



C.R.P.(MD) No.503 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	19.11.2024
Pronounced on	04 .12.2024

CORAM

THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) No.503 of 2022

and

C.M.P.(MD) No.2179 of 2022

Mariappan
S/o.Murugan

... Petitioner

Vs.

Mariamammal
W/o.Murugan

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decretal order dated 27.09.2021 passed in I.A.No.6 of 2021 in O.S.No.127 of 2013 on the file of the Subordinate Court, Sankarankovil.

For Petitioner : Mr.R.J.Karthick

For Respondent : Mr.M.Jothibas



C.R.P.(MD) No.503 of 2022

ORDER

WEB COPY This Civil Revision Petition has been filed against the order dated 27.09.2021 passed by the Subordinate Court, Sankarankovil, in I.A.No.6 of 2021 in O.S.No.127 of 2013.

2. The facts of the case are that the suit in O.S.No.127 of 2013 was filed by the respondent/plaintiff for declaration, for recovery of possession, and for a permanent injunction restraining the revision petitioner/defendant from encumbering the suit properties. During the pendency of the suit, the respondent/plaintiff filed I.A.No.6 of 2021 under Section 151 of CPC, to receive the photocopy of the unregistered Lease Deed (ஒத்தி பத்திரம்) dated 10.03.2006 and a sworn affidavit/sworn statement (வாக்குமூலம் எனும் உறுதிமொழி ஆவணம்) as additional evidence in the above suit.

3. The said application was resisted by the revision petitioner/defendant, who stated that the documents are irrelevant to the dispute in the suit; that the revision petitioner/defendant is unaware of the existence of those documents; that, moreover, P.W.2, through whom the documents are sought to be marked, has no connection with the



C.R.P.(MD) No.503 of 2022

documents; and that the said documents cannot be allowed to be received as additional evidence and marked through P.W.2.

4. The trial court, by the impugned order, allowed the said application, against which the present Civil Revision Petition has been filed.

5. The learned counsel for the revision petitioner/defendant would submit that with regard to the proposed documents, there are no pleadings whatsoever in the plaint; that, moreover, P.W.2 is a third party and not connected with the above documents, and therefore, the same cannot be marked through P.W.2; that the above documents require registration, and therefore, they cannot be received as additional evidence; and that, moreover, the trial court erred in rendering the finding that the revision petitioner/defendant, who examined himself as D.W.1, admitted the execution of the said Lease Deed dated 10.03.2006 during cross-examination, which is incorrect.

6. The learned counsel for the revision petitioner/defendant would further submit that the xerox copies of the alleged Lease Deed cannot be



C.R.P.(MD) No.503 of 2022

marked in evidence as per Section 63 of the Indian Evidence Act, 1872, and hence, the order passed by the trial court warrants interference by this Court; and that considering the unregistered documents would result in a breach of the mandate of Section 49 of the Registration Act, 1908. To support his contention, he relied upon the judgment of the Hon'ble Supreme Court in ***Korukonda Chalapathi and another v. Korukonda Annapurna Sampath Kumar***, reported in **2022 (15) SCC 475**, in which it has been held that, *“This is significant for the reason that the law is not that in every case where a party sets up the plea that the court may look into an unregistered documents to show the nature of the possession that the court would agree to it. The cardinal principle would be whether by allowing the case of the party to consider an unregistered document it would result in the breach of the mandate of the Section 49 of the Registration Act.”* He would, therefore, pray for setting aside the impugned order passed by the trial court.

7. On the other hand, the learned counsel for the respondent/plaintiff would submit that an unregistered/unstamped document can be marked and relied upon by the party for collateral purposes, and it is well settled that the courts must mark an



C.R.P.(MD) No.503 of 2022

unregistered/unstamped document subject to the objection by the opposite party and should not shut down the evidence at the threshold itself; and that only at the time of final decision, the courts should consider the evidence based on the document and objections by the opposite party and come to a fair conclusion. To support his contention, he relied upon the judgment of this Court in ***Solai v. Periyakaruppan and others***, reported in ***2015-1-L.W.134***.

8. The learned counsel for the respondent/plaintiff would further submit that the court, while considering the application for admissibility of documentary evidence, if any objection is raised for marking the said document, shall notice such objection and decide the evidential value of the said document at the stage of final judgment, and that unless the document affects the rights of any party in immovable property, it cannot be received as evidence; that in the present case, the revision petitioner/defendant himself accepted the existence of the documents during his cross-examination; that moreover, the evidential value of the above documents can be decided by the court at the time of final judgment, and that hence, there may be no impediment to receiving the above documents in evidence. To support his contention, he relied upon



C.R.P.(MD) No.503 of 2022

the following judgments of the Honourable Supreme Court and this

Court:-

- i. ***Bipin Shantilal Panchal Vs. State of Gujarat and another***, reported in ***(2001) 3 SCC 1***; and
- ii. ***Nachimuthu Vs. Ramanan @ Ramasamy (Died) and others***, reported in ***2024 (3) CTC 399***.

