

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED:30.06.2017

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN**C.R.P(PD) (MD)No.1224 of 2017****and****C.M.P. (MD)No.5869 of 2017**

K.Xavier Pushparaj

... Petitioner/Petitioner/
Defendant

Vs.

1.D.R.Selvanayagam
2.Rajendran Selvanayagam
3.Peter Selvanayagam... Respondents/ Respondents
Plaintiffs

Prayer:Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order passed in I.A.No.205 of 2017 in O.S.No.253 of 2014, dated 04.04.2017, on the file of the Principal District Munsif Court, Nagercoil.

For Petitioner	: Mr.F.X.Eugene
For Respondent No.1	: Mr.M.P.Senthil for Caveator

ORDER

This revision petition is directed against the dismissal order of the Trial Court for disallowing the request of the revision petitioner to receive the photo copy of compromise deed which finds reference in the sale deed, relied on by the revision petitioner.

2. The reading of the impugned order reveals that the Court below after considering the affidavit filed in support of the application, has concluded that though the application has been filed under section 65(a) of the Indian Evidence Act, it is not the case of the petitioner that the original is rest with the respondent and he refuse to part away with the documents. In the absence of such plea, Section 65(a) of the Indian Evidence Act will not attract, only Section 65(c) of the Indian Evidence Act is attracted. As far as clause (c) of Section 65 for non-production of the original, proper account should be stated in the affidavit.



Since, there is no reason for non-production of the original, the Trial Court has concluded that application to receive so called photo copy of compromise deed is not sustainable.

3. This Court after going through the affidavit filed along with the application, finds that what Trial Court has observed is substantially correct. In the affidavit, there is no reference regarding the where about of the original. However, when the matter was taken up for admission, the learned counsel appearing for the revision petitioner would submit that the compromise deed relates to the larger extend of the property including the suit property, the vendor who sold a portion has retained the original, and gave only the photo copy. Now the vendor has died. She is not able to get the original from the vendor. Hence an opportunity should be given to file better affidavit citing out all of the facts and to convince the Court below for inability to produce the original compromise deed.

4. In view of the above submission the revision petition is allowed and the order of I.A.No. 205 of 2017 is set aside. The application is remanded back for fresh consideration. The revision petitioner is permitted to file a supplementary affidavit in I.A.No.205 of 2017 under appropriate provision of law and on such application, the respondent is at liberty to challenge the same and agitate all the legal and factual issues connected with the documents. After affording opportunity to both sides the Trial Court shall decide on merits. No costs. Consequently, C.M.P.(MD) No.5869 of 2017 is closed.

Sd/-

Assistant Registrar(Protocol)

/True Copy/

Sub Assistant Registrar

To

The Principal District Munsif Court,
Nagercoil.

+1cc to M/S. F.X.EUGENE, Advocate, SR.No.62971.

+1cc to M/S. M.P.SENTHIL, Advocate, SR.No.62976.

C.R.P(PD) (MD) No.1224 of 2017
and C.M.P.(MD) No.5869 of 2017
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