

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

WP(C).No. 17997 of 2015 (Y)

PETITIONER(S):

**BENNY CHANDRAN, AGED 41 YEARS
S/O P.U. CHANDRAN, RESIDING AT PERUMBALATHU HOUSE
NARAKKAL PO, ERNAKULAM 682 505**

BY ADV. SRI.S.ANANTHAKRISHNAN

RESPONDENT(S):

**1. STATE OF KERALA
REPRESENTED BY SECRETARY, REGISTRATION DEPARTMENT
SECRETARIAT, TRIVANDRUM 695 001**

**2. THE SUB-REGISTRAR,
RAJAKUMARI, IDUKKI DISTRICT 686 512**

R. BY ADV. GOVERNMENT PLEADER SMT. C.K. SHERIN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 13-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WP(C).No. 17997 of 2015 (Y)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 TRUE COPY OF THE AGREEMENT DATED 19/5/2015

**EXT.P2 TRUE COPY OF THE LETTER DATED 22/5/2015 OF THE 2ND
RESPONDENT**

RESPONDENT(S)' EXHIBITS:

**EXT.R2(a) TRUE COPY OF THE ORDER NO. LR(A3) 36667/99 DATED
19.08.2000.**

// TRUE COPY //

PA TO JUDGE.

SB

K. VINOD CHANDRAN, J.

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W.P.(C) No.17997 of 2015 -Y

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Dated this the 13th day of August, 2015

J U D G M E N T

The petitioner is aggrieved with the fact that the petitioner has been directed to register an agreement presented by the petitioner for registration; as a conveyance deed and not as an agreement for sale. The 2nd respondent has objected the registration of Ext.P1, which according to the petitioner is a mere agreement of sale. The objection has been raised only on the ground of the recitals in the document indicating handing over possession of the property on the basis of the agreement itself.

2. The learned Counsel for the petitioner would contend that it was a specific term of the agreement since, there were certain activities to be carried on in the property before the sale could be effected; inter alia of laying path ways.

3. The 2nd respondent has filed a counter affidavit, in

which an order of the Land Revenue Commissioner issued as Ext.R2(a) in a similar circumstance, is produced. The specific contention is with respect to the handing over possession; which according to the 2nd respondent would result in a conveyance.

4. It is not clear as to how if the conveyance itself is deemed to have been effected as per the terms of the agreement; how the 2nd respondent would grant exemption of the stamp duty, when a proper conveyance is made; for reason of the sale agreement having been registered as one deemed to be a conveyance. There is absolutely no provision available in the Kerala Stamp Act, 1959 to grant such exemption. There could also be no liability to pay stamp duty, twice for the same transaction.

5. What assumes significance is the definition of conveyance as seen in the Kerala Stamp Act, 1959, which is a conveyance on sale, by an instrument whether of movable or immovable property effecting transfer inter vivos. Specific

reference can also be made to Section 54, where sale is defined as a transfer of ownership in exchange for a price paid or promised to be paid or promised in part to be paid. The contract for sale has also been explained in Section 54, which by itself has been specified to create no interest or charge on such property. In such circumstance, Ext.P1 is only a contract of sale despite the same having agreed to hand over the property even before a proper conveyance is effected. There is no transfer of property inter vivos and the same is yet to materialize. Ext.P1 would hence be registered as a sale agreement and there shall be a direction to do so.

The writ petition would stand allowed.

Sd/-
K. VINOD CHANDRAN,
JUDGE

SB

// true copy //

P.A to Judge.