police and publication of a public notice in a local newspaper. The non-traceable certificate is a long-standing administrative document routinely issued by the public across the country and is not in any sense onerous. Public notice through newspaper publication is a recognized method of giving notice to the world at large of a claim or asserted right and a practice followed in



WEB COPY

numerous statutory and customary contexts including Rule 67 of the Civil Procedure Code, public notice requirements under various tenancy and consumer protection statutes and the standard practice in banking circles when title deed are lost. A certified copy is not a substitute for the public notice requirement that protects innocent third party claimants.

15. As far as the 5th proviso is concerned, it exempts documents in which the Government or a statutory body is the executant from the operation of the section and empowers the State Government to exempt other classes of documents by notification. It is the stand of the respondents in the counter affidavit that the amendment will not violate the right to property under Article 300-A and the right to life under Article 21. Article 300-A merely provides that no person shall be deprived of his property save by authority of law. The authority of law includes both substantive and procedural law made by a competent legislature. The impugned Section 34-C of the Registration Act, being a substantive enactment of the State legislature with presidential assent, satisfies the requirement of authority of law in the most complete sense.



WEB COPY

16. Further, it is stated in the counter affidavit that the impugned provision does not deprive any person of the property. It merely regulates the procedure for registration of certain instruments. Furthermore, registration is a privilege and a creature of statute. There is no fundamental or constitutional right to registration. The legislature has unquestioned competence to prescribe the conditions under which documents may be registered. The exercise of such regulatory power, when it is rationally connected to a legitimate State interest such as prevention of fraud, cannot be characterized as a deprivation of property. The Sub-Registrar is required only to verify the existence or non-existence of certain objective facts and the presence of subsisting registered mortgage, the existence of a registered agreement for sale, the lapse of the limitation period, the production of patta or non-traceable certificate and the publication newspaper notice. None of these involve adjudication of disputed questions. Hence, challenge to the Act 34-C of the Registration Act, which has President assent, has to fail.

SUBMISSIONS:

17. Mr.Sharath Chandran, learned counsel appearing for the petitioner in W.P.(MD) No.7415 of 2026, submitted that the amendment

18/117



WEB COPY

introduced to the Registration Act infringes the constitutional rights of the parties. According to him, Section 34-C is merely a statutory reproduction of the earlier circulars and rules issued by the registering authorities, which had already been declared unconstitutional by this Court. Learned counsel further contended that, by virtue of the amendment, the Sub-Registrar is required to determine, while considering registration of a document, whether the period of limitation for instituting a suit for specific performance has expired. Apart from this, the provision empowers the Sub-Registrar to examine issues relating to title and to insist upon production of original title documents. It is therefore submitted that the functions of the Sub-Registrar under the Registration Act are essentially ministerial in nature and confined to the process of registration. The Sub-Registrar, being only a registering authority, cannot be vested with adjudicatory powers to examine questions of title or other disputed civil rights.

18. Learned counsel further submitted that the first proviso to Section 34-C imposes an unreasonable restriction on the mortgagor's right to deal with the mortgaged property by mandating the production of a No Objection Certificate from the mortgagee before any sale document

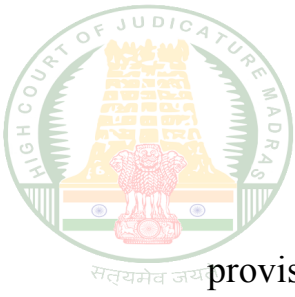


WEB COPY

can be registered. According to him, the proviso effectively takes away the rights conferred upon parties under the Transfer of Property Act, 1882 (hereinafter referred to as "the TP Act"), to enter into and effect lawful transactions concerning immovable property.

19. It was contended that a mortgage, by its very nature, runs with the property, and the rights of the mortgagee remain protected irrespective of any subsequent transfer by the mortgagor. In such circumstances, insisting upon a No Objection Certificate from the mortgagee as a precondition for registration of a sale deed imposes an unwarranted restriction on the owner's right to transfer property and infringes the constitutional rights of the parties. Learned counsel submitted that the amendment virtually operates as a statutory injunction restraining the owner from alienating the property.

20. Learned counsel further argued that the TP Act itself contemplates transfers of mortgaged property and provides adequate safeguards, including the doctrine of marshalling in favour of subsequent purchasers. Similarly, an agreement for sale does not, by itself, create any right, title, interest, or charge over the immovable property. However, the

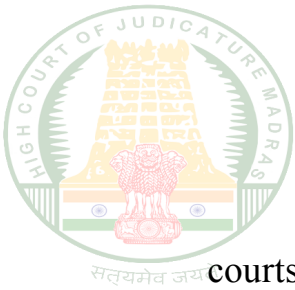


WEB COPY

proviso introduced by the amendment effectively disables the owner from dealing with the property by stipulating that a sale deed shall not be registered until the period prescribed for filing a suit for specific performance has expired. Such a restriction, according to the learned counsel, directly impinges upon the constitutional and property rights of the parties.

21. It was further submitted that the amendment confers upon the Sub-Registrar powers which are essentially adjudicatory in nature. The Sub-Registrar is now required to determine whether the limitation period for instituting a suit for specific performance has expired. In doing so, the Sub-Registrar would necessarily be required to interpret and apply Article 54 of the Limitation Act, 1963, and determine which limb of the Article is attracted to the facts of a particular agreement. Such an exercise involves adjudication of disputed legal issues, which falls exclusively within the domain of judicial authorities.

22. Therefore, learned counsel contended that the amendment virtually empowers the Sub-Registrar to assume adjudicatory functions and to decide questions that are properly within the jurisdiction of civil



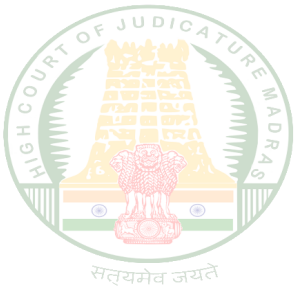
WEB COPY

courts. Such conferment of powers is contrary to the doctrine of separation of powers and renders the provision constitutionally vulnerable.

23. It is the further contention of the learned counsel for the petitioner that the object of the Registration Act is designed to prevent fraud by obtaining contemporaneous publication and unimpeachable record of documents. According to him, transactions relating to immovable property are governed by the provisions of the Transfer of Property Act, 1882. The Registration Act operates upon the document presented for registration and not upon the underlying transaction itself. Therefore, insofar as the validity and effect of transactions relating to immovable property are concerned, the field is occupied by the Transfer of Property Act.

24. Learned counsel submitted that the restrictions now sought to be introduced through Section 34-C are substantially similar to those earlier sought to be enforced by way of Circular dated 25.04.2012. The said circular was struck down by this Court, and what has now been incorporated through the amendment is, in essence, an attempt to reintroduce the very same restrictions in a different form.

22/117

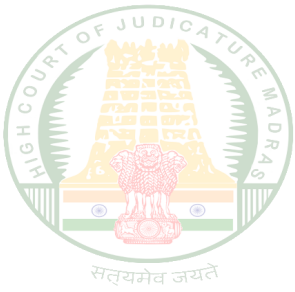


WEB COPY

25. It was further contended that Rule 55-A, introduced by the registering authorities, contained similar restrictions and was struck down by this Court in the *Federal Bank's case*. Subsequently, the said Rule was also held to be ultra vires by the Hon'ble Supreme Court in *Gopi's case*. Learned counsel further pointed out that the Division Bench, in *Ramayee's case*, after an exhaustive consideration of the provisions of the Registration Act and the scope of the powers exercisable by the registering authorities, struck down the impugned circulars and categorically held that the mere existence or pendency of an agreement for sale does not operate as a bar to the registration of a subsequent document executed by the owner of the property.

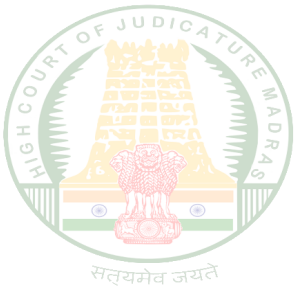
26. According to the learned counsel, the said view has also received the approval of the Hon'ble Supreme Court. Therefore, it was submitted that the impugned amendment seeks to confer upon the registering authority powers which have repeatedly been held by the Courts to be beyond the scope of the Registration Act and, consequently, the provision is liable to be declared unconstitutional.

23/117



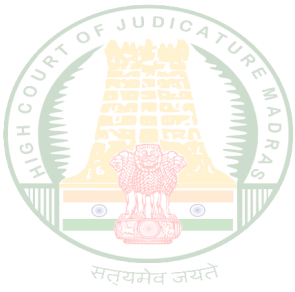
WEB COPY

27. In a nutshell, the contention of the learned counsel is that the impugned amendment is nothing but an attempt to resurrect Rule 55-A of the Registration Rules and the restrictions contained therein, which had earlier been declared invalid by this Court and subsequently by the Constitutional Courts. Learned counsel fairly conceded that the legislative competence of the State Legislature to enact the impugned provision cannot be questioned. However, he submitted that once a provision or rule has been struck down by a competent Court and binding directions have been issued regarding the scope and extent of the powers of the registering authorities, the Legislature cannot simply override or nullify the judicial pronouncement by re-enacting, in a different form, substantially the very same measure that had been declared invalid. According to him, what has been sought to be achieved through the impugned amendment is precisely such an exercise. It was therefore contended that the amendment is an attempt to circumvent and neutralise binding judicial decisions without removing the defects and infirmities identified by the Courts. Consequently, the impugned provision is liable to be declared unconstitutional.



WEB COPY

28. Learned counsel for the petitioner further contended that, although Presidential assent has been obtained for the newly introduced Section 34-C under Article 254(2) of the Constitution of India, the attention of the Hon'ble President was not specifically drawn to the repugnancy between the impugned amendment and the provisions of the Transfer of Property Act, 1882. According to the learned counsel, the effect of the amendment is to override and dilute substantive rights and principles embodied in various provisions of the Transfer of Property Act, including Sections 41, 43, 48 and 56. The nature and extent of the repugnancy between the State enactment and the existing Central legislation must be specifically brought to the notice of the Hon'ble President so that the assent is accorded with full awareness of the provisions sought to be overridden or modified. In the present case, according to the learned counsel, assent appears to have been sought and obtained only with reference to the amendment to the Registration Act, without specifically drawing attention to the manner in which the amendment affects upon substantive rights governed by the Transfer of Property Act.



WEB COPY

29. Therefore, it was contended that the mere fact that Presidential assent has been obtained under Article 254(2) would not, by itself, cure the constitutional infirmity arising from the alleged repugnancy. In the absence of proper consideration of the impact of the amendment on the provisions of the Transfer of Property Act, the assent so obtained cannot be treated as validating a provision which effectively overrides a Central enactment governing transfers of immovable property. In support of his submissions, learned counsel placed reliance upon the following decisions:

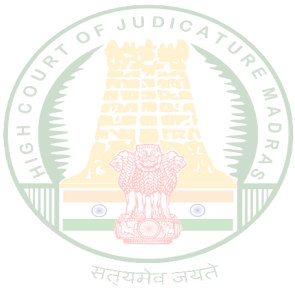
(i) *N.Ramayee Vs. Sub-Registrar*, reported in (2020) 8 MLJ 305;

(ii) *Federal Bank Vs. Sub-Registrar* reported in (2023) 2 CTC 289;

(iii) *The Sub Registrar Vs. The Federal Bank Ltd., and 2 Ors. [W.A.No.1303 of 2023 and C.M.P.No.12938 of 2023]*;

(iv) *K.Gopi Vs. Sub-Registrar* reported in (2025) 3 MLJ 97 (SC)

(v) *Samiullah Vs. State of Bihar* reported in (2026) 1 MLJ 145 (SC)



WEB COPY

(vi) *State of Rajasthan Vs. Basant Nahata*

reported in (2005) 12 SCC 77

(vii) *Pork View Enterprises and Ors. Vs. State*

Government of Tamil Nadu reported in 1989 SCC OnLine

Mad 273

(viii) *Horil Vs. Keshav and Anr.* reported in (2012)

5 SCC 525;

(ix) *G.Rajasulochana Vs. Inspector General of*

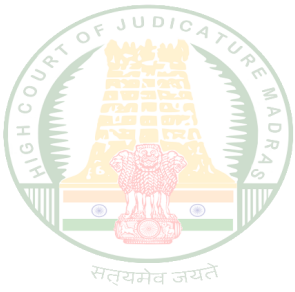
Registration and Anr. reported in (2024) 3 MLJ 729 and

(x) *M.Kathirvel and Ors. Vs. Inspector General of*

Registration reported in (2024) 5 MLJ 107.

30. Learned Senior Counsel Mr. Srinath Sridevan, who assisted this Court, submitted that the impugned amendment infringes constitutional rights and is merely an attempt to reintroduce provisions that have already been struck down by this Court. He contended that, the State possesses the legislative competence to enact laws, however, it cannot, under the guise of an amendment, re-enact provisions that have been declared ultra vires without curing the defects pointed out by the Court.

27/117

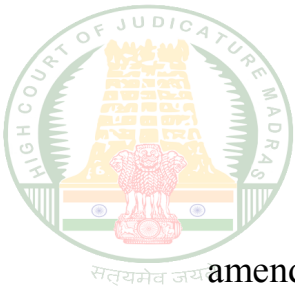


WEB COPY

31. According to the learned Senior Counsel, the amendment, in substance, confers upon the Sub-Registrar the power to adjudicate questions of title, a function that falls outside the scope of the registration authorities. It was further submitted that such conferment of power violates the doctrine of separation of powers and is contrary to the basic structure of the Constitution. Therefore, the impugned amendment is liable to be struck down.

32. Whereas, Mr. Gowthaman, learned Additional Advocate General appearing for the respondents, submitted that the amendment does not violate any constitutional provision. Though the right to hold property is a constitutional right, it is always subject to reasonable restrictions. The amendment has been introduced primarily to safeguard members of the public who are vulnerable to fraudulent registrations based on false documents and to prevent such fraud.

33. Although Rule 55-A of the Tamil Nadu Registration Rules, which contained similar provisions, was struck down by the Hon'ble Supreme Court in *Gopi's case*, the Rule was set aside on the ground that there was no proper source of power to frame such a Rule. The present

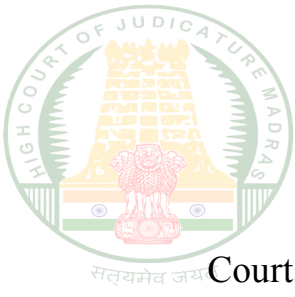


WEB COPY

amendment has been enacted only to remedy the mischief identified by the Courts. It satisfies the test laid down in *Heydon's Case*, which prescribes four principles for statutory interpretation.

