



C.R.P.No.2668 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No.2668 of 2017
and C.M.P.No.12716 of 2017

D.Maragatham

... Petitioner

Vs.

C.Dhanalakshmi

... Respondent

Prayer :- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order passed in I.A.No.16 of 2017 in O.S.No.414 of 2015 on the file of the I Additional District Munsif of Erode, dated 28.06.2017.

For Petitioner : Mr.V.S.Kesavan

For Respondent : Mr.I.C.Vasudevan

ORDER

The Civil Revision Petition has been filed as against the judgment and decree dated 28.06.2017 passed by the learned I Additional District Munsif, Erode, in I.A.No.16 of 2017 in O.S.No.414 of 2015, thereby



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dismissing the petition to eschew exhibit marked as Ex.A.2., viz., the agreement dated 28.05.2007 and to decide its admissibility regarding registration and stamp duty.

2. The petitioner is the defendant in the suit filed by the respondent for mandatory injunction and also permanent injunction in respect of the suit schedule property. When P.W.1 was in box for his cross-examination by the petitioner, the petitioner herein filed an application to eschew Ex.A.2, which is named as pathway agreement dated 28.05.2007. It is an un-registered document and un-stamped one and as such it is invalid under the law and inadmissible in evidence for want of registration and stamped duty. Hence the petitioner filed petition to eschew the document which was marked as Ex.P.A.2 dated 28.05.2007.

3. On a perusal of Ex.A.2 revealed that it is a pathway agreement and it conveys right of common enjoyment of the suit property and it doesn't transfer or create any absolute right or title in respect of the suit property. It is a mutual agreement for common enjoyment alone and the value of right of



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common enjoyment is covered therein is much lesser than the value specified for compulsorily registered under the Registration Act.

4. Further, on a perusal of written statement revealed that the petitioner admitted the execution of Ex.A.2 dated 28.05.2007. According to the petitioner, the grand mother, mother and brother of the respondent requested the petitioner to execute a nominal document viz., the document styled as the pathway agreement to satisfy the respondent and assured that the said document will be in existence only in paper and assured that they will not claim any right over the property sold to the petitioners herein. On such circumstances, only to satisfy the respondent herein, the petitioner executed the pathway agreement dated 28.05.2007.

5. When it being so, as per the Section 36 of the Indian Stamp Act, once an unstamped instrument is admitted is shall not be called in question at any stage of proceedings of of the suit on the ground that it has not been duly stamped. Therefore, the Court below rightly dismissed the petition filed by the petitioner with liberty to challenge the exhibit Ex.A.2, as not admissible



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as contemplated under Section 49 of the Registration Act. This Court finds no infirmity or illegality in the order passed by the Court below.

6. Accordingly, the Civil Revision Petition stands dismissed.

Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

23.01.2023

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

rts



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WEB COPY To

1. The I Additional District Munsif,
Erode.



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G.K.ILANTHIRAIYAN, J.

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