

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

**DATED: 08.02.2017**

**CORAM**

**THE HON'BLE MR. JUSTICE M.V.MURALIDARAN**

**CRP(PD)No.4719 of 2013  
and  
M.P.No.1 of 2013**

1.Sampath Kumar  
2.Dwaragadas

.. Petitioners

Vs

1.Thilaga Sulochana  
2.Punjab National Bank,  
No.62/773, Oppanakara Street Main Branch,  
Coimbatore – 1.  
3.Punjab National Bank,  
No.190, Sarojini Street Ram Nagar Branch,  
Coimbatore.  
4.Punjab and Singh Bank,  
No.827, Oppanakara Street Main Branch,  
Coimbatore – 1.  
5.Lakshmi Vilas Bank,  
Gandhi Nagar,  
Kavundampalayam Branch,  
Coimbatore – 30.  
6.Kotak Mahindra Bank Ltd.,  
Skanda Square,  
No.727, Avinashi Road,  
Coimbatore.  
7.Integrated Enterprises (India) Ltd.,  
Depository Division, 1<sup>st</sup> Floor,  
Kences Tower,  
No.1, Ramakrishna Street,  
North Usman Road,  
T.Nagar, Chennai-17.  
8.Karvy Consultants Ltd.,

Depository Participant,  
 No.21 Avenue 4, Street No.1,  
 Banjara Hills,  
 Hyderabad -34.  
 9.Kotak Securities Ltd.,  
 Bakhtawar, 1<sup>st</sup> Floor,  
 No.229, Nariman Point, Mumbai-21  
 (Respondents 2 to 9 are not necessary  
 parties in the above CRP and no  
 relief claimed against them)

.. Respondents

**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and final order dated 24.11.2013, made in I.A.No.643 of 2010 in O.S.No.654 of 2010 on the file of the 5<sup>th</sup> Additional District and Sessions Court, Coimbatore.

For Petitioners : Mr.N.Anand Venkatesh

For Respondents : Mr.M.Sanjaiyan (for R1)

R2 to R9 – Given up

**ORDER**

The petitioners have filed this Civil Revision Petition to set aside the order passed in I.A.No.643 of 2010 in O.S.No.654 of 2010 dated 24.11.2013 on the file of the learned V Additional District and Sessions Court, Coimbatore and allow the above Civil Revision Petition.

2.The petitioners herein are defendants in the above suit in O.S.No.654 of 2010 filed for partition by the plaintiff / the respondent

herein for the relief of Partition and separate possession of 1/3<sup>rd</sup> share in the suit property and for other reliefs.

3.The Trial commenced and evidence remained adduced and on completion of plaintiff's side evidence, the evidence of defendants was then undergoing and in the said circumstance the respondent produced a Xerox copy of a deposition said to have been made by petitioner's father before the income tax officer to mark as a document on his side.

4.The revision petitioner's Counsel before the trial Court objected for marking of the proposed xerox copy, however regardless of the objection the document was marked as exhibit A-11. As against the marking of document, the revision petitioner immediately filed an interlocutory application in I.A.No.643 of 2013 praying the trial Court to reject the xerox copy of the document marked as Exhibit A-11 under Order 13 rule 3 of CPC.

5.The petitioners' application was dismissed by the trial Court holding that the relevancy of document can be gone into only at the

time of pronouncing judgment and whether a document is relevant or not and as to whether there is pleading to substantiate the marking of document cannot be decided at threshold. The said order is under challenge in this civil revision petition.

6.I heard Mr.N.Anand Venkatesh, learned counsel for the petitioners and Mr.M.Sanjaiyan, learned counsel for the 1<sup>st</sup> respondent and perused the entire materials available on record.

7.On perusal of the records and hearing the submissions, it is not in dispute that the document marked as Exhibit A11 is a xerox copy and in this context it is needless to say that a photocopy of document will be admissible in evidence only if it satisfies the requirements of section 65 of Indian Evidence Act.

8.In this regard it would also be useful to state that the Courts should not mark xerox copies of documents in the face of objection raised by the parties and the Court should not decline to take them on record as evidence without leaving the issue of admissibility open and hanging. Therefore firstly it has to be found whether the document put

forth is admissible or inadmissible to be marked.

9. In the case on hand the document marked as Exhibit-A11 do not satisfy the requirement stipulated under Section 65 of Evidence Act and more so the approach of the trial Court holding that the admissibility of the document will be decided at the time of pronouncing judgment is erroneous and unacceptable.

10. In the result, this Civil Revision Petition succeeds and the same is allowed and accordingly Exhibit-A11 shall stand rejected. No costs. Consequently, connected miscellaneous petition is closed.

**08.02.2017**

vs

Note: Issue order copy on 01.02.2019

Index: Yes

Internet: Yes

To

The 5<sup>th</sup> Additional District and Sessions Court,  
Coimbatore.

WEB COPY

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

VS



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