



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 26.09.2018

DELIVERED ON : 24.10.2018

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (NPD) (MD) No.877 of 2015

Kavitha

.. Petitioner

Vs.

K.Sundararaj

.. Respondent

Prayer : This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 13.03.2015 made in O.S.No.6 of 2007 on the file of the Sub Court, Pattukottai.

For Petitioner : Mr.K.K.Ramakrishnan

For Respondent : Mr.N.Dilip Kumar

ORDER

Heard Mr..K.K.Ramakrishnan, learned counsel appearing for the petitioner and Mr.N.Dilip Kumar, learned counsel appearing for the respondent.

2.This petition has been filed to set aside the fair and decreetal order dated 13.03.2015 made in O.S.No.6 of 2007 on the file of the Sub Court, Pattukottai.

3.The petitioner herein is the defendant and the respondent herein is the plaintiff in the suit. The respondent herein has filed a suit in O.S.No.6 of 2007 seeking for a prayer of declaration that the petitioner herein is not adopted daughter and for permanent injunction. During the trial, the learned Sub Judge has passed a speaking order relating to filing of a document. The respondent herein wanted to file a petition and affidavit which was already returned by the Court and the same was objected by the petitioner herein. The lower Court has passed an speaking order accepting the marking of the document subject to objections. Against that order, the petitioner came forward with the revision petition.

4.On the side of the petitioner, it is stated that the respondent filed an affidavit dated 15.09.2014 and requested the Court to examine the petitioner's adoptive mother as a witness on his side after commencement of the examination of P.W.1. The affidavit is not an evidence and it is not admissible under Order 19 Rule 3 of C.P.C. The order of the lower Court in allowing the application to mark the document is not correct and it is to be set



aside.

5. On the side of the petitioner, it is stated that already suit was filed by the adopted mother of the petitioner. Being a negative relief for declaring the petitioner as not the adopted daughter, she withdraw the suit in O.S.No.129 of 2003 without reserving any liberty to file a fresh suit on the same cause of action. The petitioner is the adopted daughter and from the age of one and she was brought up and was educated by her adoptive parents and that after the death of adoptive father, some of the relatives made the mother to file such a false case. Without considering these facts, the lower Court has passed an order allowing the respondent to mark the document which is his own affidavit. Only a third party affidavit can be marked as a document.

6. The learned counsel appearing for the petitioner relied on the Judgment passed by this Court in the case of *V. Baby v. Sekar and another* reported in 2015 (1) CTC 27, which reads as follows:

"Held, Provisions of Order 19, Rules 1 and 2 would not be applicable to Affidavit filed in support of application-said provision would be applicable only to proof affidavit of witnesses, who are produced by parties to litigation in support of their claim."

7. The learned counsel appearing for the petitioners relied on the Judgment passed by this Court in the case of *P.N.Karuppa Gounder v. Karuppayal and others* reported in 2013 (1) MWN (Civil) 425, which reads as follows:

"Moreover, Court has no discretion to permit cross-examination of deponent at instance of either party."

8. The learned counsel appearing for the petitioner relied on the Judgment passed by the Hon'ble Supreme Court in the case of *Sudha Devi v. P. Narayana and others* reported in 1988 3 Supreme Court Cases 366, which reads as follows:

"Besides, affidavit are not included in the definition of 'evidence' in Section 3 of the Evidence Act and can be used as evidence only if for sufficient reason court passes an order under Order 19, Rule 1 or 2 of the Code of Civil Procedure. This part of the argument of Mr.Tapas Ray must, therefore, be rejected."

9. On the side of the respondent, it is stated that the suit is filed in the year 2007 and the intention of the petitioner is to drag on the case and the petitioner filed C.R.P.(MD)Nos.1967 of 2012 and 406 of 2014 and the Court passed an order directing the lower Court to dispose of the case within a period of four weeks. When the witness was on the box, the document to be filed by the respondent was objected by the petitioner and the lower Court passed an order allowing the document to be marked subject to objections. One Chinnappillai who is the wife of the deceased Annamalai was the owner



of the property and the petitioner purchased the property from the said Chinnapillai who is 89 years old. The respondent want to examine Chinnapillai before examining the respondent as a witness. The petition was returned by the Court. In between the said Chinnapillai was kidnapped by the petitioner and she was dead and a complaint was lodged. Now the respondent could not examine Chinnapillai as she is no more. But the respondent want to mark the said petition and affidavit as documents to show that the respondent took effective steps to examine the vendor Chinnapillai. It is prayed that this revision petition is to be dismissed.

10.The learned counsel appearing for the respondent relied on the Judgment passed by the Hon'ble Supreme Court in the case of Bipin Shantilal Panchal v. State of Gujarat and Another reported in (2001) 3 Supreme Court Cases 1, which reads as follows:

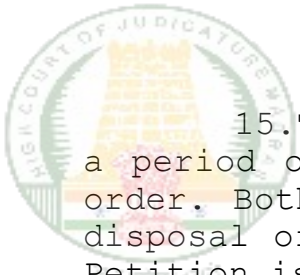
"Procedure to be followed by trial Court at evidence-taking stage when any objection is raised regarding admissibility of any material or any item of oral evidence-.....-Instead Court should make a notice of such objection and decide it at the last stage of the final judgment."

11.Records perused. The case of the plaintiff is that he purchased the property from one Chinnapillai and the defendant is claiming herself as an adopted daughter of Annamalai who is the husband of Chinnapillai. The suit is filed for declaring the defendant not an adopted daughter of Annamalai and for permanent injunction. The case of the petitioner is that the trial Court is wrong in passing a non-speaking order allowing the plaintiff to mark his own affidavit as a document. It is wrongly stated that there was no objection to receive the document and the Court has straight way allowed the marking of the document.

12.The case of the respondent is that he purchased the property from Chinnapillai and the respondent tried to examine Chinnapillai who was 89 years old as a witness on his side, even before the examination of the defendant himself but that petition was returned by the Court. To prove that he took effective steps to examine Chinnapillai, the respondent wanted to mark the petition and affidavit returned by the Court.

13.This case is pending from the year 2007. Already this Court has given a direction to dispose of the case within a period of four months in C.R.P.(MD)Nos.1967 of 2012 and 406 of 2014 on 17.12.2014. The Hon'ble Supreme Court has already decided that marking a document can be done subject to objections.

14.An opportunity for the respondent to put forth his case is to be given. The document is marked subject to objections only. There is nothing sufficient enough to interfere the order passed by the lower Court.



15. The lower Court is directed to dispose of the suit within a period of eight weeks from the date of receipt of copy of this order. Both the parties are directed to co-operate for the speedy disposal of the case. With the above direction, this Civil Revision Petition is dismissed. No Costs.

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Sd/
Assistant Registrar(AD-I)
/True copy/

Sub Assistant Registrar(CS-II)

To
The Judge,
Subordinate Court, Pattukottai.

+1cc to Mr.K.K.RAMAKRISHNAN, Advocate, SR.No.91770
+1cc to Mr.N.DILIPKUMAR, Advocate, SR.No.91332

C.R.P. (PD) (MD) No.877 of 2015

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