9. The learned counsel for the respondent/plaintiff would further submit that the present suit was filed for declaration of title and recovery of possession; that the revision petitioner/defendant, during his cross-examination, has categorically admitted the execution of the Lease Deed dated 10.03.2006 and its contents; that, hence, the respondent/plaintiff filed the application in I.A.No.5 of 2020 for receiving additional documents through P.W.2, which was allowed by the trial court; that since the originals of the Lease Deed dated 10.03.2006 and the sworn affidavit/sworn statement are under the custody of the revision petitioner/defendant, the respondent/plaintiff filed the present application in I.A.No.6 of 2021 for receiving the xerox copies of the same as additional evidence; and that the trial court has rightly allowed the said application, which warrants no interference.



C.R.P.(MD) No.503 of 2022

10. Heard on both sides. Records perused.

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11.The suit in O.S. No. 127 of 2013 was filed by the respondent/plaintiff for a declaration of title, recovery of possession, and for a permanent injunction restraining the revision petitioner/defendant from encumbering the suit properties. During the pendency of the suit, the respondent/plaintiff filed an application in I.A.No.6 of 2021 to receive additional documents, namely the photocopy of the Lease Deed dated 10.03.2006 and the sworn affidavit/statement, on the ground that the revision petitioner/defendant had admitted the execution of the said Lease Deed dated 10.03.2006 during his cross-examination. In such circumstances, the trial court, by the impugned order dated 27.09.2021, allowed the said application, which is now under challenge before this Court.

12. The contention of the revision petitioner/defendant is that the said documents are not in his custody, and the proposed documents intended to be marked are unregistered photocopies of the same, which cannot be permitted to be marked. In the impugned order dated 27.09.2021, the trial court observed as follows:



C.R.P.(MD) No.503 of 2022

“9.மனுதாரர் தனது மனுவில், இந்த எதிர்மனுதாரரான பி.சா.1 தனது குறுக்கு விசாரணையில் 10.03.2006 தேதிய ஒத்தி பத்திரத்தில் தானும் ஒரு தரப்பினர் என்று ஆவணங்கள் அந்த ஏற்பட்டதை ஒப்புக் கொண்டுள்ளதாக குறிப்பிட்டுள்ளார். ஆனால் எதிர்மனுதாரர் தனது எதிருரையில் 10.03.2006 தேதிய ஒத்தி ஆவணம் மற்றும் வாக்குமூலத்தை பற்றி தனக்கு எதுவும் தெரியாது என்றும், தான் தரப்பினர் கிடையாது என்றும் கூறியுள்ளார். அவ்வாறு மனுதாரர் தனது மனுவில் குறிப்பிட்டுள்ளவாறு 10.03.2006 ஒத்தி மற்றும் வாக்குமூலத்தினை எதிர்மனுதாரர் தனது குறுக்கு விசாரணையில் தான் தரப்பினர் என்பதை ஒப்புக் கொண்டுள்ளாரா என ஆராய்கையில், பி.சா.1 தனது குறுக்கு விசாரணையில் □வழக்கு வீட்டை ஒத்தி வாங்கியது சம்மந்தமாக எழுதப்பட்ட பத்திரம் தான் என்னிடம் காட்டப்படுவது என்றால் சாட்சி ஆவணத்தை வாங்கி முழுமையாக படித்துப் பார்த்துவிட்டு சரியென சாட்சியம் அளிக்கிறார். ஒத்தியை திருப்பி தான் சொத்தில் குடியிருந்து வருவதாக சாட்சி சாட்சியம் அளிக்கிறார். மேற்படி ஆவணமானது சங்கரிடமிருந்து நான் வீட்டை ஒத்தி வாங்கியதற்காக ஏற்பட்ட ஆவணம் என்றால் சரிதான். அந்த ஆவணத்தில் முருகன் கேட்கும்பொழுது வீட்டை காலி செய்து சுவாதீனம் ஒப்படைப்பதாகத் தான் எழுதப்பட்டுள்ளது என்றால் சரிதான். அதில் சொல்லப்பட்டுள்ள பரமசிவன் மகன் முருகன் என்பவர் தான் வாதி மாரியம்மாளின் கணவர் என்றால் சரியல்ல” என்று சாட்சியம் அளித்துள்ளார். எனவே பி.சா.1ன் சாட்சியத்திலிருந்தே மனுதாரர் குறிப்பிடும் ஒத்தி ஆவணத்தில் இந்த எதிர்மனுதாரர் ஒரு தரப்பினராக இருந்துள்ளார் என இந்நீதிமன்றம் கருதுகிறது.”

