

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.02.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.617 of 2016

and

C.M.P.No.3265 of 2016

Rajammal

... Petitioner

vs.

1.Sumathi

2.Deeba

3.Arthi

4.Preethi (minor)

D/o.Selvakumar

Rep. by her mother and guardian

the 2nd Respondent

...Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 29.01.2016 made in Memo (No.Nil) in O.S.No.46 of 2015 on the file of Subordinate Judge, Attur.

For Petitioner : Mr.V.Bhiman

ORDER

The plaintiff in O.S.No.46 of 2015 pending on the file of Sub Court, Attur is the petitioner in the revision. The trial is in progress. After the completion of the evidence adduced on the side of the plaintiff, the defendants were called upon to lead evidence and during the course of cross-examination of DW2, an attempt was made to introduce a xerox copy

of a document produced by the defendants in an enquiry/investigation by the Police in Attur Police Station. The same was denied and the attempt made by the plaintiff to introduce the said document as one for the purpose of cross examination of DW2, resulted in a failure. Thereafter, the plaintiff filed a Memo dated 18.12.2015 for the production of the said document as a documentary evidence on his side. The same was negated by the trial court by order dated 29.01.2016. It is as against the said order, the present civil revision petition has been filed under Article 227 of the Constitution of India.

2. The matter stands listed today for admission. The submissions made by Mr.V.Bhiman, learned counsel for the petitioner are heard. The copy of the impugned order and the copies of the connected papers produced in the form of typed set of papers are also perused.

3. Upon such hearing and after such perusal, this court is of the view that there is no substance in the challenge made to the order of the trial court. First of all, Order VII Rule 14 CPC mandates that the plaintiff shall prepare a list of documents on which he sues and shall produce along with the list, the documents which are in his possession or power and in case they are not in his possession, or his power, he shall state in whose possession or power such documents are. Sub clause (3) of Rule 14 says that when such a document, which ought to have been produced along with the list annexed to the plaint or entered in the list contemplated under

sub clause (2) shall not be received later on unless the leave of this court is obtained. Prior to 1999, sub clause (4) of Rule 14 permitted the plaintiff to use documents, which were not produced along with the plaint or included in the list contemplated under sub clause (2), to use them for cross-examining the defendant side witnesses and to hand over the same in order to make witness refresh his memory alone. Now the said provision has been omitted by the amendment. At the same time, Rule 1-A has been introduced under Order VIII CPC, which gives such a right to the defendant alone to use such document for the cross-examination of the plaintiff's side witnesses and to hand over the same to any witness merely for the purpose of having the memory of such witness refreshed.

4. In the case on hand, having failed to produce the documents along with the plaint and having failed to include the document in the list of documents annexed to the plaint and having failed to state in whose possession or power the document was at the time of filing of the plaint, the plaintiff simply wanted to introduce the same without seeking the leave of the court contemplated under sub clause (3) of Rule 14 under Order VII CPC by showing it to DW2. Of course if it is admitted, the plaintiff may have a case to say that the admitted documents have to be marked. But the said document has been denied by DW2. Thereafter, the plaintiff chose to file the Memo in an attempt to make the document one receivable by the court in spite of the fact that it has not been produced complying with the provisions indicated above.

5. The document sought to be produced is only a xerox copy. Now-a-days documents can be xeroxed and some manipulations can be made in the product, namely xerox copies. The question of adducing secondary evidence will arise only where the original has not been produced and the original is said to be in the custody or power of the opposite party. Here, though the original, admittedly, was in the custody of the defendants, the defendants have chosen to produce the original and the same has been marked as Ex.B8. Only in order to show that the original has been tampered with and some alteration has been made, the plaintiff wants to produce a xerox copy on the premise that it was obtained from the Police station. If at all any such document had been produced in the police station, the plaintiff could have taken steps to summon the concerned police to produce the documents available with them. The author of the original marked as Ex.B8 or the officers concerned with the said document, which is a Manaivari Thoraya Patta, particulars of which shall be entered in a register can be summoned to verify the genuineness or otherwise of the same. Here the genuineness of Ex.B8 is not disputed. On the other hand, what the plaintiff attempts to contend is that it has been altered materially. Such alteration cannot be sought to be proved by producing a xerox copy. There are other effective ways of proving such alteration. Instead of doing it, the plaintiff has chosen to insist upon the receipt of the xerox copy produced by him as evidence to show manipulation and material alteration of Ex.B8. The object sought to be achieved may be tenable, but the manner

in which, it is sought to be achieved will indicate that the prayer, has got to be rejected as not a proper course of action to be taken by the plaintiff.

6. The learned trial Judge, considering all these aspects, has passed a reasoned order, which cannot be interfered with by this court, in exercise of its power of superintendence under Article 227 of the Constitution of India. There is no merit in the revision and the same deserves to be dismissed at the threshold.

In the result, the civil revision petition is dismissed. However, there shall be no order as to cost. Consequently, the connected civil miscellaneous petition is closed.

29.02.2016

Index : Yes
Internet : Yes
asr

To

The Subordinate Judge, Attur

P.R.SHIVAKUMAR, J.

asr/-

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