

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.01.2018

CORAM

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CIVIL REVISION PETITION Nos.898, 899 and 900 of 2017
and 1421 of 2017

C.M.P.Nos.4420 to 4422 and 6586 of 2017

C.R.P.No.898 of 2017

S.Jebaselvi

... Petitioner

vs

Mrs.Pappammal
@ A.Pappa Shankar (Deceased)

1.S.Rajan

2.Miss. Priya Evangelin (Minor)
Represented by her mother and
natural guardian Mrs.Suhasini

3.Master Prince Premkumar, (Minor)
Represented by his mother and
natural guardian Mrs.Suhasini.

4.Mrs.Suhasini

.. Respondents

The Civil Revision Petition filed under Article 227 of the
Constitution of India to set aside order dated 20.02.2017 passed
in I.A.No.24 of 2017 in O.S.No.7817 of 2010 on the file of the
XV Additional City Civil Court, Chennai.
C.R.P.No.899 of 2017

S.Jebaselvi

.. Petitioner

vs

Mrs.Pappammal
@ A.Pappa Shankar (Deceased)

1.S.Rajan

2.Miss. Priya Evangelin (Minor)
Represented by her mother and
natural guardian Mrs.Suhasini

3.Master Prince Premkumar, (Minor)
Represented by his mother and
natural guardian Mrs.Suhasini.

4.Mrs.Suhasini

.. Respondents

The Civil Revision Petition filed under Article 227 of the
Constitution of India to set aside order dated 20.02.2017 passed
in I.A.No.25 of 2017 in O.S.No.7817 of 2010 on the file of the
XV Additional City Civil Court, Chennai.

C.R.P.No.900 of 2017

S.Jebaselvi

.. Petitioner

vs

Mrs.Pappammal
@ A.Pappa Shankar (Deceased)

1.S.Rajan

2.Miss. Priya Evangelin (Minor)
Represented by her mother and
natural guardian Mrs.Suhasini

3.Master Prince Premkumar, (Minor)
Represented by his mother and
natural guardian Mrs.Suhasini.

4.Mrs.Suhasini

.. Respondents

The Civil Revision Petition filed under Article 227 of the
Constitution of India to set aside order dated 20.02.2017 passed
in I.A.No.26 of 2017 in O.S.No.7817 of 2010 on the file of the
XV Additional City Civil Court, Chennai.

C.R.P.No.1421 of 2017

S.Jebaselvi

.. Petitioner

vs

Mrs.Pappammal
@ A.Pappa Shankar (Deceased)

1.S.Rajan

2.Miss. Priya Evangelin (Minor)
Represented by her mother and
natural guardian Mrs.Suhasini

3.Master Prince Premkumar, (Minor)
Represented by his mother and
natural guardian Mrs.Suhasini.

4.Mrs.Suhasini

5 David

6. Murugesan ... Respondents

The Civil Revision Petition filed under Article 227 of the Constitution of India to set aside order dated 17.08.2016 passed in I.A.No.3596 of 2016 in O.S.No.7817 of 2010 on the file of the XV Additional City Civil Court, Chennai.

For Petitioner ... Mr.Balamurali
for M/s.Shivakumar & Suresh
(for all the petitions)

For Respondents ... Mr.A.R.Pradeep
(for all the Respondents)

COMMON ORDER

Civil Revision Petition Nos.898 to 900 of 2017 have been filed to set aside the order dated 20.02.2017 passed in I.A.Nos.24, 25 and 26 of 2017 in O.S.No.7817 of 2010 on the file of the XV Additional City Civil Court, Chennai.

Civil Revision Petition No.1421 of 2017 has been filed to set aside the order dated 17.08.2016 passed in I.A.No.3596 of 2016 in O.S.No.7817 of 2010 on the file of the XV Additional City Civil Court, Chennai.