13. The trial court, based on the judgment of this Court in *The Home Missionary Society of India Vs. Vepery Auxiliary of the Home Missionary Society of India*, reported in 2015 (1) CTC 187, permitted the



C.R.P.(MD) No.503 of 2022

respondent/plaintiff to file the xerox copies of the above documents. The

relevant portion of the impugned order is extracted hereunder:

“10. மனுதாரர் தனது மனுவில் குறிப்பிட்டுள்ள ஆவணங்களின் அசல் எதிர்மனுதாரரின் வசம் உள்ளதால் அதன் நகல்களை குறியீடு செய்ய அனுமதி கோரியுள்ளார். அவ்வாறு நகலினை குறியீடு செய்ய அனுமதி அவசியமா? என ஆராய்கையில் இந்நீதிமன்றம் The Home Missionary Society of India Vs Vepery Auxiliary of the Home Missionary Society of India Dated 07.11.2004 Reported in 2015 (1) CTC 187 என்ற முன் தீர்ப்பினை சுட்டிக் காட்ட விரும்புகிறது. மேலும், மேற்கண்ட முன் தீர்ப்பில் ஒரு தரப்பினர் ஒரு ஆவண நகலினை குறியீடு செய்ய விரும்பும் பட்சம் இந்திய சாட்சிய சட்டம் 65(a)ன் கீழ் மனு தாக்கல் செய்து அனுமதி பெற்று குறியீடு செய்ய வேண்டுமென்று குறிப்பிடப்பட்டுள்ளது. மேலும் மனுதாரரும் இம்மனுவினை நகலினை குறியீடு செய்ய தாக்கல் செய்துள்ளார். மேலும், இந்திய சாட்சிய சட்டம் பிரிவு 65(a)ன்கீழ் ஒரு நகலினை குறியீடு செய்யும் பட்சம் இந்திய சாட்சிய சட்டம் பிரிவு 66ன் கீழ் வரையறுக்கப்பட்டுள்ள நடைமுறையினை மேற்கொள்ள வேண்டுமென்று குறிப்பிடப்பட்டுள்ளது. மேலும் இந்திய சாட்சிய சட்டம் பிரிவு 66ல் ஒரு நகலினை குறியீடு செய்ய ஒரு தரப்பினர் விரும்பும் பட்சம் 65(a)ன் அனுமதி கோருவதற்கு முன்னர் அந்த அசல் ஆவணமானது எதிர் தரப்பினர் வசம் இருக்கும் பட்சம் அதை இந்நீதிமன்றத்தில் தாக்கல் அறிவிப்பு வழங்கி அந்த அறிவிப்பின் படியும் எதிர் தரப்பினர் அசலினை நீதிமன்றத்தில் ஒப்படைக்கவில்லையென்றால் மட்டுமே நகலினை குறியீடு செய்ய அனுமதி அளிக்கலாம் என்று குறிப்பிடப்பட்டுள்ளது.”

14. Though the revision petitioner/defendant, in the counter-affidavit, has categorically denied the custody of the above documents, he



C.R.P.(MD) No.503 of 2022

admitted the existence of the said documents during his cross-examination. Moreover, the respondent/plaintiff also issued a notice under Order 12 Rule 8 of the CPC to the revision petitioner/defendant to produce the original documents. However, the revision petitioner/defendant, in his reply notice, denied the custody of the documents. Therefore, the trial court held that the respondent/plaintiff, having complied with the requirements of Section 65 of the Indian Evidence Act, is permitted to file secondary evidence. The said finding of the trial court cannot be considered perverse.

15. Furthermore, an unregistered or unstamped document can be marked by the parties for collateral purposes. The question of its admissibility is to be decided by the trial court at the time of the final judgment. The court should not shut down the evidence at the threshold itself. The above documents can be marked subject to the objection of the opposite party, and such objections shall be considered at the time of final judgment.

16. The further contention of the revision petitioner/defendant is that the respondent/plaintiff intends to mark the above documents through



C.R.P.(MD) No.503 of 2022

P.W.2, who is not a party to the above documents. Since the revision petitioner/defendant himself admitted the existence of the above documents, they may be marked through P.W.2. As rightly observed by the trial court, the relevancy and validity of the documents can be considered at the time of the final judgment. Therefore, the impugned order under revision does not suffer from any fundamental irregularity or error and warrants no interference by this Court. Accordingly, the impugned order is confirmed.

17. This Civil Revision Petition stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

04.12.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order

JEN

Copy To:

The Subordinate Judge,
Sankarankovil,
Tirunelveli District.



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C.R.P.(MD) No.503 of 2022

K.GOVINDARAJAN THILAKAVADI, J.

JEN

Pre-Delivery Order made
in
C.R.P.(MD) No.503 of 2022
and
C.M.P.(MD) No.2179 of 2022

04.12.2024