

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 17.09.2019

Orders Pronounced on : 25.09.2019

CORAM

THE HON'BLE MR. JUSTICE **R.PONGIAPPAN**

CRP.NPD.No.3320 of 2014 and
M.P.No.1 of 2014

Sree Lakshmi ...Petitioner

Vs.

Sunitha Gopalakrishnan ...Respondent

PRAYER: The Civil Revision Petition is filed under Section 115 of CPC to set aside the fair and decretal orders dated 29.10.2013 in EA.No.152 of 2012 in E.A.No.216 of 2008 in EP.No.88 of 2006 on the file of the Principal District Munsif's Court, Coimbatore.

For Petitioner : Mr.C.R.Prasanan

For Respondent : Mr.R.Krishna Prasad
for M/s.Sarvabhuman Associates

ORDER

Aggrieved over the order passed in EA.No.152 of 2012 in EA.No.216 of 2008 in EP.No.88 of 2006, the petitioner Lakshmi, who is the respondent/Judgment debtor/the petitioner in the said EA preferred the Civil Revision Petition as against the order passed in EA.No.152 of 2012.

2. Originally on 12.06.2005 based on the decree passed in O.S.No.1637 of 2004 on the file of the learned Principal District Munsif Court, Coimbatore, the husband of the respondent in this revision petition/R.J.Gopalakrishnan filed the execution application in E.P.No.88 of 2006. In the said execution petition, the legal representative of the deceased R.J.Gopalakrishnan who is the respondent in this Civil Revision Petition filed one execution application in E.A.No.231 of 2006 with a prayer to add Sunitha Gopalakrishnan as a legal representative of the deceased (Petitioner, R.J.Gopalakrishnan). The said application filed by the respondent, Sunitha Gopalakrishnan was allowed on 13.11.2007. Thereafter when the EP proceedings are pending for disposal, on 30.10.2012 the present petitioner herein filed one other application in EA.No.216 of 2008 under Section 47 of C.P.C. By order dated 01.07.2011 the said petition filed by the petitioner was dismissed and against which the present petitioner preferred the Civil Revision Petition in CRP.No.296 of 2012 on the file of this Court. This Court in its order dated 30.03.2012 set aside the order passed in EA.No.216 of 2008 and directed the learned Principal District Munsif Court, Coimbatore to decide the EA.No.216 of 2008 in EA.No.231 of 2006 in EP.No.88 of 2006 within a period of two months from the date of receipt of copy of the order. While at the time of allowing the Civil Revision Petition, this Court has observed only in the application filed

under Section 47 of Code of Civil Procedure, the right of the revision petitioner has to be decided. After dismissal of the above Civil Revision Petition, before the E.P. Court, the petitioner had examined as PW1, during the time of her cross examination, the documents now under dispute were exhibited as Ex.R1 to Ex.R4. Only thereafter the petitioner herein filed this application under Order 13 Rule 3 of CPC, in which he prayed to delete the exhibits R1, R2, R3 and R4. The learned Principal District Munsif, Coimbatore after receiving the counter filed by the second respondent, in its order dated 29.10.2013, dismissed the application filed by the revision petitioner. Aggrieved over the said finding, the petitioner is before this Court with this Civil Revision Petition.

3. The learned counsel for the petitioner would contend that through the order passed in CRP.No.296 of 2012, EA.No.216 of 2008 is set aside, therefore the respondent cannot rely upon the order passed in EA.No.216 of 2008 dated 01.07.2011. According to him, the affidavit and evidence of living person which has already been set aside cannot be relied upon. The learned counsel for the petitioner would attack the order passed by the learned Principal District Munsif in four-folds. According to him while at the time of disposing the CRP.No.296 of 2012, this Court did not set aside the petition, affidavit,

counter, and the documents marked as Ex.R1, R2, R3 and R4. The second submission made by the learned counsel appearing for the petitioner is that the respondent has not marked any evidence or deposition by either herself or the petitioner given in EA.No.231 of 2006. Therefore, the bar contemplated under Section 33 of Evidence Act has no application to the present petition. Thirdly, he would contend that in the order passed, this Court not restricted or curtailed the right of the parties in letting the evidence as to the proceedings belonging to the EA.No.231 of 2006. Finally he has submitted that the provisions of the Order 13 Rule 3 only prior to marking of documents and not applicable to the documents marked already during the time of evidence.