34. Therefore, he submitted that merely because certain practical difficulties may arise for the public during the registration of documents, that cannot be a ground to strike down the entire amendment, which has been enacted by the Legislature in its wisdom. The amendment was introduced to address the mischief identified in the earlier Rule and to comply with the directions for review issued by the Courts. Accordingly, there is a strong presumption of constitutionality attached to Section 34-C of the Registration Act.

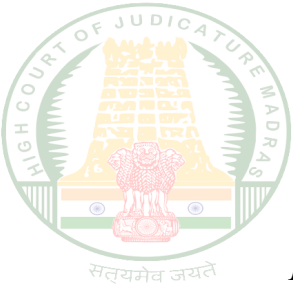
35. It is further submitted by the learned Additional Advocate General that the amendment is not a mere attempt to overcome a judicial pronouncement. The Courts had held the earlier Rules to be invalid for want of statutory backing. In order to cure the defect so identified, the present amendment has been enacted by incorporating the substantive provision into the parent statute itself. Therefore, it is contended that the amendment is not intended to deviate from or nullify the judgment of the



WEB COPY

Courts, but only to cure the defects pointed out therein. It is further submitted that the Registration Act falls within Entry 6 of List III (Concurrent List) of the Seventh Schedule to the Constitution. The amendment has also received the assent of the President. Therefore, the amendment enacted by the State Legislature will certainly apply and no question of repugnancy arises. In support of his submissions he also relied upon the following judgments:

- (i) ***Shri Prithvi Cotton Mills Vs. Broach Borough Municipality*** reported in (1969) 2 SCC 283;
- (ii) ***Indian Aluminium Company Vs. State of Kerala*** reported in (1996) 7 SCC;
- (iii) ***Bhavesh D.Parish Vs. Union of India*** reported in (2000) 5 SCC 47;
- (iv) ***Bakhtawar Trust and others Vs. M.D.Narayanan and others*** reported in (2003) 5 SCC 298;
- (v) ***State of Rajasthan Vs. Basant Nahata*** reported in (2005) 12 SCC 77;
- (vi) ***Government of Andhrapradesh Vs. Smt.P.Laxmi Devi*** reported in (2008) 4 SCC 720;
- (vi) ***Suraj Lamp & Industries (P) Ltd., Vs. State of***



WEB COPY

Haryana reported in **(2012) 1 SCC 656;**

(viii) **State of Madhya Pradesh Vs. Rakesh Kohli**
reported in **(2012) 6 SCC 312;**

(ix) **Million Vs. Union of India** reported in **(2014)**
14 SCC 496

(x) **Chevittivenkanna Yadav Vs. State of**
Telangana reported in **(2017) 1 SCC 496;**

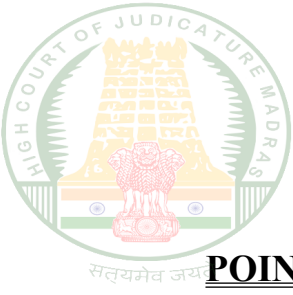
(xi) **Federal Bank Vs. Sub-Registrar (W.P.No.**
2758 of 2023)

(xii) **K.Gopi Vs. The Sub Registrar [Civil Appeal**
No.3954 of 2025];

(xiii) **Madras Bar Association Vs. Union of India**
reported in **(2026) 2 SCC1;**

(xiv) **Goa Foundation Vs State of Goa** reported in
(2016) 6 SCC 602; and

(xv) **State of Andhra Pradesh Vs.MCDowell &**
Co.and Ors. reported in **(1996) 3 SCC 709.**



POINTS FOR CONSIDERATION:

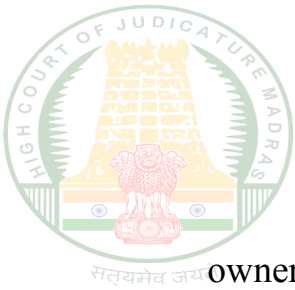
WEB COPY

36. In the light of the above submissions, the point that arises for consideration in these Writ Petitions is whether the amendment introduced as Section 34-C of the Registration Act by the Registration (Tamil Nadu Amendment) Act, 2026 (Tamil Nadu Act 1 of 2026), infringes any constitutional right of the parties or is otherwise violative of the provisions of the Constitution.

DISCUSSIONS:

37. The challenge is primarily directed against the newly introduced Section 34-C of the Registration Act on the ground that it imposes restrictions on the registration of documents in several circumstances. For instance, where a mortgage subsists over the property, a sale deed cannot be registered without obtaining a No Objection Certificate from the mortgagee. Likewise, where an agreement for sale is in existence, a conveyance cannot be registered until the period of limitation prescribed for filing a suit for specific performance has expired. Similarly, in the absence of the original title document, the

32/117



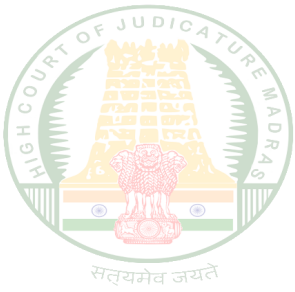
WEB COPY

owner is precluded from dealing with the property. It is contended that these restrictions place substantial impediments on the right of an owner to deal with and transfer his property.

38. A survey of the legal position in the last 10-15 years would show that consistent efforts were made to expand the powers of the Registrar to adjudicate questions of fraud and forgery by issuing various circulars and rules all of which were struck down or annulled by this Court and the Supreme Court at various points of time.

39. The Inspector General of Registration issued Circular No 67 dated 03.11.2011 purportedly in exercise of his powers under Section 69(2) of the Registration Act, 1908 empowering the Registrars to cancel the registration of a document if the same was fraudulently executed. Even in the said circular, the following clarification was made:

“It is further emphasized that the procedure prescribed above is only to deal with fraudulent registrations done and it should in no way be construed to mean that the Registering Authority shall go into the issue of deciding title in case of rival claims on certain basis.”



40. However, in **Satya Pal Anand v. State of M.P., (2016) 10**

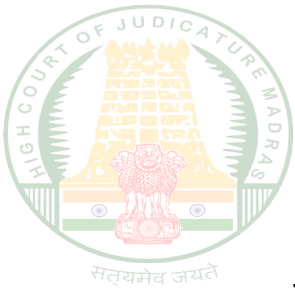
SCC 767, the Supreme Court held as follows:

“Once the document is registered, it is not open to any Authority, under the 1908 Act to cancel the registration. The remedy of appeal provided under the 1908 Act, in Part XII, in particular Section 72, is limited to the inaction or refusal by the Registering Officer to register a document. The power conferred on the Registrar by virtue of Section 68 cannot be invoked to cancel the registration of documents already registered.”

41. In view of the decision of the Supreme Court the Inspector General of Registration issued another circular dated 20.11.2017 bearing No 41530/UI/2017 withdrawing Circular 67 and issued further directions to the Sub-Registrar’s to return all petitions received to the respective applicants.

42. In the meantime, the Inspector General of Registration issued another Letter No 18339/ C1/2012 dated 25/4/2012, issuing instructions for prohibiting fraudulent registrations. The material portion of the letter reads as follows:

“Hence, in order to safeguard the public interest by preventing bogus or fraudulent registration of documents,



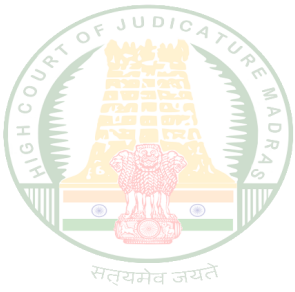
WEB COPY

following instruction are reiterated for strict adherence in letter and spirits.

*(A) In respect of deeds involving transfer of immovable property, such as sale, gift, settlement, exchange or creating charge over the property such as Mortgage or Power of Attorney, the registering officer should insist presentation of previous original deed/deeds by which the executants acquired right over the said property before registering the document **and then verify the previous documents to satisfy himself that the executants have right over the property.***

(B) In case previous document are not available as the property may be ancestral, the executants should produce revenue records such as Patta copy issued by the Revenue Department and tax receipt in original along with attested/notarized Xerox copies to prove that the properties are owned by them. The Registering Officer should verify the original and return them to the party concerned and preserved the attested Xerox copy as part of the document by scanning and numbering it.

(C) In case the previous original document is lost, the party should produce certified copy of the document, copy of complaints recorded in Police Station and copy of advertisement published in local dailies regarding loss of documents. In such case, the party has to produce patta/property tax receipt in original.



WEB COPY

(i) *In case if the property is Government land/poramboke land or belonging to religious institution as per revenue records/other records and the party has not produce any patta to prove his right the Registering officer should return the document with check slip stating the facts.*

(ii) *In the above mentioned case if the party produces patta, then the Registering Officer should keep the document pending for ascertaining the facts and genuineness of patta from concerned department/revenue officials*

5. *In case of cancellation of settlement deed if the settler is unable to produce the original settlement deed as it may be with settlee then the settler should produce certified copy of the settlement deed. The Registering Officer, after verifying the certified copy for identity, can register the cancellation deed without insisting for original deed.*

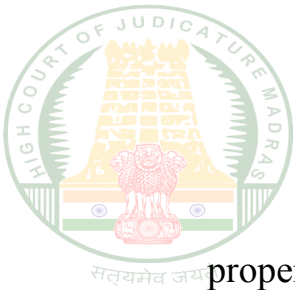
The above instructions should be strictly adhered along other Instruction already issued in this regard

Sd/...25.4.2012

Inspector General of. Reg

For Inspector General of Registration”

43. Paragraph (A) of the above circular was clearly a mischievous attempt to illegally expand the powers of the Registrar by permitting them to examine whether the executants had title to the



WEB COPY

property which was something which the Registrar was barred from doing under Rule 55 which directed that “*It forms no part of a registering officer’s duty to enquire into the validity of a document brought to him for registration or to attend to any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document*”. The other aspects of the letter requiring production of patta etc were set at naught by various decisions of this Court like *Jesupalam v Sub-Registrar*, WP 5696 of 2015. As a matter of fact in *Managing Trustee vs. The Inspector General of Registration, Chennai* [2002 (1) MLJ 244], this Court had held that a person, who present the document for registration does not have a duty to submit chitta, adangal or FMB sketch to the Registration Authority for the purpose of registration. Despite the aforesaid decisions, the Inspector General of Registration nonchalantly continued to issue circulars and instructions openly defying the law laid down by this Court in a long line of decisions.

44. Based on the above circular, Registrars started compounding the illegality by indiscriminately refusing registration on extraneous grounds giving rise to a spate of litigation in this Court.

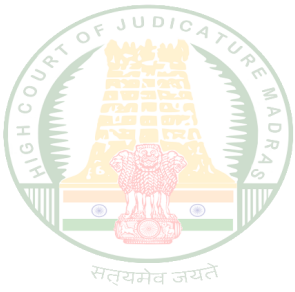
37/117



WEB COPY

Finally, in *N. Ramayee v Sub-Registrar*, (2020) 8 MLJ 305, a reference was made to a Division Bench of this Court on account of an order of a learned single judge upholding the order of the Sub-Registrar refusing registration citing the Letter No 18339/ C1/2012 dated 25/4/2012 issued by the Inspector General of Registration. The ground for refusal was that since a prior agreement of sale had been registered subsequent agreement for sale could not be registered unless the previous agreement was annulled by a civil court. Overruling the decision of the learned single judge, it was held:

“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 for creating 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 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



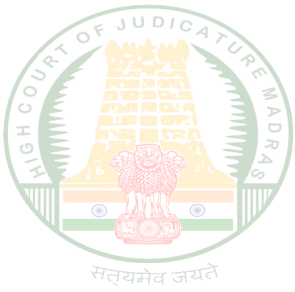
WEB COPY

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.”

45. When the reference was pending before the Division Bench, the Inspector General of Registration issued another letter bearing No. 24011 / C1 / 2020 and dated 08.10.2020. A free English translation of the relevant portions of the letter are as follows:

“Registration Officers are requested to follow the procedures below and carry out document registration without stopping subsequent document registration merely because Sale Agreements, Mortgages, Deposit of Title Deeds, and Lease encumbrance entries are pending as per the Encumbrance Certificate:

1.Regarding pending Sale Agreement documents as per the Encumbrance Certificate: If the document presenters state in the document currently submitted for registration that: The time period mentioned in those Sale Agreements has expired, and no case is pending in any court under The Specific Relief Act, 1963, or the limitation period of three years for filing a suit has expired, and if a separate Affidavit is submitted regarding this, it may be accepted. After confirming as per the



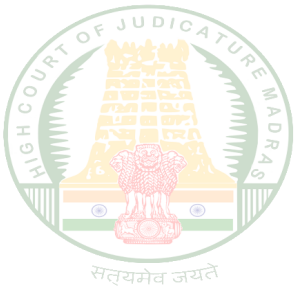
WEB COPY



document presenter's statement that both the above limitation periods have expired, and also confirming that no objection petition with proper evidence has been filed stating that the person who signed as the purchaser in the Agreement has filed a suit in court seeking specific performance of the agreement, Registration Officers are instructed to permit subsequent document registrations.

2.If Mortgage and Deposit of Title Deeds encumbrance is pending as per the Encumbrance Certificate: When a document is submitted for registration along with a No Objection Certificate (NOC) obtained from the concerned Bank or Mortgagee, Registration Officers are instructed to accept the subsequent document registration on that basis.

3.If a Lease document registration exists for a property as per the Encumbrance Certificate: If Sale Deeds and other subsequent documents are submitted for registration by the property owner concerning that property: If the lease period of the previously registered Lease document has expired, the subsequent document may be accepted for registration. If the lease period has not expired as per the terms of the Lease document, and if a General Power of Attorney is submitted with a statement that the previously registered Lease document is still in force and has not concluded, and with a clause that subsequent documents must be registered only after obtaining a No Objection Certificate from the Lessee, the General Power of Attorney may be accepted for registration.



WEB COPY



For other documents, if the lease period has not expired, they may be accepted for registration if a No Objection Certificate from the Lessee is obtained and submitted.

