



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.03.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

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C.R.P. (PD) (MD) No.2320 of 2018

and

C.M.P. (MD) No.10371 of 2018

P.Devasenapathy

... Petitioner / Respondent

Vs.

P.Anusha

... Respondent / Petitioner

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 05.10.2018 passed in I.A.No.406/2018 in I.A.No.3/2016 in I.A.No.508/2015 in H.M.O.P.No.110/2015 on the file of the Family Court, Dindigul.

For Petitioner: Mr.Veera kathiravan
Senior Counsel
for M/s.Veera Associates

For Respondent : Mr.S.Parthasarathy
Senior Counsel
for Mr.R.Niresk Kumar

O R D E R

The Civil Revision Petition has been filed by the petitioner against the fair and decreetal order, dated 05.10.2018, passed in I.A.No.406 of 2018 in I.A.No.3 of 2016 in I.A.No.508 of 2015 in H.M.O.P.No.110 of 2015, on the file of the learned Family Judge, Dindigul.

2.The brief facts of the I.A.No.406 of 2018 are as follows:

2.1.I.A.No.406 of 2018 was filed by the petitioner/husband. The petitioner herein, in the affidavit filed in I.A.No.406 of 2018, contended that the petitioner had filed a proof affidavit to commence joint trial in H.M.O.P.No.110 of 2015 and I.A.No.3 of 2016 and in the said proof affidavit, the petitioner is seeking to mark documents 1 to 7, which are all documents/xerox copies of medical certificates signed by the Doctors. The petitioner

herein/husband is the respondent in H.M.O.P.No.110 of 2015.

3.It is contended by the petitioner that the respondent is making several allegations against the petitioner by stating that he is mentally retarded due to non-development of IQ and on the said grounds, the respondent/wife preferred H.M.O.P. to declare the marriage held between them is null and void. The respondent/wife is also claiming compensation of Rs.30 crores, by way of filing I.A.No.3 of 2016.

4.The petitioner further contended that the documents 1 to 7 are all the xerox copies of Medical Certificates, issued by the Doctors. These documents were issued in the name of the petitioner herein by some expert Doctors. In the main H.M.O.P.No.110 of 2015, the respondent/wife herein had given an undertaking that she will summon the medical records of the petitioner herein from the Doctors, who conducted medical examination on the petitioner.

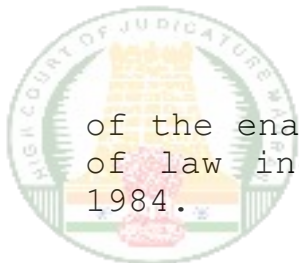
5.It is further contended by the petitioner herein that he has raised objection by stating that the respondent herein has no *locus standi* either to produce or mark the above said documents 1 to 7 and for the purpose of marking the same, the petitioner also filed a memo to that effect.

6.Regarding the allegations made against this petitioner that he is a mentally retarded person and impotency, the petitioner is very much relying upon the documents 1 to 7. Hence, a petition has been filed by the petitioner before the Family Court to record the objection of the petitioner and to direct the respondent/wife to mark the original document Nos.1 to 7 mentioned in her proof affidavit through the author/Expert Doctor, who issued the same so as to enable the petitioner/respondent to cross examine them.

7.The respondent, in the statement of objections, has contended that the seven documents, which are filed by the respondent, are important and necessary to deal with the dispute in this case and as such the Family Court is empowered to accept and admit those documents without considering its admissibility under the provisions of Section 14 of the Family Courts Act, 1984, which reads as follows:

"14.Application of Indian Evidence Act, 1872 : A family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872."

8.Hence, the respondent/wife contended that these documents <https://www.ecourts.gov.in> and can be marked as exhibits on the side of the respondent without examination of its authors. If those documents are declined to be marked, the same would defeat the very purpose



of the enactment of the Family Courts Act, 1984 and the provisions of law incorporated under Section 14 of the Family Courts Act, 1984.

