

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Dated: 01.06.2017**

**CORAM**

**THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN**

**CRP(PD)No.1963 of 2013  
and  
M.P.No.1 of 2013**

Avani

.. Petitioner

Vs.

1.Somasundaram  
2.Vedhambal  
3.Gangaiammal  
4.Avani  
5.Marudhapandiyan  
6.Vijila  
7.Chandrodhayam  
8.Ambikapathi

.. Respondents

**Prayer:** Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and the decretal order dated 13.03.2013 passed in I.A.No.119 of 2012 in O.S.No.69 of 2009, on the file of the Sub Court, Mannargudi.

For Petitioner : Mrs.R.Meenal

For Respondents : Mrs.P.T.Ramadevi (for R1)

R2 to R8 – Given up

**ORDER**

The 3<sup>rd</sup> defendant in the suit in O.S.No.69 of 2009 is the civil revision petitioner before this Court, challenging the order passed in I.A.No.119 of 2012 in O.S.No.69 of 2009, on the file of the Sub Court, Mannargudi, this civil revision petition has been filed.

2.The case of the petitioner/3<sup>rd</sup> defendant is that the suit in O.S.No.69 of 2009 has been filed before the learned Sub-Judge, Mannargudi by the respondent/plaintiff for partition and separate possession of the suit property. This petitioners/defendants 3 and 4 are filed written statement denying the contentions of the plaintiff. Thereafter, the plaintiff has filed his Proof Affidavit and examined himself as PW1 and Exs.A1 to A7 were marked. The suit properties were purchased by the petitioner/3<sup>rd</sup> defendant and they could not come under partition. The respondent/plaintiff filed nine documents with the plaint. Out of which seven documents were marked, during the chief examination of plaintiff. The remaining two documents are sale agreement dated 15.05.1996 and 02.03.1998, since the counsel for the petitioners/3<sup>rd</sup> defendant and 4<sup>th</sup> defendant objected to mark the above two documents that they were not registered and they are

not the title deed, and they are not the document of title and no title right effected with regard to the properties mentioned in those documents. Without examining the parties of the documents namely Shanmugam and Pachamuthu, the above documents could not be marked through the plaintiff, who is the third person to the document. Since the above documents are not related to this partition suit and the documents are created one it is not acceptable as per the provisions of law and hence the petitioners/3<sup>rd</sup> and 4<sup>th</sup> defendants prayed the Court to reject the above documents and therefore, they filed the documents in I.A.No.119 of 2012 in O.S.No.69 of 2009.

3.On receipt of the notice in the I.A., the counter affidavit has been filed by the 1<sup>st</sup> respondent/plaintiff and denied the allegations set out in the affidavit.

4.The 1<sup>st</sup> respondent/plaintiff states that the documents 1 to 9 filed with plaint are not the new documents and they are in the custody of this respondent. Since the suit properties were purchased by the 1<sup>st</sup> respondent/plaintiff from the income derived out of his abroad employment, the documents dated 15.05.1996 and 02.03.1998 are joint family properties and comes under partition.

5. Therefore, after trial of the suit, the Title should be proved and not at the stage of marking the documents as exhibits. Since, the defendants were not affected and their case is not affected by marking the above documents, the properties which are in the possession, the judgment only bind over the co-partners and hence the properties has not purchased by registered deed also come under partition. There is no stay for it. Order 13, Rule 3, does not to defend the suit. The 3<sup>rd</sup> defendant/petitioner did not object the documents in his written statement. Since the petitioner did not object the documents in his written statement, he could not object at the stage of examination of witnesses. Therefore, the 1<sup>st</sup> respondent/plaintiff has prayed for dismissal of the petition.

6. Considering both side arguments, the learned Subordinate Judge, Mannargudi, by order dated 13.03.2013, dismissed the petition by stating that the documents received are subject to the proof and relevancy. Challenging the said order, the present Civil Revision Petition has been filed.

7. I have heard Mrs. R. Meenal, learned counsel appearing for the

petitioner and Mrs.P.T.Ramadevi, learned counsel appearing for the 1<sup>st</sup> respondent and perused all the materials available on record.

8.It is admitted fact that the suit filed for partition by the 1<sup>st</sup> respondent/plaintiff and proof affidavit of plaintiff filed and examined as PW1 and seven documents were marked as Exs.A1 to A7. On behalf of the petitioner/3<sup>rd</sup> defendant several judgments were produced:

(1) ***The Special Tahsildar (L.A.), S.H.A.R. Unit, Ponneri Taluk v. K.Leelammal and others*** reported in ***2000 -1- L.W. 402***

(2) ***The Tamil Nadu Industrial Investment Corporation Ltd., Chengai Transport Branch, rep. By its Branch Manager, C-48, II Avenue, III Floor, Anna Nagar, Chennai-40 v. N.Swaminathan and others*** reported in ***2002 -4- L.W. 147***

(3) ***Meenakshiammal and others v. Gopalakannan and others*** reported in ***2004 (3) CTC 481***

(4) ***Ponnambalam v. Pitchai*** reported in ***2008 -2- L.W. 809***

On perusal of all the judgments, it reveals that photostat copies cannot

be considered or relied upon for any purpose and that Xerox copies will not always tally with original and the judgment reported in **2008 2 LW 809**, which was held that photocopies cannot be entertained and there could be no second thought over it.

9.The Hon'ble Apex Court in a case of ***Shalimar Chemicals Works Ltd. v. Surendra Oil & Dal Mills (Refineries) & Ors*** held as follows:-

“The trial Court should not have “marked” as exhibits the Xerox copies of the certificates of registration of trade mark in face of the objection raised by the defendants.”

10.Therefore, it is made clear that the Xerox copy cannot be marked and the Court below ought not to have marked the said Xerox copies, even there was no objection from the other side. The said judgment passed by the Hon'ble Supreme Court has squarely applicable to the present case on hand. Both the petitioner as well as the 1<sup>st</sup> respondent were admitted that both the documents dated 15.05.1996 and 02.03.1998 are unregistered documents. The petition filed by the petitioner is clearly held that the petitioner/3<sup>rd</sup> defendant has filed the application to reject the above two documents is

absolutely correct. The order of the learned Judge by dismissing the petition is liable to be set aside.

11.The Hon'ble Apex Court very clearly held that the Xerox Copies cannot be marked at the threshold itself and the documents should be rejected. Therefore, the order of the learned Judge is warranting interference and the same is liable to be set aside. Accordingly, the order passed in I.A.No.119 of 2012 in O.S.No.69 of 2009, dated 13.03.2013, on the file of the Sub Court, Mannargudi, is set aside.

12.In the result:

(a) this civil revision petition is allowed by setting aside the order passed in I.A.No.119 of 2012 in O.S.No.69 of 2009, dated 13.03.2013, on the file of the Sub Court, Mannargudi.

(b)the learned Sub-Judge, Mannargudi, is hereby directed to take up the suit, without giving any adjournments to either parties and to dispose the suit within a period of three months from the date of receipt of

a copy of this order. Both the parties are hereby directed to give their fullest cooperation for early disposal of the suit. No costs. Consequently, connected miscellaneous petition is closed.

**01.06.2017**

Index:Yes  
Speaking Order

vs

To

The Sub Court,  
Mannargudi.

**M.V.MURALIDARAN, J.**

VS

**Pre-Delivery order made in**  
**CRP(PD)No.1963 of 2013**  
**and**  
**M.P.No.1 of 2013**

**01.06.2017**