08.10.2020

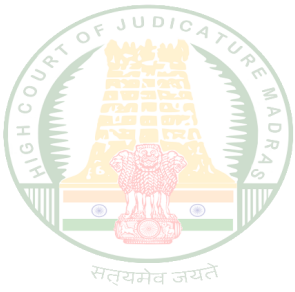
Inspector General of Registration

/By Order/

District Registrar (Law)”

46. Taking note of the aforesaid circular, the Division Bench in ***Ramayee’s case***, supra, held as follows:

“7. It is also brought to our notice about the new circular in No. 24011/C1/2020 dated 08.10.2020. It is the contention of the learned Additional Advocate General that the Registrar has power to regulate the registration in order to prevent fraud and hence, the Registrar is having powers under the Registration Act to regulate the registration and the right to refuse the document and that such power is available under Section 71 of the Registration Act. Such contention is not acceptable for the simple reason that the circular bars transfer of property on the ground that when a lease is already executed in respect of the property, without expiry of the lease, transfer cannot be permitted or without consent of lessee no registration is permissible. Further, insisting a no objection from mortgagee before registration is also against the very substantive provision of law. If any property is sold with existing mortgage, the transferee steps into the shoes of mortgagor. He has the right to redeem the property by paying the mortgage money. Therefore in the name of regulating the registration, any circular which is in the nature of violating the substantive



WEB COPY

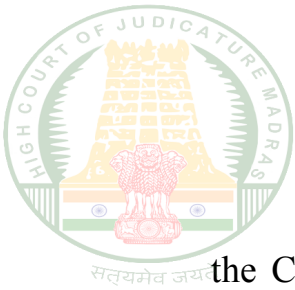
provision of law, which deals with the transfer of property, then such circular cannot stand in the eye of law. If the contention of learned Advocate General that without seeking declaration and cancellation of the agreement of sale, subsequent agreement or transaction cannot be registered, is accepted then such restriction, in fact, infringes the very Constitutional right of the citizen provided under Article 300 A of the Constitution.”

47. The aforesaid order of the Division Bench was challenged before the Supreme Court in Sub-Registrar v N. Ramayee, SLP Civil 4844 of 2021. By an order dated 05.04.2021, the SLP was dismissed with the following observations:

“We find no grounds to interfere with the well-reasoned judgment and order of the Division Bench of the High Court.

The Special Leave Petition is, accordingly, dismissed. Pending application(s), if any, stand disposed of.”

48. After the aforesaid decision, the State of Tamil Nadu introduced the Registration (Tamil Nadu Second Amendment) Act, 2021 introducing, inter alia, Section 22-B, Section 77-A and 77-B into the statute book after obtaining Presidential assent under Article 254(2) of

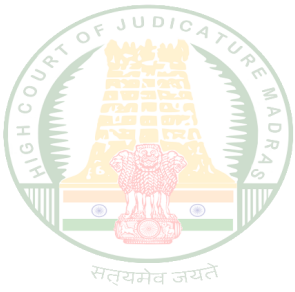


WEB COPY

the Constitution. For ease of convenience, the aforesaid provisions are extracted hereunder:

“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.”.

“77-A. Cancellation of registered documents in certain cases.— (1) The Registrar, either suo moto or on a complaint received from any person, is of the opinion, that registration of a document is made in contravention of section 22-A or section 22-B, shall issue a notice to the executant and all the parties to the document and parties to subsequent documents, if any, and all other persons who, in the opinion of the Registrar, may be affected by the cancellation of the document, to show cause as to why the registration of the document shall not be cancelled. On consideration of reply, if any received therefor, the Registrar may cancel the registration



WEB COPY



of the document and cause to enter such cancellation in the relevant books and indexes.

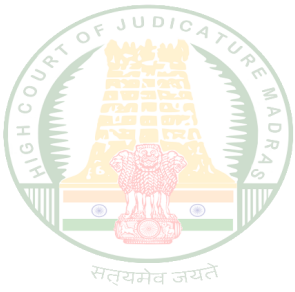
(2) The power under sub-section (1) may also be exercised by the Inspector General of Registration.”

“77-B. Appeal.- (1) Any person aggrieved by an order of the Registrar under sub-section (1) of section 77-A may prefer an appeal to the Inspector General of Registration within thirty days from the date of cancellation of the document and the Inspector General of Registration shall pass an order confirming, modifying or cancelling the order of the Registrar.

(2) In the case of an order passed by the Inspector General of Registration under sub-section (2) of section 77-A, an appeal shall lie to the State Government within thirty days from the date of the order.”

49. The effect of the above amendments was to vest the District Registrars in the State of Tamil Nadu with powers to cancel documents on various grounds including the ground of forgery. The aforesaid amendments were challenged before a Division Bench of this Court in *M. Kathirvel v Inspector General of Registration*, (2024) 4 LW 110. The utter confusion and anarchy unleashed by the aforesaid amendment has been captured by the Division Bench of this Court as under:

“It is interesting to note the order impugned in

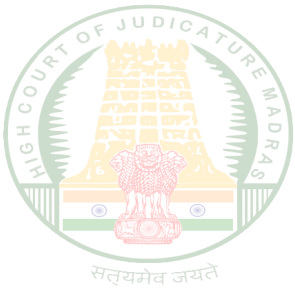


WEB COPY



WP(MD). No. 22561/2023, filed by the Bank. The complainant filed a petition under Section 77-A of Registration Act for cancellation of document vouching the deposit of title deeds which is registered as Document No. 2824/2016. The complainant has stated that the mortgagor before creating the mortgage by deposit of title deeds, had executed a Sale Deed in his favour in respect of an extent of 1167 sq.ft., out of an extent of 3626 sq.ft., of land. The District Registrar, while invoking power under Section 77-A declared the document registered as Doc. No. 3824/2016, i.e., the document vouching the mortgage by deposit of title deeds, as forged document and directed cancellation of the document creating mortgage. The District Registrar has passed this order without understanding the scope of Section 77-A and without even knowing that the mortgage is always valid in respect of remaining extent of land which was not alienated by the mortgagor.”

Similarly, the impugned order in WP(MD). No. 8305/2023 is again an order passed by the District Registrar in exercise of his power under Section 77-A of Registration Act. A complaint was filed by a third party alleging that the vendor had fraudulently obtained patta including the property belonged to the complainant's father and that members of complainant's family had not executed any sale deed in respect of property of his father. The allegation is that patta has been obtained fraudulently and on that basis, property had been sold by a registered sale deeds. Therefore, it is contended that the registration of subsequent sale deeds are liable to be



WEB COPY

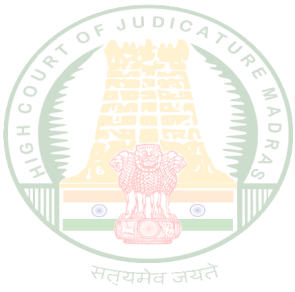


cancelled under Section 77-A. By the impugned order, the District Registrar cancelled four documents which were registered in the year 2006 and 2007 after holding that the vendor had no title to the property without much discussion.

Similarly, Hon'ble Mr. Justice N. SATHISH KUMAR in the case of R. Narayanan v. The District Registrar [Administration], allowed the writ petition in WP. No. 12472/2024 by order dated 03.07.2023 in similar circumstances. It was a case where a complaint about fraud and forgery was finally rejected by the Deputy Inspector General of Registration by order dated 08.06.2023 by directing the parties to work out their remedies before the Civil Court. However, the Deputy Registrar entertained a second complaint within a month, i.e., on 05.06.2023 and passed an order cancelling the document under Section 77-A. Without even knowing the difference between fraud and forgery, the Deputy Registrar cancelled the registration on the ground that the person who executed the document, has no title.”

50. The Division Bench made its displeasure clear at the deliberate attempt to convert the Registrar into an alternative forum for the civil court. They observed:

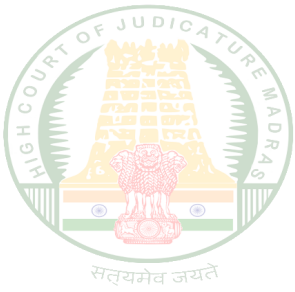
“From a few orders passed under Section 77-A, anyone can understand lack of knowledge and perversity in



WEB COPY



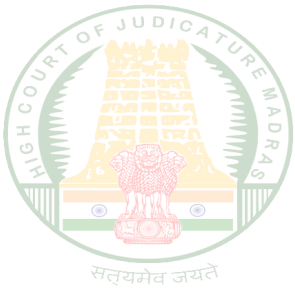
the approach. Therefore, it would be unwise to delegate the judicial power to the District Registrar to decide the character of any instrument or the property. More so, when the power is also conferred with the Inspector General of Registration to make rules in order to exercise general superintendence over all the Registering Officers within the territories of the State. It is interesting to note that the learned Advocate General has produced before this Court the Master Circular issued in April 2024 in exercise of his power to regulate the enquiry under Section 77-A. Even though Section 22-B confers the power to refuse to register forged document, thereby Section 22-B is confined to registration of forged document, the Inspector General of Registration under this Circular has enlarged the scope of enquiry not only to a document registered through impersonation but also to property claimed through forged documents like patta, tax receipt, death certificate, legal heirship certificate etc., and property claimed through previously forged documents. Therefore, the enquiry has now been expanded if tax receipt, death certificate or patta is not found genuine and further, even if the allegation is that one of the previous documents which is shown as parent document is found forged, the District Registrar can entertain an application and pass orders beyond the scope of Section 77-A. It is not known, how forgery of parent document can be examined or concluded by Registrar.”



51. Finally, the Division Bench struck down Section 77-A and

77-B of the Registration Act, 1908 by observing as follows:

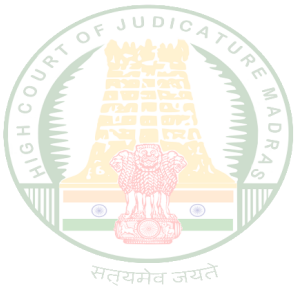
“84. The object of Registration Act is only to maintain public record in relation to immovable properties. Merely because a document executed by a person without title is registered, that does not affect the title of true owner. In other words, the question of title cannot be decided merely on the basis of registered documents of conveyance, even though such documents may be considered as evidence of transactions. Cancellation of a registered instrument after the transfer of right in immovable property is often the subject matter of suit under Section 31 or Section 34 of the Specific Relief Act. By registration, the Registering Officer only gives the seal of approval to the instrument and by registration, the Registering Officer does not recognise the title of individuals. Registration is a formality to complete the transfer of conveyance between two parties. A power conferred on the registering authority to cancel the registration is not therefore provided under the Act unless the document of conveyance or cancellation is signed by both parties. Even though the object of Registration Act and the amending Act are not different from the grounds on which the cancellation of registered deeds can happen under Section 77-A, we are of the view that the impugned legislation is nothing but creation of a new forum in the place of Civil Court. This cannot be permitted by constitutional Courts to protect the rights of parties to the documents.”



WEB COPY



85. *Even the Civil Court's jurisdiction to cancel the instrument is only when the transaction as such, is hit by any provisions of Indian Contract Act for being void or voidable. Article 56 of Schedule to Limitation Act deals with suits to declare the forgery of an instrument issued or registered. The limitation for filing a suit is three years from the date of execution or from the date when the plaintiff comes to know about the registration. Article 59 of Schedule to Limitation Act prescribes three years for filing a suit to cancel or to set aside an instrument or decree. Limitation starts when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside become known to the plaintiff. Section 27 of the Limitation Act extinguish the right to property at the determination of the period limited to any person for instituting a suit for possession of any property. The principle underlying Section 27 of the Limitation Act is that a person who is having a right to possession fails to file a suit within the prescribed period of limitation, will leave his title in favour of the party in possession. Now under Section 77-A of the Registration Act without any restriction, even documents which were registered some decades ago, can be challenged and the registration of the same can be cancelled on specific grounds which are enumerated under Section 22-A and Section 22-B. In the counter affidavit, the respondents have admitted this position and supported the enactment on the principle of equity. Even though a suit filed under Section 31 of Specific Relief Act is dismissed on the ground of limitation, power under Section 77-A can still be exercised by the Registrar. This situation renders*



WEB COPY

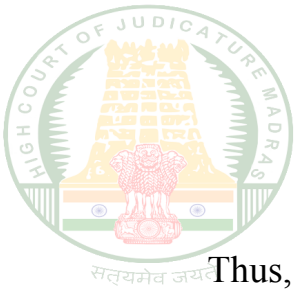


the enactment unconstitutional being contrary to the doctrine of separation of power.

86. When judicial Forum administered by qualified and trained judges who are accountable and guided by procedures, norms, principles and precedents is available, providing parallel remedy before executive authority to decide as to the legal sanctity of registered documents, is unconstitutional. There is no certainty to any documents of conveyance if an executive authority is given unguided power which can also be misused to invalidate even genuine transaction in the absence of proper guidelines by legislation.”

52. In the context of Section 22-A and 22-B, these provisions were read down by the Division Bench and it was held that the Registrar had no power to resort to these provisions when there were disputed facts involved. In other words, resort to these provisions could be made only when the facts were admitted. It was held:

“179. In view of our conclusions reached above on every point we have taken for determination in these cases, this Court finds that there is no scope for entertaining any application under Section 77-A of the Act. Similarly, the power under Section 22-A and Section 22-B of the Act can be exercised only when the jurisdictional issue as indicated in our judgment can be decided on the admitted facts or on the materials which are not in dispute.”



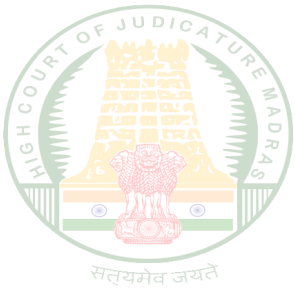
WEB COPY

Thus, this decision further made it clear that no question involving any adjudication could be made the subject matter of contest before a Registrar under the 1908 Act.

53. Another attempt was made to encroach into the domain of the Courts when the State of Tamil Nadu amended the Registration Rules and introduced Rule 55-A by way of a notification dated 05.09.2022. Despite clarifying the law in *Ramayee's case*, supra, Rule 55-A sought to set at naught the declaration of law by way of a mischievous amendment which once again attempted to expand the powers of the Registrar by imposing arbitrary and irrational barriers while dealing with property. Rule 55-A as introduced by the State of Tamil Nadu was as follows:

“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



WEB COPY



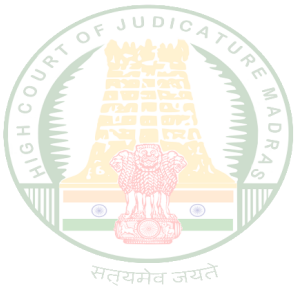
lease agreement exists over the property, the registering officer shall not register such document if the time limit for filing of suit is not lapsed or No Objection Certificate is not granted by the appropriate authority or raising of the attachment is not done, as the case may be:

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



WEB COPY

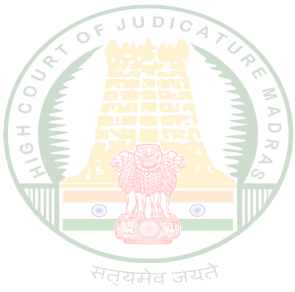


for registration conforms with the description of the property found in the previous original deed produced by the presentant as provided under this rule, he shall inscribe the word 'verified' on a conspicuous portion of the first page of such title deed and affix his signature with date and thereafter 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)."