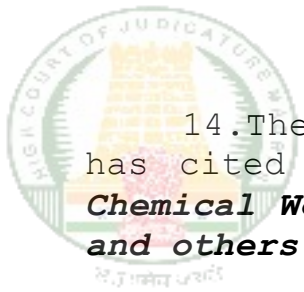
9. The learned counsel appearing for the respondent/wife has stated that the relevancy or admissibility of evidence in Civil suit is strictly followed in a proceeding under the Family Court. The Family Court lost right of Section 14 of the Family Courts Act and Order 17 of the Code of Civil Procedure. A judgment in **Akham Ibobi Singh and Another Vs. Akham Biradhwaja Singh and Another** reported in **II (2006) DMC 523** is cited.

10. The learned counsel appearing for the respondent/wife has also stated that with regard to admissibility of documents, the Family Court is competent to receive document though not proved as per strict proof, as per Evidence Act. A judgment in **Shivanand Damodar Shanbhag Vs. Sujata Shivanand Shanbhag** reported in **III (2013) DMC 263 (DB) (Bombay)** is cited.

11. The learned counsel appearing for the respondent/wife has further stated that in a petition seeking declaration of marriage as null and void, in the absence of any contra evidence and pleadings or any challenge to credibility of photocopy of certificate of respondent's earlier marriage, Family Court ought not to have adopted technical approach of insisting on strict rules of pleadings and evidence. The judgments in **Sithara Vs. Harikrishnan Nair** reported in **II (2012) DMC 190 (DB)** and in **Narayanan Roy Vs. Smt. Jamuna Dey** reported in 2010 AIR (Gau) 75, are cited.

12. On the other hand, it is argued on the side of the petitioner herein that since the very genuineness of the documents itself is disputed, then it is for the respondent to mark those documents only by examining the concerned authorities, who issued the documents.

13. The learned counsel appearing for the petitioner/husband has stated that such objections can be classified as (i) objection that the document sought to be proved is itself inadmissible and (ii) objection directed not against the admissibility of the document but against the mode of proof thereof on the ground of irregularity or insufficiency. Objection under category (i) can be raised even after the document has been marked as "an exhibit" or even in appeal or revision, but the objection under category (ii) can be raised when the evidence is tendered but not after the document has been admitted in evidence and marked as an exhibit. The Judgment reported in **2003 (8) SCC 752 (R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami & V.P. Temple and another)** is cited.



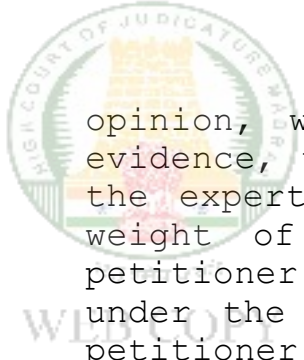
14. The learned counsel appearing for the petitioner/husband has cited the judgment reported in **(2010) 8 SCC 423 (Shalimar Chemical Works Limited Vs. Surendra Oil and Dal Mills (Refineries) and others** , wherein it is held as follows:

"Appellant - plaintiff producing photocopy of trade mark registration certificate - Production of photocopy instead of original, objected to by opposite party yet trial Court provisionally admitting photocopy "subject to objection of proof of admissibility" - Held, photocopy should have been rejected in the beginning itself - Having admitted a photocopy and then dismissing appellant/plaintiff's suit against infringement of trade mark, was a wrong procedure - Evidence Act, 1872- S.3- Admissibility of evidence - Stage at which to be decided - Civil Suit."

15. The learned counsel appearing for the petitioner/husband has stated that the procedure to be followed by the trial Court at evidence-taking stage, when any objection is raised regarding admissibility of any material or any item of oral evidence is stated in the judgment reported in **(2001) 3 SCC 1 (Bipin Shantilal Panchal Vs. State of Gujarat and another)** is cited.

