



WEB COPY

C.R.P.(MD)



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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.04.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P. (MD) No.2552 of 2022

and

C.M.P. (MD) No.12560 of 2022

Vincila

..Revision Petitioner /

Respondent/ Plaintiff

Versus

Simon Doss

.. Respondent/ Petitioner/
1st Defendant

Prayer :- Petition filed under Article 227 of the Constitution of India, against the fair and final order dated 31.10.2022, made in I.A.No.279 of 2022 in O.S.No.16 of 2021, on the file of the Family Court, Pudukottai.

For Petitioner

:

Mr.P.Santhoshkumar

For Respondent

:

Mr.A.Daniel Leo

ORDER

This Civil Revision Petition has been filed against the fair and final order dated 31.10.2022, made in I.A.No.279 of 2022 in O.S.No.16 of 2021, on the file of the Family Court, Pudukottai.

2.The petitioner is the plaintiff in O.S.No.16 of 2021 before the Family Court at Pudukottai. The said suit has been filed for a declaration to declare that the Marriage Certificate dated 25.02.2019 as null and void and for other incidental reliefs. The prayer in the said suit reads as under:-

"(அ) வாதி, 1-ம் பிரதிவாதியின் மனைவியல்ல என விளம்புகை செய்தும்,

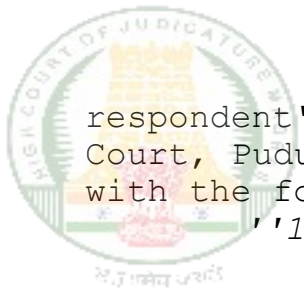
(ஆ) வழக்கு பிரதிவாதிகள் இருவரும் சேர்ந்து கடந்த 25.02.2019-ம் தேதியில் தயாரித்த "Certificate of Marriage" என்ற போர்ஜரி ஆவணத்தை இல்லாதது செல்லாதது அது வாதியை கட்டுப்படுத்தாது என விளம்புகை செய்தும்,

(இ) வாதியை எவ்வகையிலும் 1-ம் பிரதிவாதியோ, அவரது ஆட்களோ பின் தொடர்ந்து அவதூறோ, தொந்தரவோ, தகராறுகளோ செய்ய கூடாதென 1-ம் பிரதிவாதிக்கு எதிராக நிரந்தரதடையாணை பரிகாரம் வழங்கியும்,

(ஈ) வழக்கு செலவுத்தொகை வாதிக்கு பிரதிவாதிகளிடமிருந்து கிடைக்கும்படிக்கும்,"

3.In the said suit suit, the respondent herein filed I.A.No.279 of 2022 under Order VIII Rule 8-A(2) of C.P.C. on 05.08.2022, for marking certain exhibits filed along with the petition as

<https://www.mhc.tn.gov.in/judis>



respondent's side evidence. By the impugned order, the Family Court, Pudukottai, has allowed the said I.A. filed by the respondent with the following observations:-

'11.

(a)

(b)

(c) Hence in these circumstances, when this court deals with matrimonial dispute relating to the relief claimed that the registration of the marriage certificate to be declared as null and void and that she is not the wife of the petitioner, she must be given opportunity by way of pleadings. Hence, this court finds that the petitioner shall be permitted to file his additional written statement regarding the new facts, documents and the respondent shall be permitted to file her reply thereafter before the respondent side evidence is let so as to arrive at a just decision. Hence, the reference made by the learned respondent counsel to

2018 (3) MWN (Civil) 30

N.P. Lakshmanan, K. Gunasekaran

/v/

Ranganathan

is with great respect not applicable to the fact before this court.

Therefore, this petition is liable to be allowed with this observation.

12. In the result, this petition is allowed with observation that the petitioner shall produce necessary certificate under section 65 (B) of the Indian Evidence Act for the electronic records relied by him before commencing his side evidence. No Cost.''

4. The petitioner, who is the respondent in the said I.A., has challenged the impugned order stating that the Family Court has committed grave error in allowing the application. It is submitted that the electronic documents/records, which were allowed to be marked are nothing but fabricated documents and no proper certificate under Section 65-B of the Indian Evidence Act, 1872, had been accompanied with the same and therefore, the Family Court, Pudukottai, has committed an error in allowing the application filed by the respondent herein.

5. Per contra, the learned counsel for the respondent submits that the impugned order is well reasoned and requires no interference and prayed for dismissal of the Civil Revision Petition.

6. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent.



7.The Hon'ble Supreme Court in **Arjun Panditrao Khatke vs Kailash Kushanrao Gorantyal** reported in **2020 (7) SCC 1** has held that a certificate under Section 65-B of the Indian Evidence Act, 1872 can be filed at any stage prior to the commencement of the trial. Mere allowing the application for introducing the electronic record by itself would not mean to admission of such document as evidence in the proceedings initiated by the petitioner before the Family Court in O.S.No.16 of 2021.

8.The respondent will have to comply with the requirements under Section 65-B of the Indian Evidence Act, 1872. Even if such compliance is made before the trial, the document cannot be said to be admitted as an evidence unless it is corroborated and proved. Therefore, there is no merit in the present Civil Revision Petition and the same is liable to be dismissed.

9.It is always open for the petitioner to question the credibility of the electronic records, which have been allowed to be marked by the Family Court, Pudukottai, vide the impugned order dated 31.10.2022. All the issues relating to admissibility, relevancy and proof of the said documents are left open to be canvassed by the petitioner at the time of final hearing.

(*)9(a). The learned counsel for the petitioner would submit that Document No.4 which is a pregnancy test report of the petitioner is not an electronic record. The marking of the above document shall also be subject to admissibility, relevancy and proof at the time of final hearing.

10.Considering the fact that the petitioner is pursuing her medicine course, the Family Court, Pudukottai, is directed to bring a closure to the dispute as expeditiously as possible, preferably, within a period of nine months from the date of receipt of a copy of this order.

11.This Civil Revision Petition stands dismissed with the above observation and direction. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (RTI)

(*)Corrected as per the order of this Court dated 02/06/2023 made in C.R.P. (MD)No.2552 of 2022

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/05/2023

Sub Assistant Registrar(CS)



C.R.P.(MD)



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To

(*) To be substituted to the order already despatched on 19/05/2023

The Judge,
Family Court,
Pudukottai.

C.R.P. (MD) No. 2552 of 2022
28.04.2023

RD (17/05/2023) 4P 2C

RD (30/06/2023) 4P 2C