54. A corresponding amendment was made in Rule 162 of the Registration Rules inserting item XX which empowered the Registrar to refuse registration on any of the grounds set out in Rule 55-A.



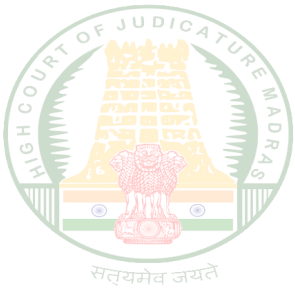
WEB COPY

55. In *Federal Bank v Sub-Registrar*, (2023) 2 CTC 289, the validity of Rule 55-A was examined in detail by this Court and the following conclusions were made:

“Coming to the first proviso to Rule 55-A(i), it states that in case an encumbrance as to mortgage, or an order as to attachment of property or a 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. It is relevant to state that this proviso has the effect of nullifying several provisions of the Transfer of Property Act. The precise issue was highlighted and pointed out by the Division Bench in Ramayee’s case.

15. 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 in Ramayee’s case. In the considered opinion of this Court, a subordinate legislation issued by the Inspector General of Registration under Section 69 of the Act cannot annul a declaration of law made by the Division Bench.”

20. These issues have been thoroughly deliberated and elaborately discussed in Ramayee’s case, which has also been affirmed by the Supreme Court, this Court is of the view

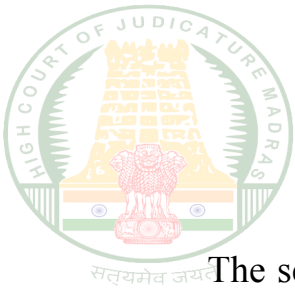


WEB COPY



that the effect of the first proviso is to set at naught to the above declaration of law by the Supreme Court and the Division Bench and it nullifies the several provisions of the Transfer of Property Act, as stated above. The authorities under the Registration Act have no jurisdiction to make rules which have the direct and immediate effect of restraining transactions which are permitted under the Transfer of Property Act. Such a restriction would be clearly illegal and violative of a citizen's right to deal with his property and would clearly infringe Article 300-A of the Constitution. It does not bear repetition that Article 300-A has now been recognised as a human right.

21. In State of Rajasthan v. Basant Nahata, (2005) 12 SCC 77, which was also a case concerning the provisions of the Registration Act, the Supreme Court held that a subordinate legislation under the said Act which is not backed up by any statutory guideline under the substantive law and opposed to the enforcement of a legal right, was invalid. In this case also, Rule 55-A being a subordinate legislation does not have any statutory guideline (for instance like the transactions mentioned in Section 22-A&B) and is opposed to the enforcement of substantive legal rights under the Transfer of Property Act. The first proviso is, therefore, invalid as it goes beyond the powers conferred on the Inspector General of Registration and is clearly ultra vires and unconstitutional to the Parent Act as well as the substantive provisions of the Transfer of Property Act.



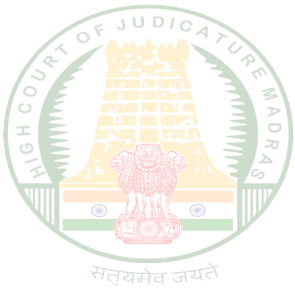
WEB COPY

The second and third proviso's were also held to be unworkable and the following conclusions were recorded:

“22. Similarly, the second proviso requires the executant to produce a revenue record to show his “right over the subject property” where the property is ancestral in character and there is no original deed available. Even a tax receipt can be produced under this proviso which is opposed to the fundamental principle of law that revenue records are not documents of title [State of A.P. v Star Bone Mill and Fertilizer Company, 2013 9 SCC 319]. Production of revenue documents to verify the source of title only demonstrates complete ignorance of the settled position of law.

23. Similarly, the third proviso also defies logic. If the original is lost, it is not understood as to why a certified copy of that document obtained from the file of the concerned SRO cannot be produced. When the best evidence is not available, the best course is to produce a certified copy which is the next best available alternative. Instead, the third proviso requires the executant to obtain a non-traceable certificate and effect paper publication.”

The Court finally held that the first proviso to Rule 55-A was clearly beyond the Rule making powers and was, thus, illegal and ultra vires the parent statute.



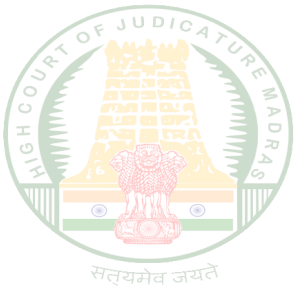
WEB COPY

56. The decision in *Federal Bank v Sub-Registrar*, (2023) 2 CTC 289, was approved by a Division Bench of this Court in *Easwari v Sub-Registrar, W.A 1367 of 2024, dated 12.06.2024* in the following terms:

“This Court while deciding that issue in Federal Bank Ltd., v. Sub Registrar, has after referring to various provisions of the Transfer of Property Act, which is the substantive law dealing with transfer of immovable property and a Central enactment held that the provisions of Section 55-A(i) are contrary or inconsistent with the provisions of the substantive law. We are in respectful agreement with the conclusions expressed by the learned Single Judge in Federal Bank Ltd., v. Sub Registrar, referred to supra.

The right to own property and the right to deal with property are constitutional rights protected under Article 300-A of the Constitution of India. Rule 55-A(i) clearly and directly invades upon such a right and empowers a Sub Registrar, who is not even a Judicial Authority to tamper with the right to property by a subordinate legislation. Courts will have to frown upon such an attempt by the legislature to invade upon a Constitutional right through a Subordinate legislation which has been rightly done by the learned Single Judge in Federal Bank Ltd., v. Sub Registrar. We are therefore of the view that the learned Single Judge, who decided the Writ Petition fell in error in concluding that the dictum in Federal Bank Ltd., will have to be confined to that case alone, we are therefore unable to uphold the judgment of the learned Single Judge impugned in this Appeal.”

57/117



WEB COPY

57. Despite the aforesaid order of the Division Bench, the Sub-Registrar filed an appeal before another Division Bench in W.A 1303 of 2023, challenging the correctness of the decision in Federal Bank's case, supra. When the matter was taken up on 08.01.2025, the State, for reasons best known to them, conveniently suppressed the fact that the decision of the learned single judge had already been upheld by a coordinate bench in *Easwari v Sub-Registrar*, W.A 1367 of 2024, dated 12.06.2024. This led the Division Bench into passing an order setting aside the declaration of Rule 55(i) as ultra vires.

58. Later another Division Bench of this Court in the case of *Ariyanatchi and others vs The Inspector General of Registration in W.A.(MD) No.856 of 2023, dated 27.06.2023* has also approved the judgment of the *Federal Bank's case*. The judgment of this Court in *Fedral Bank's case* was also considered by a Division Bench in *W.A.No.1160 of 2024 [P.Pappu vs. Sub Registrar, dated 27.09.2024]*. In the said judgment, the Division Bench clearly held that the law relating to transfer of property is governed by the substantial enactment namely, the TP Act. The right to hold property and the right to be not deprived of property without reasonable compensation is a constitutional



WEB COPY

right ensured under Article 300-A of the Constitution of India and also held that there cannot be a reasonable restriction to right to hold the property 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 and also recorded 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. By holding so, this Court held that 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 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. The above said decision of the Division Bench also reached finality. *Pappu's case* has also been challenged before the Hon'ble Supreme Court in Special Leave to Appeal

59/117



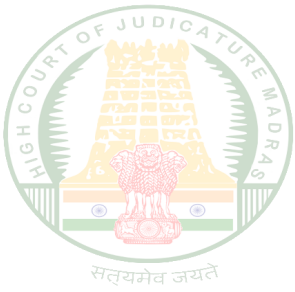
WEB COPY

No.2344 of 2025, which was dismissed on 03.02.2025 holding that “no case for interference is made out in exercise of our jurisdiction under Article 136 of the Constitution of India”.

59. When Federal Bank’s case had already been considered by the two Division Benches referred to above, W.A.No.1303 of 2023 was later filed. In the said appeal, the Division Bench held that the finding in Federal Bank’s case declaring the proviso to Rule 55-A as invalid and ultra vires alone was liable to be set aside, on the ground that there was no specific prayer challenging the vires of the Rule and that the Government had not been impleaded as a party to the writ petition. Be that as it may.

60. Subsequently, the same Rule 55-A became the subject matter of litigation in **Gopi’s case**, wherein the Hon’ble Supreme Court held as follows:

“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



WEB COPY

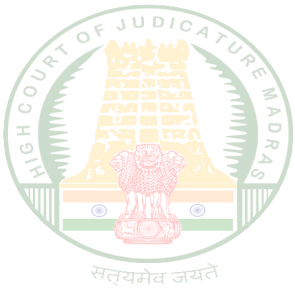


register the document if all the procedural compliances are made and the necessary stamp duty as well as registration charges/fee are paid. We may note here that under the scheme of the 1908 Act, it is not the function of the Sub-Registrar or Registering Authority to ascertain whether the vendor has 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 rule-making 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.”

61. The decision in ***Gopi's case***, supra, was subsequently followed by the Supreme Court in ***Samiullah v The State Of Bihar*** [2026] 1 MLJ 145. In the said decision it was held as follows:

61/117



WEB COPY



“A detailed examination of the relevant provisions of the Act, coupled with Sections 21 and 22 and also Section 69(1)(h) read with Sections 55(3), do not indicate anything as assumed by the High Court. At the same time a detailed examination of Sections 21, 22 and 55(3) only evidences the requirement of sufficient description to property. All these requirements are intended only to identify the property and for this purpose the provisions enable reference to maps, plans or surveys, if practicable. The reality is that, none of these provisions require reference to or production of proof of mutation in the name of the owner. That is to say, the provision does not relate to the right of disposition of the executant in respect of a property which is otherwise physically identifiable.”

*While Transfer of Property Act provides substantive legal framework for purchase and sale of immovable property and the Stamp Act imposes a fiscal charge on the transferable property as a precondition for registration, the Registration Act institutionalizes the process of registering documents to create a public record of immovable property transactions. **The Registration Act mandates registration of documents, not the title and this distinction is the fundamental character of our country’s presumptive titling system through registration.**”*

62. The above judgment clearly holds that the Registration Act mandates only the registration of documents and not adjudication of title.

62/117

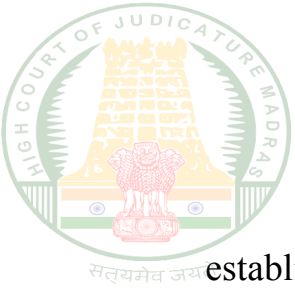


WEB COPY

After Rule 55-A of the Registration Rules was struck down, the same has been reintroduced by way of the present amendment to the Registration Act.

63. The Hon'ble Supreme Court, in *Gopi's case* and *Samiullah's case*, has categorically held that the Registering Officer is not concerned with the questions of title and has no adjudicatory power to determine whether a person possesses valid title to the property or not. This consistent view has been reiterated by the Hon'ble Supreme Court in several other judgments, wherein it has been held that the Registering Authority cannot adjudicate upon title and is not an adjudicating authority. Despite such clear findings and the law declared by the Hon'ble Supreme Court, Rule 55-A has once again been brought into force through legislative amendment in the form of Section 34-C. The Statement of Objects and Reasons clearly indicates that Rule 55-A was originally introduced for the purpose of deciding the title of a person to the property.

64. A careful reading of Section 34-C shows that, where the executant of a document is unable to produce the original document to

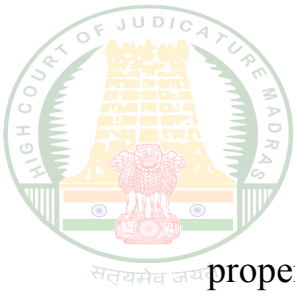


WEB COPY

establish his right over the subject property, certain safeguards and requirements have been prescribed. The requirement of producing, or accounting for, the prior title document necessarily presupposes that the Sub-Registrar must satisfy himself that such document vests title in the person presenting the document for registration. This, in effect, requires the Sub-Registrar to undertake an enquiry into the title of the property and the validity of the presentant's claim thereto. Such an enquiry is precisely what has been disapproved by the Hon'ble Supreme Court in Gopi's case and other decisions.

65. In *Gopi's case*, the Hon'ble Supreme Court has clearly declared that 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 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 1908 Act, it is not the function of the Sub-Registrar or Registering Authority to ascertain whether the vendor has title to the

64/117



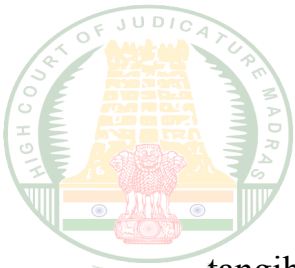
WEB COPY

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.

66. Similarly, in *Satyapal Anand v. State of Madhya Pradesh*, the Hon'ble Supreme Court held that the powers exercised by the Registrar under the Registration Act are purely administrative in nature and not quasi-judicial. It is also relevant to note that the right to hold, transfer, and deal with immovable property is a constitutional right protected under Article 300-A of the Constitution of India. Though it is no longer a fundamental right, it nevertheless remains a valuable constitutional right and cannot be curtailed or taken away lightly.

67. Insofar as the transfer of immovable property is concerned, Section 54 of the Transfer of Property Act mandates that a transfer of

65/117

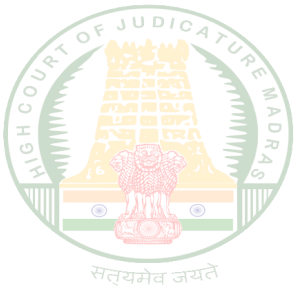


WEB COPY

tangible immovable property of a value exceeding one hundred rupees can be effected only through a registered instrument. Consequently, registration is an indispensable statutory requirement for effectuating such transfers.