16. The learned counsel appearing for the petitioner/husband has stated that the Indian Evidence Act is not made applicable in a mechanical manner. The discretion is vested with the Family Court to receive any evidence, any report, any relevant statement, documents, information etc., which is necessary for its assistance to deal effectually with a dispute. It is made permissible in the statute whether or not such documents are relevant or admissible in the Evidence Act. Thus, the powers are vested with the Family Court under Section 14 of the Family Court Act to take those documents on record. Needless to mention that the Family Court is bound to function as per the enabling provisions and the statute under Section 20 of the Family Court Act by which it was created. Evidence Act cannot be pressed into service mechanically in proceedings of an appeal under Section 14 of the Family court Act is confined not only to the Code of Civil Procedure, but also to the Evidence Act which itself is also an instrument having effect by virtue of law. It is always duty of the Court to give such construction to a statute as would promote the purpose or object of the Act. A judgment of the High Court of Judicature at Hyderabad in **Nawab Mir Barkat Ali Khan Waleshan Bahadur Vs. Princess Manolya Jah and Other** is cited.

17. On the other hand, it is contended by the respondent/wife that the provisions of the Evidence Act can be made applicable to the trial of the case before the Family Court, the opinion of expert is admissible under Section 45 of the Evidence Act and the same can be marked through a person, who is in possession of that



opinion, without examination of its expert. Under the law of evidence, when an expert opinion is marked without examination of the expert, its admissibility cannot be questioned and only the weight of its evidentiary value can be questioned. So the petitioner cannot object the marking of several documents even under the law of evidence in as much as it is admitted by the petitioner in his counter objection that those seven documents were given only by the petitioner/ husband.

18. In the counter statement filed by the petitioner/husband in I.A.No.3 of 2016, it is contended that at the time of marriage it was told by the parents and their friends and relatives the petitioner/husband studied MBA and he was the Managing Director of K.P.Textiles Private Limited the said Koorg incident caused a affright and serious incertitude on the respondent/wife about his studies and past activities and doings and that soon after the arrival from Koorg, she made herself to be bold enough to talk with him about his apathetic, episodic nonsensical and irrational conduct and his fields of study and that then only the petitioner candidly acknowledged that he had been suffering from mental illness and did not study MBA and further that he made a clean breast of the fact that he did not agree for the marriage with her as she had been a Medico but on irresistible impulse of his father, he agreed for matrimony and that then he took out some of his past medical records and showed her and that out of those records one pertained to the case report of the petitioner/husband at the age of two years ten months issued by All India Institute of Speech and hearing, Mysore, dated 30.07.1991 which indicated that he was found to be average mental maturity and that the other psychologist's record dated 10.10.1991 at the age of three years of the petitioner/husband issued by Nambikkai Nilayam Training Institute for Mentally Retarded Children, Christican Medical College, Vellore indicated the impression that the had low average intelligence D.Q.72 and that the other medical record dated 10.10.1991 issued by Department of Neurological Sciences, Christian Medical College and Hospital, Vellore revealed that the petitioner/husband was moderate mental retardation and that the another certificate dated 21.01.1992 issued by Kovai Rehabilitation & Information Services for the handicapped, Coimbatore showed that he studied in the Special School for the mentally retarded children and that another discharge summary dated 05.09.2002 issued by PSG Hospital, Coimbatore also indicated presence of mild intellectual impairment and that the other medical record dated 29.05.2006 issued by Coimbatore Speech and Hearing Clinic revealed that the Doctor wanted MR to be ruled out to the petitioner/husband and the xerox copy of those records which were obtained by the respondent/wife from the husband have already been produced before the Court along with main petition and at the time of enquiry they will be proved in the manner known to law in order to admit them into evidence etc., are all false and frivolous and the same are stoutly denied by the



petitioner/husband and puts the respondent/wife to strict proof of the same.

19.The respondent/wife in I.A.No.3 of 2015 has averred about the insanity of the petitioner/husband and also contended that if the petitioner/husband denied his insanity, he had the above illustrated idiotic activities due to insanity.

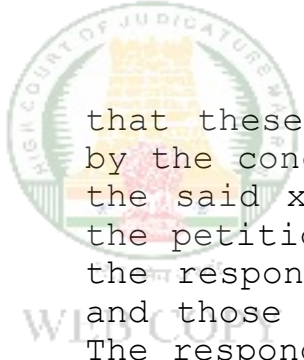
20.The petitioner herein also denied the averment made by the respondent/wife regarding medical records and also contended that there are some tests which are underwent by the petitioner herein, would reveal the fact that the mental age of the petitioner is found to be thirteen years two months and the Psychologist in Madurai has also identified mental capacity and the respondent/wife and her parents had gone to the extent of verifying his fake Degree Certificate i.e. M.B.A. after his wedding invitation. Hence, it is contended by the respondent that these documents were already produced by the petitioner/husband regarding the mental status of the petitioner herein and the same were given to the respondent/wife.