4.Submissions made by either counsel are considered. Before entering into the merits and demerits of the Civil Revision Petition, it is necessary to see Order 13 Rule 3 of CPC, which reads as follows:

"Rejection of irrelevant or inadmissible documents-

The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection."

5. In this occasion, the learned counsel appearing for the petitioner would contend that as per Section 33 of Indian Evidence Act, since the petitioner is alive, the affidavit and the other things which also be evidence cannot be treated as relevant factor in the subsequent judicial proceedings. In the judgment of the Hon'ble Apex Court in the case of **Bipin Shantilal Panchal Vs. State of Gujarat** reported in **(2001) 3 SCC 1**, the Hon'ble Apex Court has held as follows:

"In this case on different occasions the trial Judge had chosen to decide questions of admissibility of documents or other items of evidence, as and when objections thereto were raised and then detailed orders were passed either upholding or overruling such objections. After passing the orders the trial court waited for days and weeks for the parties concerned to go before the higher courts for the purpose of challenging such interlocutory orders."

6. Further he relied upon the judgement of the Hon'ble Apex Court in the case of **Shalimar Chemical Works Limited Vs. Surendra Oil and Dal Mills (Refineries) and Others** reported in **(2010) 8 SCC 423**, has held as follows:

"The appellant-plaintiff instituted a suit against the respondent-defendant for infringement of trade mark. The appellant-plaintiff did not file the original certificate of trade mark registration. Instead, a photocopy was filed which was objected to by the respondent-defendant. The trial court however admitted in evidence the photocopy "subject to objection of proof and admissibility" and marked the photocopy as exhibit but ultimately dismissed the suit. The appellant-plaintiff filed appeal before the Single Judge of the High Court who allowed the production of the original certificate. The Single Judge however without granting opportunity to the respondent-defendant to rebut additional evidence, straightway decided in favour of the appellant-plaintiff and against the respondent-defendant. On further appeal, Division Bench of this High Court held that additional evidence should not have been admitted by the Single Judge and therefore the Division Bench restored the judgment of the trial court."

7. Now on culling out the entire precedent relied on by the petitioner, as per the said section the objection of role of document

should be taken into account before the document is admitted and marked as exhibit. Further after admission neither the trial court nor the Appellate court can revise or reverse the order. In fact, the general principle is that the objection must be raised before the document is admitted at the trial. Once the document is admitted into evidence without objection the document cannot be challenged at the subsequent stage.

8. Two judgments relied on by the learned counsel for the petitioner are only related to the objection raised at the time of marking of documents and not otherwise. Here it is the case that the documents under dispute are not attracting the stamp duty. In the said circumstances, it is relevant to see the Judgement in the case of **Annasami Naidu Vs. Karunakaran** reported in **2006-2-LW.476**, wherein this Court held as follows:

"Or.13 R.3 and R.6 do not deal with rejection of admitted document. Admissibility of the document is the discretion of the Court. The Court has a duty to receive the relevant and admissible evidence and to exclude all irrelevant or inadmissible evidence. The documents once admitted subsequently found to be irrelevant or otherwise inadmissible can be rejected under Or.13 R.3 CPC. But this

discretion is to be exercised sparingly in the facts and circumstances of the case."

9. Further in the judgment in the case of **R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami And V.P. Temple and Ors** reported in **MANU/SC/0798/2003**, our Hon'ble Apex Court has held as follows:

"20. The learned counsel for the defendant-respondent has relied on *The Roman Catholic Mission v. The State of Madras and Anr.* MANU/SC/0253/1933: (1966) 3SCR283 in support of his submission that a document not admissible in evidence, though-brought on record, has to be executed from consideration. We do not have any dispute with the proposition of law so laid down in the above said case. However, the present one is a case which calls for the correct position of law being made precise. सत्यमेव जयते

Ordinarily an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes:- (i) an objection that the document which is sought to be proved is itself inadmissible in evidence;

and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as 'an exhibit', an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The later proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the

other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to herein above, in the later case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in superior Court."