68. The newly introduced Section 34-C empowers the Sub-Registrar to refuse registration where the executant fails to produce the original document evidencing his title or right over the property. It is well settled that the functions of the Registering Authority are purely administrative and ministerial in nature. The Registering Authority is not vested with any adjudicatory power to determine questions relating to title.

69. Even in the counter affidavits filed by the respondents, it has been admitted that Sub-Registrars perform only ministerial functions under the Registration Act. Such being the position, the impugned amendment effectively requires the Sub-Registrar to examine and satisfy himself regarding the executant's title before registering the document, thereby conferring upon him a function that is alien to his statutory role.



WEB COPY

70. The consequence of such a provision is that a person may be prevented from dealing with or transferring his property solely on the basis of the Sub-Registrar's satisfaction regarding title. The amendment, therefore, substantially impairs the exercise of property rights and places a restriction upon a citizen's constitutional right to deal with and transfer property.

71. The judgments make it abundantly clear that the Registering Authorities possess no adjudicatory power to determine questions of title. However, the impugned amendment effectively empowers the Registering Authority to examine and decide issues relating to title before accepting a document for registration. Such a conferment of adjudicatory power upon an authority whose functions are purely administrative and ministerial in nature runs contrary to the settled law declared by the Hon'ble Supreme Court.

72. Furthermore, by vesting the Registering Authority with powers that are essentially judicial in character, the amendment raises serious concerns relating to the constitutional doctrine of separation of powers, which forms part of the basic structure of the Constitution. It is

67/117

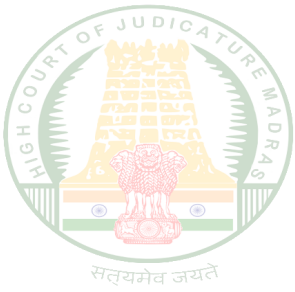


WEB COPY

also significant to note that the amendment does not prescribe the nature, scope, or manner of the enquiry contemplated thereunder.

73. It is also pertinent to note that the first proviso mandates the production of a No Objection Certificate from the mortgagee. This requirement assumes significance inasmuch as the impugned amendment appears to override the substantive provisions of the Transfer of Property Act, which comprehensively governs transactions relating to immovable property.

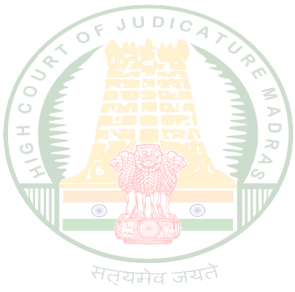
74. The Transfer of Property Act recognizes and regulates various modes of dealing with immovable property, including transfers, mortgages, leases, exchanges, and gifts. However, by imposing additional conditions upon the exercise of such rights, Section 34-C effectively alters the legal framework governing transactions in immovable property. To that extent, the amendment trenches upon a field already occupied by the substantive provisions of the Transfer of Property Act.



WEB COPY

75. It is well settled that the object of the Registration Act is primarily to provide public notice of transactions affecting property and to maintain a public record of such transactions. The Act is concerned with the registration of documents and not with the validity of the underlying transaction or the adjudication of title. Registration is intended to give authenticity and publicity to a document; it is not designed to determine proprietary rights.

76. However, Section 34-C of the Registration Act proceeds on the premise that a person can deal with immovable property only upon satisfying the Registering Authority regarding his title or right over the property. Such a requirement fundamentally alters the scheme of the Registration Act and, in effect, enables the Registering Authority to scrutinize and determine rights in property before permitting registration. The consequence is that the amendment not only travels beyond the scope and object of the Registration Act but also operates in a manner inconsistent with the substantive provisions of the Transfer of Property Act governing transactions in immovable property.

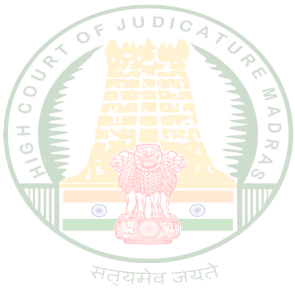


WEB COPY

77. Section 41 of TP Act deals with the power of ostensible owner to effect the transfer of the property with consent express or implied of the real owner. From the principle underlined Section 41 of the TP Act, it could be seen that ostensible owner of the property with the consent, express or implied and representing himself as a owner of the property though he is not having title, can deal with the property. Even such transfer is protected and the transferee's right is also protected if transferee is acted in good faith and taken a reasonable care to ascertain that transferor had power to transfer.

78. Similarly, Section 43 of TP Act permits transfer by unauthorised person who subsequently acquires power in transfer of the property. The above provision makes it clear that even a person who has no title at the initial stage, as on the date of transfer, can still sell the property. If the transferor subsequently acquires an interest in the same property, the title of the transferee becomes valid by operation of law. Therefore, even a transfer by an unauthorised person is not prohibited, as per the express provisions contained in Section 43 of the TP Act. Only the validity of the title would be subject to his acquiring subsequent interest in the property.

70/117

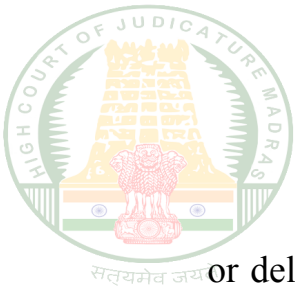


WEB COPY

79. Section 44 of TP Act permits one of the co-owners to deal with the share in the property. Therefore, the introduction of Section 34-C of the Registration Act, which empowers the Sub-Registrar to go into questions of title, would also override the provisions of Sections 41, 43, and 44 of the Transfer of Property Act. The Hon'ble Supreme Court has held that Registration Act only strikes the document and not at the transactions. Transaction is entirely governed by the TP Act.

80. Section 48 of TP Act deals with the priority of rights. When different transaction took place in different time in respect of the same immovable property, 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. The above Section also clearly show that there is no bar for successive transfer. It is only the person who have purchased the property has to make reasonable enquiry. Further, it is also noted that even transfer made during the pending suit, such transfer is not void. Further it is subject to the result of the suit.

81. Similarly Section 53 of the TP Act deals with the fraudulent transaction. Even such fraudulent transfer, if made with intent to defeat

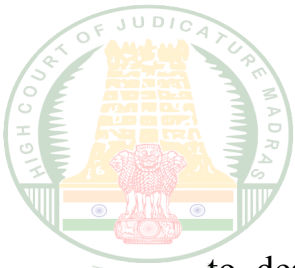


WEB COPY

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 a transferee in good faith for consideration are protected.

82. Section 56 of the TP Act deals with marshaling by subsequent transfer. The said provision also indicates that even where the property is subject to a mortgage, there is no bar on a subsequent transfer of the property. However, such subsequent transfer is subject to the rights of the earlier mortgagee.

83. Section 57 of the TP Act permits the sale of the property with encumbrances. Even the properties already encumbered can be brought under Court sale and the encumbrance can be freed after issuance of notice to the encumberer. Therefore, insisting the no objection certificate from the mortgagee to register the document will certainly infringe the constitutional right of the parties to deal with the properties. This leads to a situation where the money lender, in whose favour the mortgage exists, may refuse to issue a No Objection Certificate, and as long as such NOC is not granted or obtained from the mortgagee, the owner of the property is completely deprived of his right



WEB COPY

to deal with the immovable property. If the mortgagor is offered a favourable or enhanced price for the sale of the property, such transaction may be frustrated due to the absence of a No Objection Certificate, as mortgagees are not obliged to grant such consent. This also results in an interference with the constitutional rights of the parties. A mortgage always runs with the property. Any subsequent transfer takes place subject to the existing mortgage, and the title of the subsequent purchaser remains encumbered by the prior mortgage. Thus, the rights of the predecessor mortgagee are adequately safeguarded. The rights of such mortgagees under earlier transactions are duly protected under the TP Act. Therefore, the first proviso to Section 34-C of the Registration Act, which insists upon a No Objection Certificate, not only violates the constitutional rights of the parties but also overrides the substantive provisions of the Transfer of Property Act, which governs transactions relating to immovable property and not merely the registration of documents.

84. It is also relevant to note that the requirement of producing the original document may lead to unintended consequences. Unregulated moneylenders, who charge exorbitant rates of interest, may

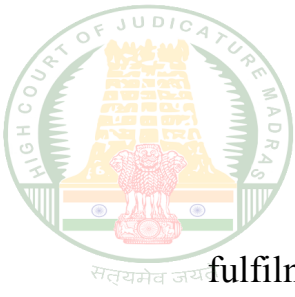


WEB COPY

advance loans without any registered instrument and merely retain possession of the original title documents as security. In such cases, the borrower may be unable to produce the original document before the registering authority. The amended provisions bar registration in the absence of the original document, thereby conferring an undue advantage upon such unregulated moneylenders. This would, in fact, confer an undue advantage upon unregulated moneylenders, enabling them to charge exorbitant rates of interest in contravention of the existing laws governing moneylending transactions. Similarly, the mere execution of a sale agreement in money transaction may deprive the owner of the right to register a document, as the amendment vests the Sub-Registrar with adjudicatory powers to determine questions relating to limitation. Such a provision effectively empowers the Sub-Registrar to decide issues that are ordinarily within the domain of a competent judicial forum.

85. Section 54 of TP Act makes very clear that a contract for the of sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties and it does not create any interest in or charge on such property. The agreement of sale is merely a document creating right to obtain a document for sale on

74/117

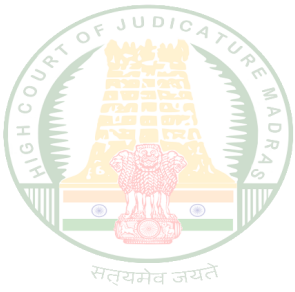


WEB COPY

fulfilment of terms and conditions specified therein and it is only capable 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 only the contract but other grounds viz., ready and willingness on his part to get a decree for specific performance provided the suit is filed within a time. In **Ramayee's case**, the Division Bench of this Court has held as follows:

“33. In Narandas Karsondas vs. S.K.Kamtam & another[AIR 1977 SC 774] the Honourable Supreme Court also considered the nature of the right created on the immovable 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.

34. 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.”



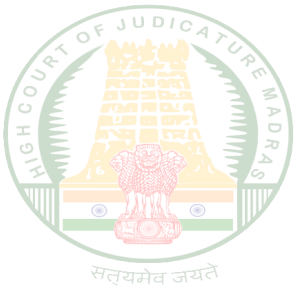
WEB COPY

86. In *Asset Reconstruction Co. (India) Ltd. Vs.*

S.P.Velayutham, reported in (2022) 8 SCC 210, the Hon'ble Supreme Court held that registration of a document comprises of three essential steps; (a) execution of the document, by the executant signing or affixing his left-hand thumb impression (b) presentation of the document for registration and timing to the registering authority the execution of such document; and (c) the act of registration of the document.

87. With regard to the aforesaid steps, it was held as follows:

“The first of the aforesaid three steps may be challenged in a suit for declaration that the registered document is null and void, either on the ground that the executant did not have a valid title to pass on or on the ground that what was found in the document was not the signature of the executant or on the ground that the signature of the executant was obtained by fraud, coercion, etc. The second step of presentation of the document and admitting the execution of the same, may also be challenged on the very same grounds hereinabove stated. Such objections to the first and second of the aforesaid three steps are substantial and they strike at the very root of creation of the document. A challenge to the very execution of a document, is a challenge to its very DNA and any defect or illegality on the execution, is



WEB COPY

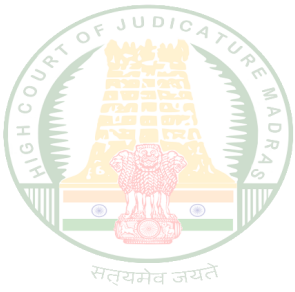


congenital in nature. Therefore, such a challenge, by its very nature, has to be made only before the civil court and certainly not before the writ court.”

As regards the second and the third step it was held:

“The third step, namely, the act of registration, is something that the registering authority is called upon to do statutorily. While the executant of the document and the person claiming under the document (claimant) are the only actors involved in the first two steps, the registering officer is the actor in the third step. Apart from the third step which is wholly in the domain of the registering authority, he may also have a role to play in the second step when a document is presented for registration and the execution thereof is admitted. The role that is assigned to the Registrar in the second step is that of verification of the identity of the person presenting the document for registration”

In suits for declaration of title and/or suits for declaration that a registered document is null and void, all the aforesaid three steps which comprise the entire process of execution and registration come under challenge. If a party questions the very execution of a document or the right and title of a person to execute a document and present it for registration, his remedy will only be to go to the civil court. But where a party questions only the failure of the registering authority to perform his statutory duties in the course of the third step, it cannot be said that the jurisdiction of the High Court under Article 226 stands completely ousted.



WEB COPY



It was finally concluded as under:

“Thus, the first two steps in the process of registration are substantial in nature, with the parties to the document playing the role of the lead actors and the registering authority playing a guest role in the second step. The third step is procedural in nature where the registering authority is the lead actor.”

88. The above judgment clearly set outs the principle that

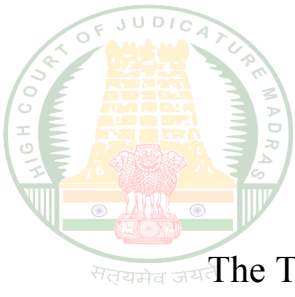
(a) as far as the execution of a document is concerned, a challenge can be made only before the civil Court.

(b) when the document is presented for registration in the second stage, the role assigned to the Registrar is confined to verify the identity of the person presenting the document for registration.

(c) the scope of enquiry during the presentation of the document followed by the act of Registration are procedural steps and not substantive in nature.

89. When it is alleged that a document has been fraudulently executed, the same could be challenged and tested only by the Civil Court as held by the Hon'ble Supreme Court in ***Fatima Bi Vs. Deputy Custodian-General, Evacuee Property*** reported in ***(1973) 1 SCC 742.***

78/117

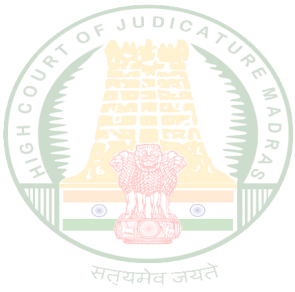


WEB COPY

The TP Act is a substantive law governing inter vivos transfers and deals with the rights and liabilities of the buyer and seller. The above rights and liabilities set out for the buyer and seller makes it clear that the seller is bound to disclose to the buyer any material defect in the property or in the seller's title thereto of which the seller is and the buyer is not aware. The maximum of caveat emptor applies to patent defects and defects of which the seller is unaware. In the event the seller fails to disclose material defects in title which are subsequently discovered by the buyer, the buyer is entitled to claim damages or rescind the contract on the ground of misrepresentation as per the judgment of the Hon'ble Supreme Court in **Pratap Singh Vs Vimla Devi reported in (1957) 2 SCC 577.**

90. The whole aim of the Registration Act, is to govern the documents and not the transaction embodied therein. Despite various judgment cited above, the State did not grasp the fundamental and basic distinction between the execution followed by presentation and registration, which has resulted in circulars, rules and legislation which seek to expand the powers of the Registrar to probe into the very execution of the document, which is purely within in the domain of the Civil Court.

