

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 06TH DAY OF MARCH 2018

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

A. No.1282 of 2018
in
C.S. No.925 of 2010

1.M.V.Krishna Rao,
S/o.Late M.Suriyanarayanamurthy,
No.33, Old NO.16/5, 2nd Floor
Akbarabad 1st Street
Kodamabakkam, Chennai 600 024

***2.Mrs.Seetharajakumari,**
W/o.Late M.V.Krishna Rao,
Hindu aged 64 years,
No.33, Old No.16/5,
2nd Floor, Akbarabad 1st Street
Kodamabakkam, Chennai 600 024

***3.M.B.V.Sathya Sai Prasad,**
S/o.Late M.V.Krishna Rao,
Hindu aged 44 years,
No.33, Old No.16/5,
2nd Floor, Akbarabad 1st Street
Kodamabakkam, Chennai 600 024

***4.M.Suriyanarayanamurthy,**
S/o.Late M.V.Krishna Rao,
Hindu aged 42 years,
No.58, Woodlands,
Dr.16, #09-18,
Singapore 737 897.

***5.M.Bagya Suryalakshmi,**
D/o.Late M.V.Krishna Rao,
Hindu aged 40 years,
No.33, Old No.16/5,
2nd Floor, Akbarabad 1st Street
Kodamabakkam, Chennai 600 024

*6.M.B.L.Ragaventhuraswamy,
S/o.Late M.V.Krishna Rao,
Hindu aged 38 years,
No.3637, Riverside DR,
Manson OH 45040 -2630
USA

*7.M.Uma Mageswari,
D/o.Late M.V.Krishna Rao,
Hindu aged 36 years,
No.33, Old No.16/5,
2nd Floor, Akbarabad 1st Street
Kodamabakkam, Chennai 600 024

(The 2nd Plaintiff arrayed
as 3rd Defendant as per order dated
05.12.2014 in A.No.2171/2011 and
order dated 24.04.2015 in A.No.2969/2015 in
A.No.2171/2011 in C.S.No.925/2010)

*(3 to 8 Plaintiffs are impleaded as
LR of deceased Plaintiff M.V.Krishna Rao
as per order dated 19.07.2013 made
in A.No.5709/2011)

*(amended as per order dated 01.08.2016
in A.No.7164/2015)

...Plaintiffs

-vs-

1.K.Shivakumar,
S/o.Karthikeyan,
No.33, Old No.16/5
2nd Floor,
Akbarabad 1st Street
Kodamabakkam, Chennai 600 024

2.Mrs.Meena Shivakumar,
W/o.K.Shivakumar,
No.33, Old No.16/5, 2nd Floor,
Akbarabad 1st Street
Kodamabakkam, Chennai 600 024

***3.S.Murugesan,
S/o.A.L.Solai Alagu Servai,
No.E-39, 240, L.I.Flats,
VII Avenue, Ashok Nagar,
Chennai 600 083**

...Defendants

**(The 2nd Plaintiff as arrayed as
3rd defendant as per order dated 30.12.2014
in A.No.2171/2011 and order dated
24.04.2015 in A.No.2969/2015 in C.S.No.925/2010)**

A. No.1282 of 2018:

S.Murugesan,
S/o.A.L.Solai Alagu Servai,
No.E-39, 240, L.I.Flats,
VII Avenue, Ashok Nagar,
Chennai 600 083

...Applicant/3rd Defendant

-vs-

1.M.V.Krishna Rao,
S/o.Late M.Suriyanarayanamurthy,
No.33, Old NO.16/5, 2nd Floor
Akbarbad 1st Street
Kodamabakkam, Chennai 600 024

...Plaintiffs(Since Died)

2.Mrs.Seetharajakumari,
W/o.Late M.V.Krishna Rao,
Hindu aged 64 years,
No.33, Old No.16/5,
2nd Floor, Akbarbad 1st Street
Kodamabakkam, Chennai 600 024

3.M.B.V.Sathya Sai Prasad,
S/o.Late M.V.Krishna Rao,
Hindu aged 44 years,
No.33, Old No.16/5,
2nd Floor, Akbarbad 1st Street
Kodamabakkam, Chennai 600 024

4.M.Suriyanarayanamurthy,
S/o.Late M.V.Krishna Rao,
Hindu aged 44 years,
No.33, Old No.16/5,
2nd Floor, Akbarbad 1st Street
Kodamabakkam, Chennai 600 024

5.M.Bagya Suryalakshmi,
 D/o.Late M.V.Krishna Rao,
 Hindu aged 40 years,
 No.33, Old No.16/5,
 2nd Floor, Akbarbad 1st Street
 Kodamabakkam, Chennai 600 024