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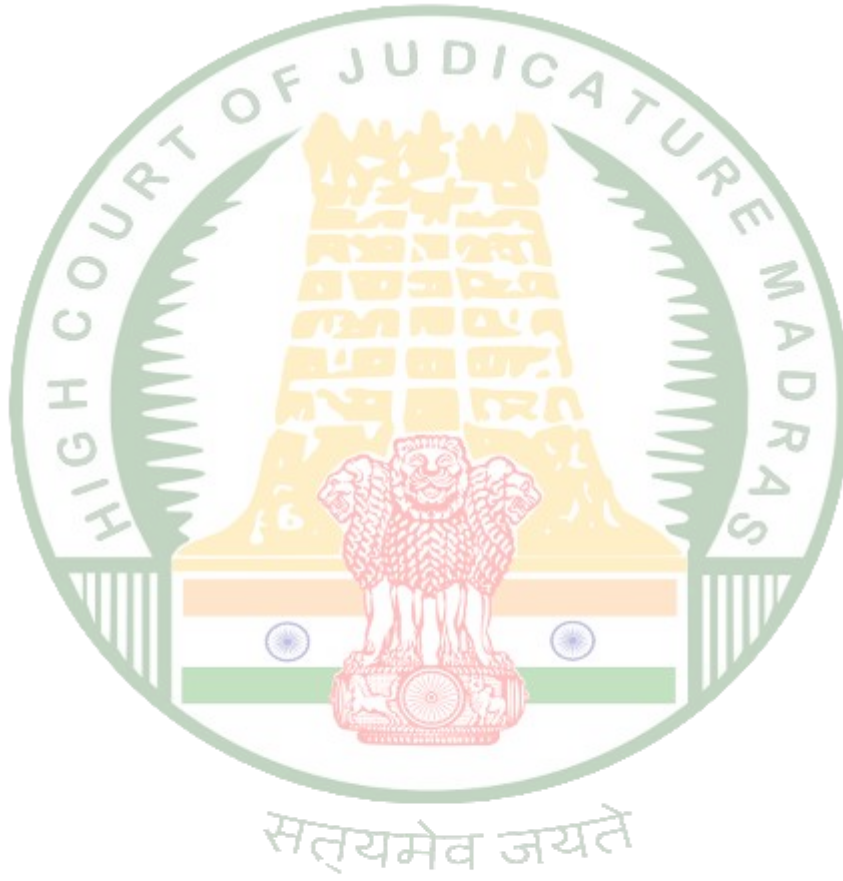
10. Now applying those principles laid down by the Apex Court with the issue placed before this Court, it is true, at the time of

recording evidence from the petitioner and at the time of marking of documents under dispute, the other side has not raised any objection. Instead of raising objection at the time of marking documents he kept quiet and allowed the petitioner to mark the document as exhibit. In the said circumstances it cannot be said that the said document relied on by the respondent is irrelevant. The learned Principal District Munsif in his order dated 29.10.2013 clearly held, since the documents are already marked as exhibit, if at all the petitioner having any grievance is also having liberty to raise his objection and validity of the documents only at the time of enquiry or arguments. So the reasoning given in the impugned order for rejecting the petition filed by the petitioner is found correct and there is no material irregularity. Accordingly, in the light of the discussion stated above, the Civil Revision Petition is dismissed.

11. The learned Principal District Munsif, Coimbatore is directed to dispose of the execution application in E.A.No.216 of 2008 and the execution petition in E.P.No.88 of 2006 as early as possible preferably within a period of two months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

25.09.2019

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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R.PONGIAPPAN, J.

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To
The Principal District Munsif's Court,
Coimbatore.



Pre Delivery order made in
CRP.NPD.No.3320 of 2014
and M.P.No.1 of 2014

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25.09.2019