2. The brief facts of the cases are as follows:

(i)The petitioner herein filed a suit in O.S.No.7817 of 2010 for declaration and mandatory injunction on the file of the learned XV Additional City Civil Judge, Chennai. She also filed I.A.No.3596 of 2016 in the said suit seeking permission to file the petition mentioned documents under Sl.Nos.1 to 16. The

learned Judge partly allowed the said application permitting the petitioner to file Document Nos.1 to 6 and 14 and 15 and the dismissed the application in respect of Document Nos.7 to 13 and 16. Thereafter, the petitioner filed application Nos.24, 25 and 26 of 2017 to re-open the evidence of P.W.1, to permit the petitioner to recall P.W.1 and to file the petition mentioned documents as listed out in the petition. The learned Judge by common order dated 20.02.2017 dismissed all the three applications holding that the authenticity of the photographs and negatives can be proved only through the photographer and the photographer, who took those photographs would have come into the box to verify the same because due to technical development, it is very much possible to create negatives based on photographs and hence, the petitioner is not entitled to mark the petition mentioned documents only on the mere production of the negatives along with photographs. It is further held that the Court below allowed the earlier application in I.A.No.3596 of 2016 filed by the petitioner, seeking permission to receive 16 documents by order dated 17.08.2016 permitting her to mark the documents 1 to 6 and 14 and 15 and dismissed the application in respect of documents 7 to 13 and 16 and the petitioner has not come out with clean hands as he has suppressed the earlier order passed in the said application and dismissed all the applications. Aggrieved by the order dated 20.02.2017, the petitioner filed the present civil revision petitions.

3.Heard the learned counsel for the petitioner, the learned counsel for the respondents and perused the materials available on records.

4.The learned counsel for the petitioner submitted that the findings of the Court below erred in coming to the conclusion that the petitioner has approached the Court with unclean hands and erroneously dismissed I.A.Nos.24, 25 and 26 of 2017 on the ground that the petitioner suppressed the earlier application by her on the very same relief.

5.The learned counsel further submitted that during the cross-examination of D.W.1, the Court below insisted that the photographs cannot be marked without negatives and the respective original news paper. Now, the petitioner produced the negatives of the photos in the album and the original newspapers as required by the Court below and C.D's converted from original audio cassettes. Therefore, the finding of the Court below is unsustainable and the same is liable to be set aside.

6.The learned counsel for the respondent would submit that the petitioner has not furnished the particulars of the order passed in I.A.No.3596 of 2010 and she approached the Court below with unclean hands. The learned counsel further submitted that

the petitioner has not filed any document to prove the authenticity of the certificate issued by the competent person under the provisions of the Evidence Act. Therefore, the Court below, rightly dismissed the applications and no interference is warranted by this Court.

7. According to the learned counsel for the petitioner, the Court below has not gone into the merits of the case and therefore liberty may be given to the petitioner for proving the authenticity of the documents before the Court below as well as the photographs along with negatives, original newspapers and the C.D's converted from original audio cassettes, which are essential to prove the case of the petitioner.

8. Considering the submissions made by the learned counsel for the petitioner that the petitioner produced the photographs along with negatives, original newspapers and the C.D's converted from original audio cassettes in the light of the Evidence Act and to give one more opportunity to the petitioner, this Court is inclined to pass the following order:

"i) The order passed in I.A.Nos.24, 25 and 26 of 2017 in O.S.No.7817 of 2010 is set aside and remanded to the Court below to consider the applications afresh and pass orders in the light of the provisions under Section 65(b) of the Evidence Act by providing opportunity to both sides.

ii) In the light of the order passed in C.R.P.Nos.898, 899 and 900 of 2017, C.R.P.No.1421 of 2017 is dismissed.

iii) C.R.P.Nos.898, 899 and 900 of 2017 are allowed.

iv) The Court below is directed to dispose of I.A.Nos.24, 25 and 26 of 2017 in O.S.No.7817 of 2010 within a period of six weeks from the date of receipt of a copy of this order, if any default on the part of the petitioner, the Court below is directed to proceed in accordance with law.

(v) No order as to costs. Consequently, connected Miscellaneous Petitions are closed."

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

To

1. The Judge
XV Additional City Civil Court, Chennai.

+1 Cc to Mr.A.K. Raghavalu, Advocate sr 6824.

+1 CC to Mr.Shivakumar, Advocate sr 6926.

C.R.P.PD.Nos.898 to 900 and
1421 of 2017

SP(06/03/2018)



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