79/117



WEB COPY

91. Part VI of the Registration Act deals with the presentation of the documents for registration. Section 32 deals with the persons, who are to present documents for a registration whereas Section 33 deals with the power of attorney which may be recognized for the purpose of Section 32. Section 34 deals with enquiry before the Registration by Registering Officer. Section 34 of the Registration Act reads as follows:

*“34. Enquiry before registration by registering officer.
—(1) Subject to the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorised as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25 and 26:*

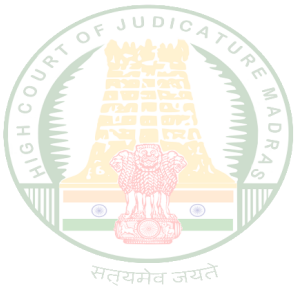
Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, in addition to the fine, if any, payable under section 25, the document may be registered.

(2) Appearances under sub-section (1) may be simultaneous or at different times.

(3) The registering officer shall thereupon—

(a) enquire whether or not such document was executed by the persons by whom it purports to have been executed;

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the



WEB COPY



document; and

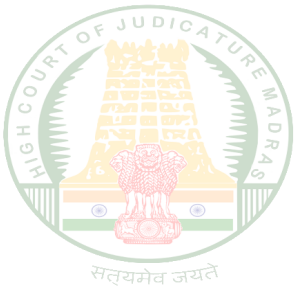
(c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

(4) Any application for a direction under the proviso to sub-section (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

(5) Nothing in this section applies to copies of decrees or orders.”

92. From the above provisions, as pointed out by the Hon'ble Supreme Court in *S.P.Velayutham's case*, the role assigned to the Sub-Register at the stage of presentation in Section 34 is to verify the identity of the person presenting the document for registration. Under Section 35, the Registering Authority shall register the document if he satisfied, or shall refuse to register if conditions are not specified and if so, follow the procedure under Part-XII of the Act. Initially Rule 55-deals with the enquiry, which reads as follows:

“55. It forms no part of a registering officer's duty to enquire into the validity of a document brought to him for registration or to attend to any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document; but he is bound to consider objections raised on any of the grounds stated below:-



WEB COPY

(a) *that the parties appearing or about to appear before him are not the persons they profess to be;*

(b) *that the document is forged;*

(c) *that the person appearing as a representative, assign or agent, has not right to appear in that capacity;*

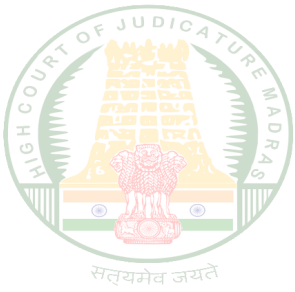
(d) *that the executing party is not really dead, as alleged by the party applying for registration; or*

(e) *that the executing party is a minor or an idiot or a lunatic.”*

93. It is also sought to be pointed out that various circulars have been issued to expand the powers of the Registrar to adjudicate questions of fraud and forgery. All the circulars and the rules were struck down by either Supreme Court or this Court at various point of time.

94. In the light of the above background, now the State has introduced the impugned amendment. For the easy reference, the same reads as follows:

"34-C. Production of Original documents. Notwithstanding anything contained in any other law for the time being in force, the registering officer before whom a document relating to immovable property is presented for registration shall not register the same, unless the executant produces the previous original document by which the right



WEB COPY



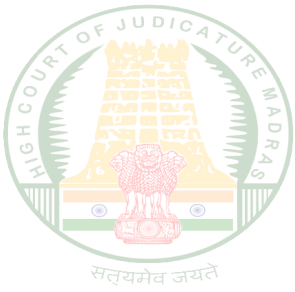
over the subject property was acquired by him along with the Encumbrance Certificate pertaining to the subject property obtained within ten days before the date of presentation:

Provided that where an encumbrance as to subsisting mortgage, exists over the property, the registering officer shall not register such document unless a No Objection Certificate is obtained from the mortgagee:

Provided further that where an agreement for sale has been executed in respect of the subject property and it has not been performed, the registering authority shall not register such document unless the period of limitation for filing a suit for specific performance of the above agreement has lapsed:

Provided also that where the subject property is ancestral one and the previous original document is not available, the registering officer shall not register such document, unless the patta issued by the Revenue Department in respect of that property is produced:

Provided also that if the previous original document is lost, the registering officer shall not register such document unless non-traceable Certificate issued by the Police department along with the advertisement published in the local Newspaper giving the notice of loss of the previous original document are produced:



WEB COPY

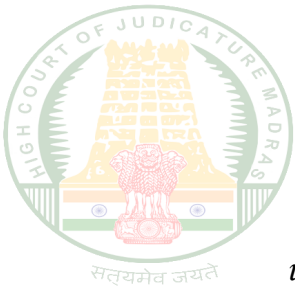
Provided also that production of the previous original document shall not be necessary for a document in which the Government or a statutory body is the executant or for such classes of documents as may be notified by the State Government, from time to time."

95. The Statement of Objects and Reasons for introducing the new Act reads as follows:

“STATEMENT OF OBJECTS AND REASONS.

In order to safeguard public from the perils caused due to fraud, forgery and impersonation in the registration of documents relating to immovable properties, rule 55-A has been inserted in the Tamil Nadu Registration Rules, 1949 by invoking section 69 of the Registration Act, 1908 (Central Act XVI of 1908). The said rule 55-A mandates that the original title deed or other records specified therein shall be produced at the time of registration of the documents relating to immovable properties. The limited purpose of the said rule is to ascertain as to whether the person executing the document possess a title over the immovable property to be registered and the said rule is made with an intent to avoid fraudulent transactions.

2. However, the Supreme Court of India, in its Judgment, dated 07.04.2025 has held that the rule making power under section 69 cannot be exercised to make a rule that is inconsistent with the provisions of the 1908 Act and accordingly, the Supreme Court has declared rule 55-A of the said Rules as



WEB COPY

ultra-vires to the said Central Act XVI of 1908.

3. In the said circumstances, in order to achieve the object behind the said rule 55-A by giving legal sanctity thereto and thereby to protect the interests of the public, who may be affected by fraud, forgery and impersonation in the registration of documents, the Government have decided to incorporate suitable provisions in the said Central Act XVI of 1908 by way of a State amendment.

4. The Bill seeks to give effect to the above decision.”

96. The very object of the amendment is to substitute the Rule that was originally introduced as Rule 55-A by way of an Act, which has already been struck down by the Hon'ble Supreme Court. It is pertinent to note that the Rule itself was introduced, as evident from the Statement of Objects and Reasons, for the purpose of determining the title of a person to the immovable property sought to be registered. The very same provision is now sought to be reintroduced by way of legislation as Section 34-C.

97. A comparative reading of Section 34-C of the Registration Act and Rule 55-A of the Registration Rules, which was struck down by the Constitutional Court, would clearly show that the present amendment

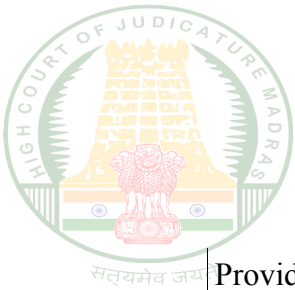
85/117



WEB COPY

is nothing but a re-enactment of Rule 55-A in the form of primary legislation. This can be easily demonstrated by the following table:

Provision under Section 34-C	Provision under Section 55-A(i)
<p style="text-align: center;">Section 34-C</p> <p>Notwithstanding anything contained in any other law for the time being in force, the registering officer before whom a document relating to immovable property is presented for registration shall not register the same, unless the executant produces the previous original document by which the right over the subject property was acquired by him along with the Encumbrance Certificate pertaining to the subject property obtained within ten days before the date of presentation.</p>	<p style="text-align: center;">Rule 55-A(i)</p> <p>The registering officer before whom a immovable document relating 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</p>
<p>Provided that where an encumbrance as to subsisting mortgage, exists over the property, the registering officer shall not register such document unless a No Objection Certificate is obtained from the mortgagee:</p>	<p>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:</p>
<p>Provided further that where an agreement for sale has been executed in respect of the subject property and it has not been performed, the registering authority shall not register such document unless the period of limitation for filing a suit for specific performance of the above agreement has lapsed:</p>	<p>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:</p>



WEB COPY

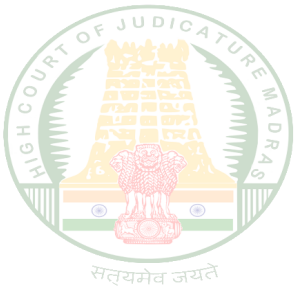
Provided also that where the subject property is ancestral one and the previous original document is not available, the registering officer shall not register such document, unless the patta issued by the Revenue Department in respect of that property is produced:	Provided also that if the previous original 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 if the previous original document is lost, the registering officer shall not register such document unless non-traceable Certificate issued by the Police department along with the advertisement published in the local Newspaper giving the notice of loss of the previous original document are produced:	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.

98. The same clearly indicates that the very object of bringing the amendment is only to reintroduce Rule 55-A of the Registration Rules, which was struck down by the Constitutional Court, by empowering the Sub-Registrar to conduct an enquiry as to whether the executant has title over the immovable property

99. It is relevant to note that while striking down Rule 55-A the Registration Rules, the Hon'ble Supreme Court in *Gopi's case* held as follows:

“15. The registering officer is not concerned with the title held by the executant. He has no adjudicatory power to

87/117

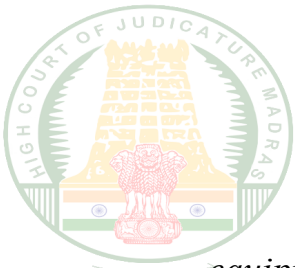


WEB COPY

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.”

100. Therefore, the reintroduction of the said provision amounts to an attempt to once again empower the Registrar to adjudicate title disputes, contrary to the law declared by the Hon'ble Supreme Court under Article 141 of the Constitution of India.

101. In *Horil Vs Keshav, reported in (2012) 5 SCC 525*, the Hon'ble Supreme Court has held that *Revenue Courts are neither*



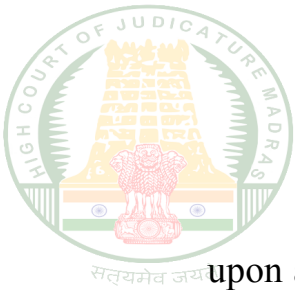
WEB COPY

equipped nor competent to effectively adjudicate on allegations of fraud that have overtones of criminality and the courts really skilled and experienced to try such issues are the courts constituted under the Code of Civil Procedure.

102. Though it is submitted by the learned Additional Advocate General that mere practical difficulties itself cannot be taken into consideration while testing a legislation. In this regard, the Hon'ble Supreme Court in *Subramanian Swamy Vs. CBI* reported in (2014) 8 SCC 682 has held as follows:

“A practical assessment of the operation of the law in particular circumstances is necessary and the court can take judicial notice of existing conditions from time to time.”

103. Interestingly, the power to decide questions of title is sought to be conferred upon the Sub-Registrar, whose functions have consistently been held by the Constitutional Courts to be purely ministerial in nature. Sub-Registrars are not judicial officers, nor are they vested with the expertise or training required to adjudicate complex questions of title and property rights. The conferment of such powers

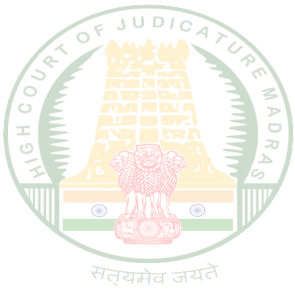


WEB COPY

upon an authority performing essentially ministerial functions is likely to result in arbitrariness and inconsistent decision-making. Therefore, a Sub-Registrar, who has hitherto been exercising only ministerial and administrative functions under the Registration Act, cannot be conferred with powers akin to those exercised by a civil court for adjudicating disputes relating to title and property rights. Such a course would be contrary to the principles laid down by the Hon'ble Supreme Court in *S.P. Velayutham's case and State of Rajasthan Vs. Basant Nahata* reported in *(2005) 12 SCC77*.

104. In *Pareena Swarup Vs. Union of India* reported in *(2008) 14 SCC 107*, the Hon'ble Supreme Court has reiterated the essential constitutional duty to maintain separation of powers by having legal question adjudicated by a free and impartial judiciary. It was held as follows:

“The Constitution guarantees free and independent judiciary and the constitutional scheme of separation of powers can be easily and seriously undermined, if the legislatures were to divest the regular courts of their jurisdiction in all matters, and entrust the same to the newly created Tribunals which are not entitled to protection similar to the constitutional protection afforded to the regular courts. The independence and impartiality



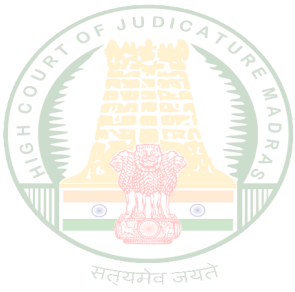
WEB COPY

which are to be secured not only for the court but also for Tribunals and their members, though they do not belong to the “judicial service” but are entrusted with judicial powers. The safeguards which ensure independence and impartiality are not for promoting personal prestige of the functionary but for preserving and protecting the rights of the citizens and other persons who are subject to the jurisdiction of the Tribunal and for ensuring that such Tribunal will be able to command the confidence of the public. Freedom from control and potential domination of the executive are necessary preconditions for the independence and impartiality of Judges. To make it clear that a judiciary free from control by the executive and legislature is essential if there is a right to have claims decided by Judges who are free from potential domination by other branches of Government.”

