

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P.[PD] No.421 of 2010
and M.P.No.1 of 2010

1. Sarala

2. Navin Kumar

... Petitioners

Vs

K.Kannan

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order in I.A.No.939 of 2009 in O.S.No.215 of 2008 on the file of District Munsif, Krishnagiri dated 19.01.2010.

For Petitioners : Mr.V.Raghavachari

For Respondent : Mr.T.R.Rajaraman

ORDER

The arguments advanced by Mr.V.Raghavachari and by Mr.T.R.Rajaraman, learned counsel for the petitioners and learned counsel for the respondent respectively are heard. The certified copy of the impugned order and copies of the other documents produced in the form of typed-set of papers are also perused.

2. This revision under Article 227 of the Constitution of India arises out of an order dated 19.01.2010 made in I.A.No.939 of 2009 in O.S.No.215 of 2008 on the file of the trial Court, namely, the Court of District Munsif, Krishnagiri.

3. The said application was filed by the respondent herein, who figures as the first defendant in the above said suit, for the rejection of two documents filed by the petitioners herein /plaintiffs in the original suit along with the plaint. According to the respondent, they are inadmissible for want of registration. Hence, the scope of consideration in this revision is quite narrow.

4. The learned counsel for the petitioners, besides making an attempt to advance arguments on merits of the matter to show that the documents are admissible, as a last weapon, advanced an argument that the respondent / first defendant should not be allowed to pre-empt the petitioners / plaintiffs before ever they seek to mark the documents either for proving the main transaction or for proving the collateral transaction. According to the submission made by the learned counsel for the petitioners, conducting a roving enquiry,

regarding its admissibility, before ever a document is sought to be marked, is an unnecessary exercise wasting the precious time of Court, besides denying the opportunity to the party producing the documents to lead evidence in proof of its admissibility for a particular purpose. According to the submissions made by the learned counsel for the petitioners, the respondent's petition filed before the trial started for rejection of the documents, ought to have been rejected as the time for raising such objection had not arisen.

5. Learned counsel for the respondent is not in a position to contradict the above said submission made by the learned counsel for the petitioners, which has been cited supra as the last weapon used by the learned counsel for the petitioners. On the other hand, the learned counsel for the respondent would contend that when the documents are inadmissible according to a provision of law, no purpose will be served by keeping the documents on file and relegating the decision regarding the admissibility to a later point of time.

6. This Court is not in a position to countenance the above said submission of the learned counsel for the respondent for the simple reason that in case a party tries to mark a document as an

exhibit on its side and the same is declined by the Court on the ground that the document is inadmissible in evidence, the Court has to make an endorsement on the document that the document was sought to be marked and permission was not granted holding the document to be inadmissible. An endorsement to the said effect has to be made by the Court on the documents rejected as inadmissible. Unless such an endorsement is made, in the appellate stage under Order XLI Rule 27 C.P.C, the party who produces the document may be at a disadvantage in his attempt to prove that the said documents were sought to be marked, but were rejected by the Court below. For the said reason, this Court comes to the conclusion that the trial Court embarked upon an unnecessary exercise in deciding the question of admissibility even before the documents were sought to be marked. On that score alone, the order of the trial Court is liable to be interfered with and set aside.

7. Accordingly, the revision petition is allowed. The order of the trial Court dated 19.01.2010 made in I.A.No.939 of 2009 is set aside. I.A.No.939 of 2009 shall stand dismissed. However, it shall be open to the respondent / first defendant to raise an objection at appropriate moment, namely, when the petitioners / plaintiffs try to

mark it as an exhibit in evidence in the suit. No costs. Consequently,
connected miscellaneous petition is closed.

17.03.2016

Index: Yes/No

Internet: Yes/No

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To

The District Munsif, Krishnagiri

P.R.SHIVAKUMAR, J

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