



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.03.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.685 of 2016 (PD)

and

C.M.P (MD) No.3221 of 2016

Periyasamy

.. Petitioner/Petitioner/Defendant

Vs.

Kuppayee

.. Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to set aside docket order passed in Un-numbered I.A.No. Of 2015 in O.S.No.292 of 2011, on the file of Additional Sub-Judge, Karur, dated 28.10.2015.

For Petitioner : Mr.M.P.Senthil

ORDER

This Civil Revision Petition has been filed to set aside docket order passed in Un-numbered I.A.No. Of 2015 in O.S.No.292 of 2011, on the file of Additional Sub-Judge, Karur, dated 28.10.2015.

2.The petitioner is the defendant. The respondent is the plaintiff. The respondent filed suit in O.S.No.292 of 2011 before the Additional Subordinate Court, Karur for partition. Pending suit, the petitioner filed application in unnumbered I.A.No. Of 2015 to eschew the Ex.A14. The learned Judge returned the application on the ground of maintainability. Against that return, the petitioner has filed the present Civil Revision Petition.

3.According to the petitioner, the said document was marked through D.W.7, the Superintending Engineer (AE) (Agricultural Engineering Department), Jail Corner, Ponmalaipatti Road, Trichy-620020, who is not the competent person to speak about the said document. Only the Revenue Officials are competent persons. The petitioner will have chance of examining the witness from Revenue Department.

4.The learned counsel for the petitioner relied on the judgment reported (2003) 8 Supreme Court Cases 752 (P.V.V.Venkatachala Gounder vs. Arulmigu viswesaraswami & V.P.Temple and another)



"19. Order 13 Rule 4 of the CPC provides for every document admitted in evidence in the suit being endorsed by or on behalf of the Court, which endorsement signed or initialed by the Judge amounts to admission of the document in evidence. An objection to the admissibility of the document should be raised before such endorsement is made and the Court is obliged to form its opinion on the question of admissibility and express the same on which opinion would depend the document being endorsed as admitted or not admitted in evidence. In the latter case, the document may be returned by the Court to the person from whose custody it was produced.

20. The learned counsel for the defendant-respondent has relied on *The Roman Catholic Mission Vs. The State of Madras & Anr.* AIR 1966 SC 1457 in support of his submission that a document not admissible in evidence, though brought on record, has to be excluded from consideration. We do not have any dispute with the proposition of law so laid down in the abovesaid case. However, the present one is a case which calls for the correct position of law being made precise. Ordinarily an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes:- (I) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as 'an exhibit', an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The later proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object and disown the evidence is precluded from doing so. The party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection



does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the later case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in superior Court.

5.The learned counsel for the petitioner also submitted that the learned Judge failed to consider the fact that the suit is for partition and equal burden of proof is on both plaintiff and defendant through oral and documentary evidence. By virtue of marking of the village map I.e., Ex.A14 through incompetent witness, the right of the defendant to examine anyone of the Revenue Officer has been taken away. He further submitted that without numbering the matter and deciding the I.A., on merits, the learned Judge erred in rejecting the application at the threshold itself.

6.I have heard the learned counsel appearing for the petitioner and also perused the entire materials available on record.

7.From the materials, it is seen that the Ex.P14 was marked through D.W.7. The petitioner objected for marking of said documents. Considering the facts, this Court directs the petitioner to re-present the I.A. No. 0f 2015 in O.S.No.292 of 2011 within two weeks from the date of receipt of a copy of this order. On such representation, the learned Additional Sub Judge, Karur is directed to number the same and decide the matter on merits and pass orders in accordance with law.

8.In the result, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS-I)

/True copy/



To
The Additional Subordinate Judge,
Karur.

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+1cc to Mr.M.P.Senthil, Advocate SR.No.17906

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