105. Similarly, in *Madras Bar Assn. v. Union of India, (2022)*

12 SCC 455, the Supreme Court has held as follows:

“The fundamental right to equality before law and equal protection of laws guaranteed by Article 14 of the Constitution, clearly includes a right to have the person's rights adjudicated by a forum which exercises judicial power in an impartial and independent manner [Union of India v. Madras Bar Assn., (2010) 11 SCC 1]”

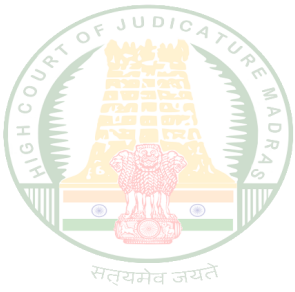


WEB COPY

106. It is equally well settled that a legislation which breaches the doctrine of separation of powers would fall foul of Article 14 of the Constitution of India. In *Madras Bar Assn. v. Union of India*, (2022) 12 SCC 455, it was held:

“26. The doctrine of separation of powers informs the Indian constitutional structure and is an essential constituent of rule of law. In other words, the doctrine of separation of powers, though not expressly engrafted in the Constitution, its sweep, operation and visibility are apparent from the scheme of the Indian Constitution. The Constitution has made demarcation, without drawing formal lines between the three organs—legislature, executive and judiciary. Separation of powers between three organs—the legislature, executive and judiciary—is also nothing but a consequence of principles of equality enshrined in Article 14 of the Constitution of India. Accordingly, breach of separation of judicial power may amount to negation of equality under Article 14. Stated thus, a legislation can be invalidated on the basis of breach of the separation of powers since such breach is negation of equality under Article 14 of the Constitution. [State of T.N. v. State of Kerala, (2014) 12 SCC 696]

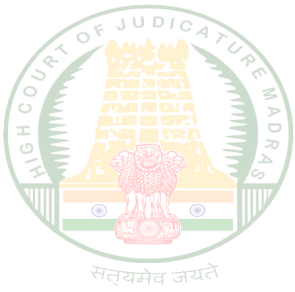
37. The constitutional mandate is that the legislature should adhere to the principles laid down in Part IV of the Constitution of India while enacting legislations. No provision shall be made in legislative Acts which would have the tendency



WEB COPY

of making inroads into the judicial sphere. Any such encroachment by the legislature would amount to violating the principles of separation of powers, judicial independence and the rule of law. Independence of courts from the executive and the legislature is fundamental to the rule of law and one of the basic tenets of the Indian Constitution. Separation of powers between the three organs i.e. the legislature, the executive and the judiciary, is a consequence of the principles of equality as enshrined in Article 14 of the Constitution [State of T.N. v. State of Kerala, (2014) 12 SCC 696] . Any incursion into the judicial domain by the other two wings of the Government would, thus, be unconstitutional.”

107. By permitting the Sub Registrar to exercise powers to “ascertain as to whether the person executing the document possess a title over the immovable property” Section 34-C” the impugned provision authorizes an authority exercising ministerial and administrative functions to probe questions of title which are within the exclusive province of the Courts. The impugned provision is, on the face of it, unconstitutional and violative of Article 14 as it clearly breaches the principle of separation of powers as held by the Supreme Court in ***Madras Bar Assn. v. Union of India, (2022) 12 SCC 455.***

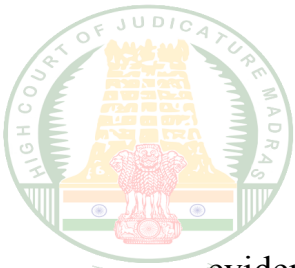


WEB COPY

108. Section 34-C of the Registration Act commences with a non-obstante clause. As already noted, the Registration Act is concerned primarily with documents and their registration, and not with the underlying transactions affecting property. The rights and liabilities of parties arising out of such transactions are governed by the substantive provisions of the Transfer of Property Act.

109. The Registration Act merely provides the procedural framework for registration and public notice of documents, whereas the validity, effect, and legal consequences of transactions relating to immovable property are governed by the Transfer of Property Act. Therefore, any provision in the Registration Act that seeks to regulate or determine substantive rights in immovable property must be examined in the light of the scheme and provisions of the Transfer of Property Act.

110. As declared by the Hon'ble Supreme Court in *Samiullah's case*, the Registration Act mandates registration of documents, not the title and mere registration of document recording purchase of immovable property does not confer guaranteed title of ownership, instead it only serves as a public record of the transaction having presumptive



WEB COPY

evidentiary value, but it is never a conclusive proof of ownership. The presumption is rebuttable and can always be challenged in a Court of law.

111. Therefore, the impugned amendment effectively empowers the Registering Authority to enquire into and determine questions of title, a function that falls exclusively within the jurisdiction of competent civil courts. The adjudication of title disputes is a judicial function and cannot be entrusted to an authority whose role under the Registration Act is purely ministerial and administrative in nature. Questions relating to title can be adjudicated only by a competent civil court upon appreciation of pleadings, evidence, and the applicable law. On the face of it, this Court is of the view that the impugned provision is unconstitutional.

112. This Court also called for the files relating to the impugned amendment and the nature of the assent sought from the Hon'ble President. Upon a careful perusal of the records, it is seen that the letter addressed to the Government of India, Ministry of Home Affairs, in Letter No. 6306/CT&R-Dfg/2025-3, dated 20.08.2025, reveals

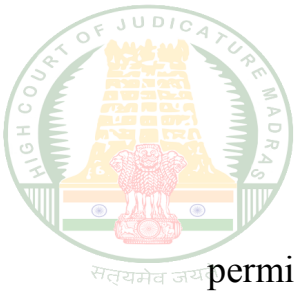


WEB COPY

that the attention of the Hon'ble President was drawn only to Entry 6 of List III (Concurrent List) of the Seventh Schedule to the Constitution, which deals with the registration of deeds and documents.

113. It is the contention of the respondents that the impugned Act has received the assent of the President and is therefore immune from challenge on the ground that it overrides several other Central enactments which govern the substantive rights of parties in relation to transfer of property.

114. As has already been pointed out in several decisions which have been adverted to, supra, the substantive law governing inter vivos transfers is governed by the Transfer of Property Act, 1882 and assent is governed by the Indian Contract Act, 1872. As noted above, the effect of the provisions of Section 34-C directly interferes with the several provisions of the Transfer of Property Act relating to ostensible sale (Section 41), feeding the grant by estoppel (Section 43), mortgages (Section 48, 53 & 56), sale (Section 54) and lis pendens (Section 52). The Act also interferes with the freedom of contract in as much as it refuses registration in respect of transactions which are otherwise legally



WEB COPY

permissible under the substantive law i.e., the Indian Contract Act, 1872.

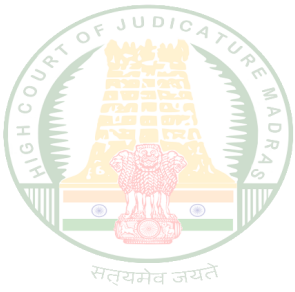
The question that arises is whether the provisions of Section 34-C of the Registration Act, 1908 would override the provisions of the substantive law contained in the Transfer of Property Act, 1882 by virtue of Article 254(2) of the Constitution.

115. Article 254 of the Constitution of India reads as follows:

“254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect



WEB COPY



to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

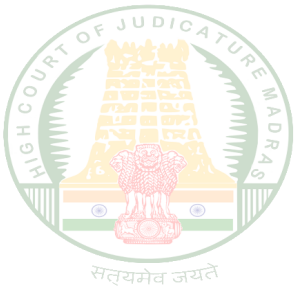
Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.”

116. The principles relating to the applicability of the doctrine of repugnancy under Article 254 are well settled. In *West U.P. Sugar Mills Assn. v. State of U.P., (2020) 9 SCC 548*, it was held that for repugnancy to exist the following conditions must be satisfied:

i. That there is a clear and direct inconsistency between the Central Act and the State Act in respect of a subject in the Concurrent List.

ii. That such an inconsistency is absolutely irreconcilable.

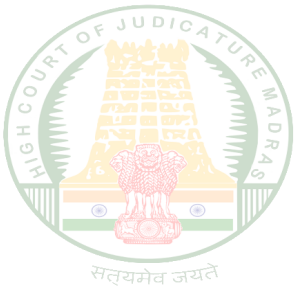
iii. That the inconsistency between the provisions of the two Acts is of such nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other.



WEB COPY

117. In *Kaiser-I-Hind (P) Ltd. v. National Textile Corpn. (Maharashtra North) Ltd.*, (2002) 8 SCC 182, it was held that while reserving the Bill for the consideration of the President under Article 254 of the Constitution, the proposal of the State must pointedly identify the law or laws in respect of which repugnancy has arisen and which requires the consideration of the President for the purposes of assent under Article 254(2) of the Constitution. Hon'ble Mr. Justice M.B.Shah who authored the majority opinion of the Constitution Bench had observed as follows:

“Applying the aforesaid meaning of the word “assent” and from the phraseology used In clause (2), the object of Article 254(2) appears that even though the law made by Parliament would have supremacy, after considering the situation prevailing in the State and after considering the repugnancy between the State legislation and the earlier law made by Parliament, the President may give his assent to the law made by the State Legislature. This would require application of mind to both the laws and the repugnancy as well as the peculiar requirement of the State to have such a law, which is repugnant to the law made by Parliament. The word “assent” is used purposefully indicating affirmative action of the proposal made by the State for having law repugnant to the earlier law made by Parliament. It would amount to accepting or conceding and concurring to the demand made by the State for such law. This cannot be done without consideration of the relevant material. Hence, the

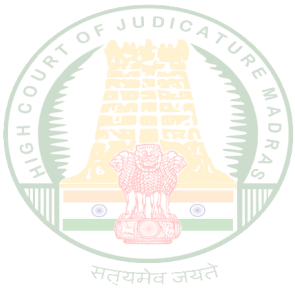


WEB COPY



phrase used is “reserved for consideration”, which under the Constitution cannot be an idle formality but would require serious consideration on the material placed before the President. The “consideration” could only be to the proposal made by the State.

It is true that the President's assent as notified in the Act nowhere mentions that assent was obtained qua repugnancy between the State legislation and specified certain law or laws of Parliament. But from this, it also cannot be inferred that as the President has given assent, all earlier law/laws on the subject would not prevail in the State. As discussed above before grant of the assent, consideration of the reasons for having such law is necessary and the consideration would mean consideration of the proposal made by the State for the law enacted despite it being repugnant to the earlier law made by Parliament on the same subject. If the proposal made by the State is limited qua the repugnancy of the State law and law or laws specified in the said proposal, then it cannot be said that the assent was granted qua the repugnancy between the State law and other laws for which no assent was sought for. Take for illustration — that a particular provision, namely, Section 3 of the State law is repugnant to enactment A made by Parliament; other provision, namely, Section 4 is repugnant to some provisions of enactment B made by Parliament and Sections 5 and 6 are repugnant to some provisions of enactment C and the State submits proposal seeking “assent” mentioning repugnancy between the State



WEB COPY

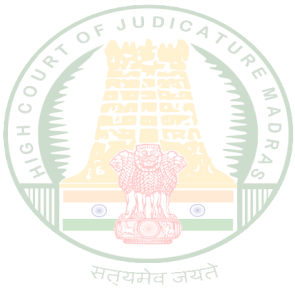


law and provisions of enactments A and B without mentioning anything with regard to enactment C. In this set of circumstances, if the assent of the President is obtained, the State law with regard to enactments A and B would prevail but with regard to C, there is no proposal and hence there is no “consideration” or “assent”. Proposal by the State pointing out repugnancy between the State law and of the law enacted by Parliament is a sine qua non for “consideration” and “assent”. If there is no proposal, no question of “consideration” or “assent” arises. For finding out whether “assent” given by the President is restricted or unrestricted, the letter written or the proposal made by the State Government for obtaining “assent” is required to be looked into.” (emphasis supplied)

118. In the light of the above observations of the Supreme Court, the proposals of the Government of Tamil Nadu to the President under Article 254(2) were called for and looked into. The letter dated 05.06.2025 addressed to the Secretary to the Government of India, Ministry of Home Affairs by the Governor’s Secretariat reads as follows:

*“Sub: The Registration (Tamil Nadu Amendment)
Bill, 2025 (LA Bill 18 of 2025) – Reserved for consideration
of the
Hon’ble President- Regarding*

101/117



WEB COPY

I am directed to state that the Tamil Nadu Legislative Assembly has passed The Registration (Tamil Nadu Amendment) Bill, 2025 (LA Bill No 18 of 2025) and sent to the Hon'ble Governor for reserving the Bill for the consideration of the Hon'ble President.

2. The Hon'ble Governor has reserved the said Bill for the consideration of the Hon'ble President on 05.06.2025. Three authentic copies of the Bill bearing appropriate endorsements made by the Speaker of the Legislative Assembly and the Hon'ble Governor are enclosed.

3. The Bill falls mainly within the scope of the following entries of the Concurrent List in the Seventh Schedule to the Constitution, namely

Concurrent List

Entry 6 :-; registration of deeds and documents.

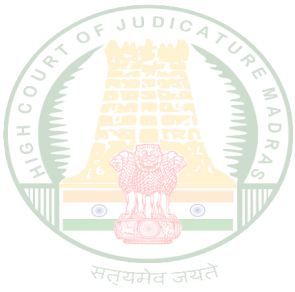
4. The Bill seeks to amend the provisions of a Central Act viz., the Registration Act, 1908 (Central Act XVI of 1908) which is an existing law on a Concurrent subject. Hence, the Bill has been reserved for the consideration of the Hon'ble President under Article 254(2) of the Constitution.

5. I am therefore directed to request you to take appropriate action for the Bill to have consideration for the Hon'ble President.

Yours truly,

Principal Secretary to Governor"

102/117



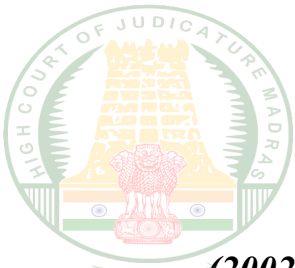
WEB COPY

119. From the above, it is clear as the day that the assent of the Hon'ble President was sought under Article 254(2) to override the provisions of the Registration Act, 1908 alone, which is an existing law under Entry 6 of List III in the Seventh Schedule. The subject matter relating to transfer of property contained in Entry 6 of List III was never within the contemplation of either the State Government or the President. Entry 6 of List III of Schedule VII of the Constitution reads as follows:

*“6. Transfer of property other than agricultural land;
registration of deeds and documents”*

120. A close perusal of the letter of the Hon'ble Governor's Secretariat dated 05.06.2025 shows that the first part of Entry 6 of List III relating to “Transfer of property other than agricultural land” has been specifically excluded from consideration in the proposal under Article 254(2) and is confined only to the second part of Entry 6 dealing with “registration of deeds and documents”. Similarly, the Indian Contract Act is an existing law falling within the first part of Entry 7 of List III in respect of which there is no reference in the proposal dated 05.06.2025 of the State of Tamil Nadu. As pointed out by the Supreme Court in ***Kaiser-I-Hind (P) Ltd. v. National Textile Corpn. (Maharashtra North) Ltd.***

103/117



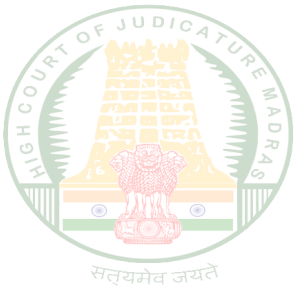
सत्यमेव जयते (2002) 8 SCC 182:

WEB COPY

“Article 254(2) contemplates “reservation for consideration of the President” and also “assent”. Reservation for consideration is not an empty formality. Pointed attention of the President is required to be drawn to the repugnancy between the earlier law made by Parliament and the contemplated State legislation and the reasons for having such law despite the enactment by Parliament.”

