

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2019

CORAM :

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.R.P.(PD).No.2328 of 2012 and
M.P.No.1 of 2012

P.Shanmugam

... Petitioner

v.

1. K. Lakshmana Raju

2. Muruganandam

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 09.03.2012 made in I.A.No.2122 of 2012 in O.S.No.7252 of 2006 on the file of the XIII Assistant City Civil Court, Chennai.

For Petitioner : Mr. P. Mathivanan

For Respondents : Mr. K.S.Doraipandi – for R1
R2 – Given up vide order dt. 30.10.2019

ORDER

Challenging the fair and final order passed in I.A.No.2122 of 2012 in O.S.No.7252 of 2006 on the file of the XIII Assistant Judge, City Civil Court, Chennai, the 1st defendant has filed the above Civil Revision Petition.

2.1 The 1st respondent-plaintiff filed the suit in O.S.No.7252 of 2006 for recovery of a sum of Rs.69,850/- together with interest. The 1st defendant filed his written statement and is contesting the suit. Subsequently, when the suit was taken up for trial, the plaintiff took out two applications, viz.,

(i) Application in I.A.No.3892 of 2012 to condone the delay in filing all the 5 sheets of Ex.A2 and mark it as an exhibit in the suit.

(ii) Application in I.A.No.2122 of 2012 to recall P.W.1 to mark a document contained 5 sheets of Ex.A2 and mark it as an exhibit in the suit.

2.2 In the affidavit filed in support of the application in I.A.No.2122 of 2012, the plaintiff has stated that originally, Ex.A2 had contained 5 sheets, but, during the cross examination of P.W.1, it was

found that only one sheet was marked as Ex.A2 and 4 sheets are missing and therefore, he should be allowed to mark the remaining sheets as exhibits in the suit.

3. It is pertinent to note that all the 5 sheets of the documents are xerox copies. The 1st defendant filed his counter opposing the application stating that xerox copies are inadmissible and therefore the application should be dismissed.

4. The Trial Court, taking into consideration the case of both the parties, allowed both the applications.

5. Aggrieved over the same, the 1st defendant has filed the above Civil Revision Petition.

6. The learned counsel appearing for the 1st respondent submitted that under Sections 63 ad 65 of the Indian Evidence Act, the plaintiff cannot mark xerox copies of the documents and therefore, the order passed by the Trial Court is proper. In support of his contention, the learned counsel relied upon a Judgment reported in **AIR 2007**

Supreme Court 1721 [Smt. J. Yashoda v. Smt. K. Shobha Rani]

wherein, the Apex court held that in the absence foundation had been laid by the party for leading secondary evidence in the shape of the Photostat copy, the document cannot be marked.

7. In the case on hand, even in the plaint, the 1st respondent-plaintiff has not stated anything about the possession of original of Ex.A2 document.

8. The learned counsel appearing for the 1st respondent submitted that the original of Ex.A2 is with the tenant. However, the tenant was not made as a defendant in the suit.

9. When the plaintiff is not a party to the invoice sought to be marked as Ex.2, the document cannot be marked through the plaintiff. It is settled position that the document can be marked only through a party to the document. That apart, in the absence of any foundation laid by the plaintiff of marking the xerox copies, the Trial court should not have allowed the applications.

10. In the Judgment reported in **2007(3) CTC 781 (SC)** [**Smt. J. Yashoda v. Smt. K. Shobha Rani**] the Hon'ble Supreme Court held that only when conditions prescribed in Section 65 are satisfied, documents can be admitted as secondary evidence.

11. For the reasons stated above, I am of the considered view that the fair and decreetal order passed in I.A.No.2122 of 2012 in O.S.No.7252 of 2006 are liable to be set aside. Accordingly, the same are set aside. The application in I.A.No. 2122 of 2012 stands dismissed. The Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

06.11.2019

Index : Yes / No

Speaking order / Non Speaking Order

Rj

To

The XIII Assistant Judge,
City Civil Court, Chennai.

M.DURAI SWAMY, J.

Rj



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