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CRP.No.2193 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2022

CORAM:

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

CRP.No.2193 of 2019

Panneer Selvam

... Petitioner

Vs.

Senthilkumar

... Respondent

PRAYER: Civil Revision petition is filed under Article 227 of the Constitution of India against the fair and decretal order of the learned Principal District Judge, Tiruvannamalai dated 06.02.2019 made in CMA.No.10 of 2015 reversing the order passed in IA.No.487 of 2014 in OS.No.346 of 2014 dated 18.08.2015 on the file of the Principal Subordinate Judge, Tiruvannamalai.

For Petitioner : Mr.Adarsh Subramanian
for Mr.V.Prakash Babu
For Respondent : Mr.K.Kathiresan

ORDER

This civil revision petition has been filed to set aside the fair and decretal order of the learned Principal District Judge, Tiruvannamalai dated 06.02.2019 made in CMA.No.10 of 2015, thereby set aside the order passed by the trial court in IA.No.487 of 2014 in OS.No.346 of 2014 dated 18.08.2015 thereby directed to furnish security and the same was directed to be registered within a period of 15 days from the date of the order.



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2. The petitioner is the plaintiff and the respondent is the defendant.

The petitioner filed suit for recovery of money. While pending the suit, the petitioner filed application for attachment before the judgment with regards to the schedule mentioned property. While pending the said application, the respondent was directed to furnish security. Draft security was filed on 27.10.2014. After approving the same, fair security deed was filed engrossed in Rs.120/- stamp paper undertaking not to encumber the property. Therefore, the trial court allowed the petition and directed the respondent to register the said document as in case of charge created for the suit property within 15 days from the date of the order and to report the compliance. Aggrieved by the same, the respondent filed appeal and the first appellate court set aside the order passed by the trial court.

3. The learned counsel for the petitioner would submit that the respondent herein had executed unregistered fair security deed in the attachment before judgment application as security and thereby it should be registered. The purpose of giving fair security is to create charge over the property. Fair security should be registered in terms of Transfer of Property Act.

4. Per contra, the learned counsel for the respondent would submit



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that the main suit itself was decreed and as such, no purpose would be served if the security furnished by the respondent is registered. Therefore, the main petition itself has become infructuous.

5. Heard, the learned counsel for the petitioner and the learned counsel for the respondent.

6. The petitioner filed suit for recovery of money as against the respondent and the same was decreed by the judgment and decree dated 15.07.2022. While pending the suit, the petitioner filed application for attachment before judgment, in which the respondent furnished security deed engrossed in Rs.120/- stamp paper in respect of the suit property undertaking not to encumber the property. The only point for consideration in this civil revision petition is that whether it should be registered or not.

7. In this regard, the learned counsel for the petitioner relied upon the judgment in the case of ***Shriram Capital Trust (P) Ltd Vs. DBS Properties Limited*** reported in ***2002-1-LW 760***, in which this Court held that charge need not be in writing, if it is in writing, it has to be registered. Since furnishing



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security is creation of charge over the immovable property and since it is in writing, because the charge has to be created to the court only in writing, it requires registration. Therefore, in order to create a charge in respect of immovable property, it is necessary that the same is required to be embodied in a document and when it is more than Rs.100/- it should be a registered document. Therefore, the trial court rightly directed the respondent to register the security which was furnished by him in respect of the suit property.

8. In view of the above, the fair and decretal order of the learned Principal District Judge, Tiruvannamalai dated 06.02.2019 made in CMA.No.10 of 2015 are set aside and the order passed in IA.No.487 of 2014 in OS.No.346 of 2014 dated 18.08.2015 on the file of the Principal Subordinate Judge, Tiruvannamalai is hereby restored and this civil revision petition is allowed. There shall be no order as to costs.

21.12.2022

Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order

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G.K.ILANTHIRAIYAN, J.

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To

- 1.The learned Principal District Judge,
Tiruvannamalai
- 2.The Principal Subordinate Judge,
Tiruvannamalai.

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