121. In his concurring judgment, Hon’ble D. Raju, J., in ***Kaiser-I-Hind (P) Ltd. v. National Textile Corpn. (Maharashtra North) Ltd., (2002) 8 SCC 182*** has also observed as follows:

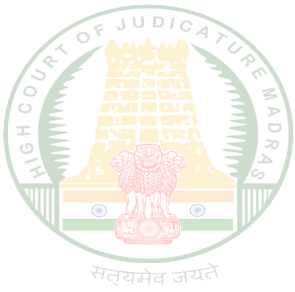
“the President has to be apprised of the reasons at least as to why his assent is being sought, the need or necessity and the justification or otherwise for claiming predominance for the State law concerned. This itself would postulate an obligation, inherent in the scheme underlying as well as the very purpose and object of seeking the assent under clause (2) of Article 254, to enumerate or specify and illustrate the particular Central law or provision with reference to which the predominance is desired. The absence of any standardized or stipulated form in which it is to be sought for, should not detract the State concerned, to disown its obligation to be precise and specific in the extent of protection sought having regard to the serious consequences which thereby inevitably follow i.e. the substitution of the Union law in force by the State law, in the territorial limits of the State concerned, with drastic alteration or change in the rights of citizen, which it may, thereby bring about.”



WEB COPY

122. Therefore, from the above observations of the Constitution Bench it is clear that unless and until the State specifies and points out the particular Central law or any provision thereof with reference to which Article 254(2) must apply there can be no general assumption that the grant of assent would override every other law or laws in the Concurrent List. Consequently, in the absence of there being any proposal from the State of Tamil Nadu to override the provisions of any other Central law except the Registration Act, 1908, the contention that the provisions of Section 34-C must be treated as overriding the substantive provisions of the Contract Act, 1872 and the Transfer of Property Act, 1882 cannot be accepted.

123. There is no dispute with regard to the principles laid down in the judgments relied upon by the learned Additional Advocate General. It is well settled that legislative enactments can be challenged on the ground of violation of any of the fundamental rights guaranteed under Part III of the Constitution, lack of legislative competence, and manifest arbitrariness.

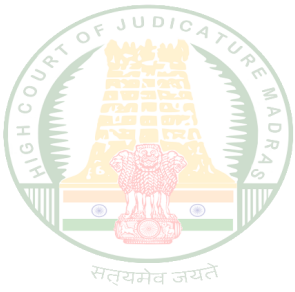


WEB COPY

124. However, the substantive provisions of the Transfer of Property Act and the Indian Contract Act, which govern the rights, liabilities, and transactions relating to immovable property, were not specifically brought to the notice of the Hon'ble President. In other words, the attention of the Hon'ble President was confined to the subject of registration and was not drawn to the substantive laws that are to be affected or overridden by the impugned amendment.

125. Article 54 of the Limitation Act prescribes a period of three years for instituting a suit for specific performance of a contract. The said Article provides that the period of limitation begins to run from the date fixed for performance, or, where no such date is fixed, from the date on which the plaintiff has notice that performance has been refused. Therefore, a plea of limitation invariably involves mixed questions of fact and law, which cannot be adjudicated by the Sub-Registrar. This Court is unable to understand how the Sub-Registrar could decide such an issue, or what the nature of the enquiry contemplated would be whether it is to be summary in nature or whether it is to be decided merely on the basis of affidavits. Therefore, the question of limitation is a question of law, often involving mixed questions of fact and law, and cannot be decided by the Sub-Registrar.

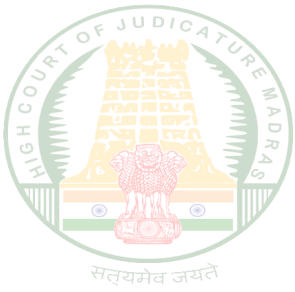
106/117



WEB COPY

126. Further, mere registration of an agreement for sale does not take away the right of the owner to sell the property. Admittedly, even if an agreement for sale is made subject to compulsory registration and is reflected in the records, it is for the purchaser to take such risk. Whether a person had prior notice of an earlier agreement is a question of fact and must be duly established. It is precisely to address such situations that Section 19 of the Specific Relief Act has been enacted. Therefore, the contention of the respondents that the question of limitation is purely factual cannot be countenanced. Conferment of power to decide whether the period of limitation has expired or not is a clear instance of usurpation of judicial functions and its vesting in the Sub-Registrar, who has no adjudicatory role or expertise in law or legal procedure. Therefore, it has to be held that the impugned proviso suffers from manifest arbitrariness and is violative of Article 14 of the Constitution, apart from being contrary to the substantive provisions of law. Further, as already indicated in paragraph 83, there is no bar under the TP Act on the sale of a mortgaged property. The existence of a mortgage does not prohibit the transfer or sale of the property.

107/117



WEB COPY

127. The third proviso to Section 34-C of the Registration Act authorises the Sub-Registrar to refuse registration where the subject property is ancestral in nature and the original prior document is not available, unless the patta issued by the Revenue Department in respect of the property is produced. On a careful scrutiny of the proviso, it is clear that it also empowers the Sub-Registrar to decide questions of title, namely whether the property is ancestral in nature or not. Whether the property is ancestral property or joint family property is a matter to be decided on facts. How can the Sub-Registrar, hitherto performing a ministerial function, assume the role of determining and safeguarding the character of the property so as to decide whether it is ancestral property or not. Therefore, the third proviso, which empowers the Sub-Registrar to decide questions of title, also violates the basic structure of the Constitution and the doctrine of separation of powers.

128. The fourth proviso relates to the requirement of a non-traceable certificate issued by the police department, along with publication in a widely circulated local newspaper. This proviso was also incorporated in the earlier Rule, which was struck down by the Division Bench of this Court in *P. Pappu v. Sub-Registrar* in W.A. No. 1160 of

108/117

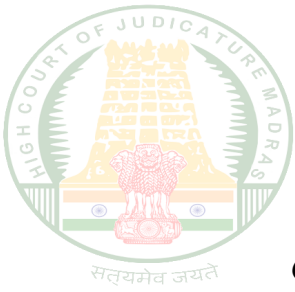


2024, dated 29.07.2024, wherein it was clearly held as follows:

WEB COPY

“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 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.Ramanlal, learned Additional Advocate

109/117



WEB COPY

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.”

129. The said judgment is also upheld by the Hon'ble Supreme Court in S.L.P.(Civil)No.3244 of 2025, by order dated 03.02.2025.

130. With regard to the last proviso to Section 34-C, it is clear that its survival depends upon the survival of the other limbs of the provision. Consequently, if the other limbs of Section 34-C are struck down, the last proviso must also automatically go. Therefore, we are of the view that the entire amendment introduced is nothing but a resurrection of the earlier Rule 55-A, which had been struck down by the Hon'ble Supreme Court. As already noted supra, the legislature cannot vest adjudicatory powers with the executive. Such an exercise violates the separation of powers thereby violating Article 14 of the Constitution and is also impose arbitrary and unreasonable restrictions on the right to



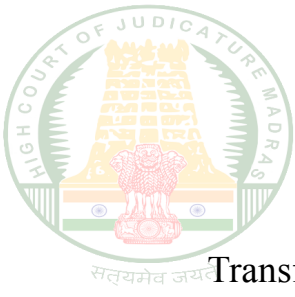
WEB COPY

deal with one's property, which is a constitutional right under Article 300-A. It is now well settled through a catena of decisions that the right to property has been recognized as a human right under Article 21.

131. Since the amendment is nothing but a resurrection of the earlier Rule, which has already been struck down by the Constitutional Court, it not only infringes constitutional rights but also overrides the provisions of substantive laws, namely the Transfer of Property Act and the Contract Act, as discussed above. Furthermore, it violates the doctrine of separation of powers and is manifestly arbitrary.

132. Considering the above, the only conclusion that can be reached by this Court is that Section 34-C is nothing but a resurrection of the old Rules, which had already been struck down by the Courts. The new amendment, by prescribing constitutional limitations, reintroduces provisions that have already been held to be unconstitutional by this Court as well as by the Hon'ble Supreme Court. Hence, we are constrained to hold that all the amendments are ultra vires and unconstitutional on the ground of violation of the doctrine of separation of powers, and also for overriding substantive laws governing the

111/117

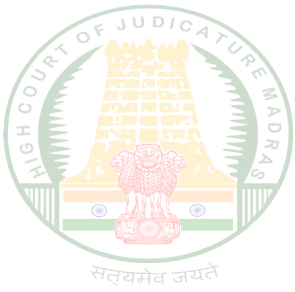


WEB COPY

Transfer of Property Act. The amendments take away the constitutional right and impose unreasonable restrictions on the right to deal with one's property, which is a constitutional right under Article 300A. The right to property is not only a constitutional right but is also recognized as a human right.

133. In view of the above findings and discussions, Section 34-C of the Registration Act, 1908, inserted vide the Registration (Tamil Nadu Amendment) Act, 2026 (T.N. Act 1 of 2026), is struck down and held to be ultra vires.

134. Accordingly, all the Writ Petitions are allowed. Consequently, the refusal check slip dated 18.02.2026 issued by the District Registrar, Bypass Road, Oyyakondansiruvayal, Karaikudi, is set aside and he is directed to register the gift deed dated 16.02.2026 presented by the petitioner in W.P.(MD)No.6183 of 2026, forthwith. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.



WEB COPY

135. We also make the following suggestions to prevent further fraud, since the registration of documents, including sale agreements, has now been made compulsory. Though an unregistered sale agreement can still be used for filing a suit for specific performance to enforce a contract under the Registration Act, most transactions are now covered by registered documents.

136. The interests of innocent purchasers can best be protected by providing clear and accurate details of prior and existing encumbrances on the property, thereby enabling purchasers to exercise the reasonable care and diligence required under Section 55 of the Transfer of Property Act, 1882, before entering into a transaction. It is necessary to ensure that any person intending to deal with the property is put on notice of any existing or prior encumbrances on the property. The Inspector General of Registration is directed to prepare and publish a comprehensive list of encumbrances in Book I, indexed survey number-wise and door number-wise. This exercise shall be undertaken forthwith in all Sub-Registrar Offices across the State of Tamil Nadu and shall be completed in a phased manner within a stipulated time frame. If such an exercise is undertaken, all entries relating to transactions will be properly

113/117

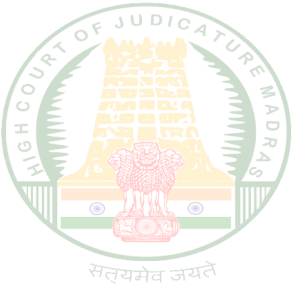


WEB COPY

reflected in the encumbrance records, thereby addressing the concerns of the State and enabling members of the public to conduct a thorough search before entering into any transaction.

137. We, therefore, direct the Inspector General of Registration, Chennai to ensure that all transactions in respect of all the survey numbers are reflected in the encumbrance register without fail. We are also constrained to mention here that we have come across several instances where entries of particular transactions are erroneous, and encumbrance certificates have been issued on that basis, which has in fact led to various consequences and affected innocent persons at large. Therefore, as indicated in paragraph No. 136, we direct the Inspector General of Registration, Chennai to undertake the exercise of verifying the integrity of encumbrance entries in Book I, indexed survey number-wise and door number-wise, and to ensure that the same are properly reflected in the encumbrance certificates. The said exercise shall be commenced forthwith and completed in a phased manner across the State.

114/117



WEB COPY

138. We also place on record our appreciation for the valuable assistance rendered by Mr. Sharath Chandran, Mr. E. Balaji, Ms. Jasima Yasmin, and Mr. R.M. Arum Swaminathan, learned counsel for the petitioners; Mr. T.G. Gowthaman, learned Additional Advocate General, assisted by Mr. M.P. Senthil, learned counsel for the State; and Mr. Srinath Sridevan, learned Senior Counsel, who have brought to our notice the relevant position of law and made fair submissions.

[N.S.K., J.] & [M.J.R., J.]
23.06.2026

Index : Yes/No
Internet : Yes
vsm

To

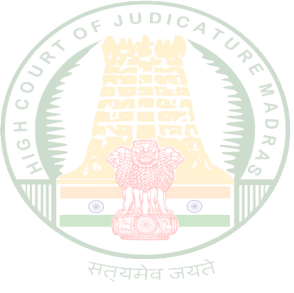
1. The Secretary to Government,
Registration Department,
Secretariat, Fort St. George,
Chennai-600 009.
2. The Secretary to Government,
Law Department, Secretariat,
Fort St. George, Chennai-600 009.
3. The Inspector General of Registration,
Office of the Inspector General of Registration,
Santhome High Road, Chennai-600 100.

115/117



WEB COPY

4. The Sub Registrar,
Office of the Sub Registrar,
Kodaikanal,
Dindigul District.
5. The Sub Registrar,
Beach Road, near the Bus Stand,
Thondi, Ramanathapuram-623 409.
6. The District Registrar,
Bypass Road,
Oyyakondansiruvayal,
Karaikudi-630 002.
7. The State of Tamilnadu,
Represented by its Secretary to Government,
Commercial Taxes and Registration Department,
Secretariat, Chennai-600 009.
8. The Joint – II Sub Registrar,
Join – II Sub Registrar Office,
Karaikudi, Sivagangai District.



WEB COPY



N.SATHISH KUMAR, J.
AND
M.JOTHIRAMAN, J.

vsm

**Pre-Delivery Order made in
W.P.(MD)Nos.7415, 6183, 9526
& 16387 of 2026**

23.06.2026

117/117