



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.12.2021

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THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P (PD) (MD) No.1425 of 2017

and

C.M.P (MD) No.7131 of 2017

Karungammal

... Petitioner/Petitioner/Plaintiff

Vs .

Koodalingam

... Respondent/Respondent/Defendant

PRAYER:- Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 05.07.2017 made in I.A.No.206 of 2017 in O.S.No.59 of 2013 on the file of the District Munsif Court, Mudukulathur.

For Petitioner	: Mr.PT.S.Narendravasan
For Respondent	: Mr.G.Gomathi Sankar

ORDER

The above civil revision petition is filed challenging the order passed in I.A.No.206 of 2017 in O.S.No.59 of 2013 on the file of the District Munsif Court, Mudukulathur.

2.The facts in brief are as follows:-

The plaintiff / revision petitioner had filed a suit in O.S.No.59 of 2013 on the file of the learned District Munsif, Mudukulathur. for a permanent injunction restraining the defendant from interfering with the peaceful possession of the suit property either by trespassing or creating the documents in respect of the suit property and also for a declaration to declare the settlement deed dated 04.03.1993 registered as Document No. 136/1993 on the file of the Sub Registrar, Mudukulathur, as null and void. Along with the plaint, the plaintiff had filed an unregistered Othi deed dated 06.02.2003. The plaintiff had therefore filed I.A.No.206 of 2017 to impound the said original othi and permit the plaintiff to pay the deficit stamp duty thereon. This application has been filed after the plaintiff was examined in chief as P.W.1.

(ii) The said application was resisted by the respondent herein stating that the said application deserves to be dismissed, since the document in question is a document that has to be compulsorily registered under Section 17 of the Registration Act and being



unregistered, it is therefore, inadmissible in evidence. The respondent/defendant had also denied the document stating that the document has been executed by a person who has no right, title or interest to the property.

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(iii) The learned District Munsif, Mudukulathur, by her order, dated 05.07.2017, was pleased to dismiss the said application on the ground that the othi dated 06.02.2003 as well as the other othi dated 24.11.2003 and 04.08.2004 have all being discharged and therefore, there is no relationship of mortgagor and mortgagee between the parties and the document is not operative and legally enforceable. Therefore, the said application was dismissed. Challenging the same, the revision petitioner is before this Court.

3. Heard the learned counsel appearing on either side and perused the records.

4. The document dated 06.02.2003 is a mortgage deed (othi). This is a document that has to be compulsorily registered as per Section 17 of the Registration Act. The defect does not get cured by paying penalty on the stamp duty. The document seeks to create an interest on an immovable property which squarely falls within the provision of Section 17 of the Registration Act. The petitioner seeks to rely upon the said document to prove her possession and title over the suit property and therefore, the purpose is not collateral, but is the primary purpose. Therefore, the document cannot be admitted in evidence on the ground of non-registration. The learned Judge has no doubt dismissed the application on the ground that the document is no longer enforced. However, the document is also an unregistered one despite the fact that it requires compulsory registration. Therefore, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

cp

Note In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To:-

The District Munsif,
Mudukulathur.

WEB COPY +1 CC to M/s.G.GOMATHISANKAR, Advocate (SR-39627[F] dated
20/12/2021)

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SE (CO)
KB (01.02.2022) 3P 3C