21.Now the grievance of the petitioner herein is that the documents which are placed before the Court for marking, are xerox copies and as per the Evidence Act, those documents cannot be marked.

22.On hearing both sides and also perusing the documents available on record, this Court finds that the mental capacity of the petitioner herein is the issue in the H.M.O.P. filed by the respondent/wife by stating that a false representation was made by the petitioner/husband by suppressing insanity of the first respondent and make her to marry him. It is stated by the respondent herein/petitioner in the H.M.O.P. that some of the medical records were shown to the respondent/wife and out of those records, some documents pertain to the case report and due to misunderstanding between the parties once again, the petitioner herein objected to some tests and also reveal the fact that for the ailment of marriage.

23.On verifying the document which was shown to her as well as the tests underwent by the petitioner/husband the respondent/wife was put to lot of mental agony. The respondent / wife has filed the petition for a decree of nullity of marriage. It is stated in the said petition by the respondent/wife that she prepared to take steps to summon the Medical Records of the petitioner / husband from the respective hospitals, institutions where he underwent treatment and checkup and also subjected for medical examination.

<https://hcservices.courts.gov.in/hcservices/> 24.In view of the above averments made by the respondent in the H.M.O.P and the said documents which were shown to her and produced before the Court and now the petitioner struck on to say



that these documents are xerox copies and unless these are filed by the concerned authority to prove the contents of the documents, the said xerox copies cannot be marked. It is also contended by the petitioner herein that the said documents, which were filed by the respondent/wife along with the main petition, are also false and those documents have to be proved by the respondent herself. The respondent/wife also averred that she will summon the persons, who treated the petitioner and also authority, who issued the certificates to the petitioner. Now, the only question is whether documents being xerox copies, can be marked.

25.The Hon'ble Supreme Court in ***R.V.E.Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple and Another*** reported in **2003 (8) SCC 752**, has held that Objection under category (i) is that the document sought to be proved is itself inadmissible and under category (ii) is the objection directed not against the admissibility of the document but against the mode proof thereof on the ground of irregularity or insufficiency. Objection under category (i) can be raised even after the document has been marked as "an exhibit", under Section 65 of the Evidence Act, 1872.

26.The Hon'ble Supreme Court in ***Bipin Shantilal Panchal Vs. State of Gujarat and Another*** reported in **2001 (3) SCC 1**, has held that whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence, the trial Court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the Court finds at the final stage that the objection so raised is sustainable, the Judge or Magistrate can keep such evidence excluded from consideration.

27.This case was referred by the petitioner regarding the procedure to be followed by the trial Court and in paragraph No.14, it has been held that whenever objection is raised regarding the admissibility of any material or any item of oral evidence, the trial Court can make a note of such objection and mark the objected document tentative as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment and if the Court finds at the final stage that the objection so raised is sustainable, the Judge or Magistrate can keep such evidence excluded from consideration. However, the Hon'ble Surpeme Court made it clear that if the objection relates to deficiency of stamp duty of a document, the Court has to decide the objection proceeding further and for all other objections, the procedure suggested above, can be followed.

<https://hcservices.ecourts.gov.in/hcservices/>

28.On the side of the respondent, the Judgment of the Bombay



High Court in **Shivanand Damodar Shanbhag v. Sujata Shivanand Shanbhag** reported in **III (2013) DMC 263 (DB)**, is cited, wherein it has been held that family Court is competent to receive document they have proved as per strict proof as per Evidence Act. In the said Judgment, it has also been held that Section 14 of the Family Court Act provides for exception to the general rule of evidence regarding admissibility of statements and documents if permissible by the Court, etc. It has been so provided looking to the nature of the cases which are decided by the Family Courts. The Court should not go into the technicality and should take a decision on the material before it in a broad based manner. Section 14 of the Family Court Act is a special legislation on the principles of admissibility of documents as provided under the Evidence Act, are not relevant in such cases.