6.M.B.L.Ragaventhuraswamy,
 S/o.Late M.V.Krishna Rao,
 Hindu aged 38 years,
 No.3637, Riverside DR,
 Manson OH 45040 -2630
 USA

7.M.Uma Mageswari,
 D/o.Late M.V.Krishna Rao,
 Hindu aged 36 years,
 No.33, Old No.16/5,
 2nd Floor, Akbarbad 1st Street
 Kodamabakkam, Chennai 600 024

...Respondent 2-7/Plaintiffs 2-7

(2 to 7 Plaintiffs are impleaded as
 LR of deceased Plaintiff M.V.Krishna Rao
 as per order dated 19.07.2013 made
 in A.No.5709/2011)

8.K.Shivakumar,
 S/o.Karthikeyan,
 No.33, Old No.16/5
 2nd Floor,
 Akbarbad 1st Street
 Kodamabakkam, Chennai 600 024

9.Mrs.Meena Shivakumar,
 W/o.K.Shivakumar,
 No.33, Old No.16/5, 2nd Floor,
 Akbarbad 1st Street
 Kodamabakkam, Chennai 600 024

...Respondent 8 & 9/Defendants 1 & 2

Application praying that this Hon'ble Court be pleased to grant leave to the petitioner herein to bring on record the taped conversation contained in "IC Recorder, Sony, Voice Operated Recording" that primarily took place between Mr.Shivakumar (D2) and Mr.S.Murugesan (D3) Applicant by or about May 2010 for (1 hour 40 Minutes) and 07.06.2010 (1 hour 4 minutes) along with transcript of the entire conversation.

This Application coming on this day before this court for hearing the court made the following order:-

This application has been filed seeking leave to produce the tape recorded conversation that had taken place between the applicant and the 1st defendant in the suit during May & June 2010.

2. The suit itself was filed by one Mr.M.V.Krishna Rao as 1st plaintiff seeking to set aside the sale deed executed by him in favour of the 1st defendant contending that the sale deed was obtained by the 1st defendant without consideration on the pretext that the 1st defendant would help the said Krishna Rao for sale of the property. It is also claimed that the 1st defendant was the counsel for the said Krishna Rao in the matrimonial proceedings between him and his wife.

3. The applicant got himself impleaded as 2nd plaintiff on the death of the sole plaintiff Krishna Rao by an order dated 19.10.2011 in A.No.2171 of 2011. He had made his claim based on an un-probated Will said to have been executed by Late Krishna Rao.

4. Thereafter, it appears that the wife and the children of Krishna Rao had filed an application to implead themselves in the suit and the said application was allowed on 19.07.2013 and the applicants were impleaded as plaintiffs 3 to 8. Subsequently, by an order dated 05.12.2014 made in A.No.2969 of 2015, the applicant who figured as 2nd plaintiff in the suit was transposed as 3rd defendant.

5. Now the suit is at the stage of trial. The applicant is in the box. The applicant now seeks to produce the tape recorded conversation between himself and the 1st defendant said to have taken place in May & June 2010. The transcript of the conversation has also been produced along with the tape recorded conversation. It is claimed by the applicant that the conversation was recorded using a Sony IC recorder.

6. This application is resisted by the 1st defendant contending that the applicant had not made even a whisper of existence of this recording all through the proceedings ever since the suit was instituted in 2010. Even though the original plaintiff Krishna Rao had referred to the applicant as his friend who assisted him in filing the suit, there is no whisper about the tape recorded conversation in the original plaint or in the written statement filed by the applicant after he was transposed as 3rd defendant, except stating that the applicant is in possession of clinching evidence against the 1st defendant.

7. The learned counsel appearing for the 1st defendant would also contend that the evidence being a electronic recording the provisions under Section 65(b) of the Evidence Act will have to be complied with.

8. Since this application is only for production of evidence on record, I am not going into the question as to whether the tape recorded conversation would amount to electronic evidence within the meaning of Section 65(b) of the Evidence Act.

9. In the entire counter affidavit there is no denial of the fact that there was actually a conversation between

the applicant and the 1st defendant or that the recorded conversation that is sought to be produced was not between the 1st defendant and the applicant and in the absence of such denial I do not think the rejection of evidence or denial of opportunity to produce evidence would be justified.

10. Hence, I am of the considered opinion that the 3rd defendant/ applicant should be allowed to produce the recorded conversation subject to proof and relevancy for the purpose of the suit. Hence, this application is allowed. The tape recorded conversation along with its transcript are allowed to be produced as evidence subject to proof and relevancy.

Sd./-R.S.M.J
06/03/2018

//Certified to be true copy//
Dated at Madras this the day of 2018.

jj 17/04/2018

COURT OFFICER(O.S.)
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