29. Based on the above legal provision, the Hon'ble Supreme Court has held that there is no doubt that the Family Court is competent to receive the document though not proved as per the strict proof as per the Evidence Act.

30. In **Akham Ibobi Singh and Another v. Akham Biradhwaja Sikngh and Another** reported in **II(2006) DMC 523**, the Gauhati High Court has held that relevancy or admissibility of evidence in Civil suit is not strictly followed in the proceedings of Family Court. Family Court lost right of Section 14 of the Family Court Act and Order 17 of C.P.C.

31. In this case, the documents filed on the side of the respondent/ wife, which were shown to her and the main petition was filed by the respondent / wife only on the basis of the mental capacity of the petitioner herein. The respondent / wife herself has clearly stated in the petition that even after the marriage, the petitioner was subjected to test and a report was also given by the concerned authority. Hence, it is stated by the respondent / wife that these are all the documents, which were shown to her and they can very well be marked before the Court, subject to be proved by the respondent/wife, who filed the same before the Court and it is for the revision petitioner herein who is the respondent in the main H.M.O.P. can very well prove the admissibility of the document by any method, as per law.

32. Hence, in view of the provisions mentioned in Section 14 of the Family Courts Act, the petitioner herein shall very much object for the genuineness of the said documents. The objection of the petitioner / husband is that without examining the authority, who issued the documents, the said document cannot be marked.

<https://hcservices.courts.gov.in/hcservices/>
 33. In view of the provisions of the Family Courts Act, these documents can be marked with objection. The issue involved in



this case is with regard to the mental status of the petitioner / husband.

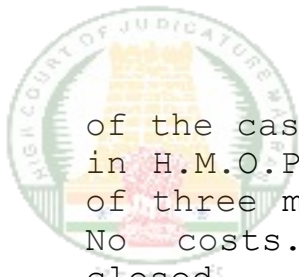
34. The trial Court has observed that the respondent wanted to mark the xerox copies of the documents through evidence of the respondent, but it was objected by the petitioner that the xerox copy is not admissible and also the mode required to be adopted by the respondent to prove the contents of the documents, is irregular. It is also observed by the trial Court that it is seen from the averment of the petition that the petitioner is not disputing the relevancy of the document, but the petitioner made his objection only towards the mode of proof sought to be adopted by the respondent to prove the contents of those documents.

35. The settled proposition of the Hon'ble Apex Court is that the objection as to the admissibility of document is classified into two classes and the first classification is that the documents to be proved is itself inadmissible and the second classification is as to the mode of proof is insufficient.

36. The trial Court also while discussing the classification of documents regarding the admissibility, further observed that the Court may receive any document in evidence, whether it is admissible or not under the Evidence Act as per Section 14 of the Family Court Act and there is a condition which has to be fulfilled by the court in receiving any document as evidence. The condition is in receiving the documents by the Court is of opinion that it would assist the Court to decide the matter effectually. So the Court need not consider whether document is admissible or not under the Evidence Act, if the Court is of the opinion that it would assist the Court to deal with the matter effectually involved in the matrimonial dispute.

37. Hence, the Trial Court has also ordered to record the objection of the petitioner herein in marking the xerox copy of those documents and otherwise the party would have enabled to rectify the defects in proving the fact and the trial Court also observed that the respondent is entitled to proceed with the enquiry further by marking xerox copies of the documents.

38. In view of the contentions raised by both parties and also the case laws cited in support of their case and main issue involved in this H.M.O.P. with regard to mental status of the petitioner herein and the contents of the said documents has to be verified and the mode of filing the document can be considered next to the relevancy of the contents of the said document, the parties can, at any point of time, prove the contents of the documents or disprove the same in the manner and procedure available to them. It is for the parties to prove the genuineness of the documents as well as its contents. In view of the same, this Civil Revision Petition is dismissed. In view of the pendency



of the case, the trial Court is directed to proceed with the case in H.M.O.P.No.110 of 2015 and dispose of the same within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

To

The Judge,
Family Court, Dindigul.

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-51885[F] dated 06/03/2019)

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