



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2019

CORAM

THE HON'BLE MR.JUSTICE S.S.SUNDAR**C.R.P (PD) (MD) No.1003 of 2013****and****M.P. (MD) No.1 of 2013**

R.Shanmuganantha Athithan : Petitioner/Respondent/Plaintiff

.. Vs ..

1.T.A.K.Kither Mohideen

2.Niyasnoor

: Respondents/Petitioners/

Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order dated 04.02.2013 passed in Memo in I.A.No.438 of 2011 in O.S.No.186 of 2010 on the file of the District Munsif Court, Tiruchendur.

For Petitioner : Mr.G.Prabhu Rajadurai

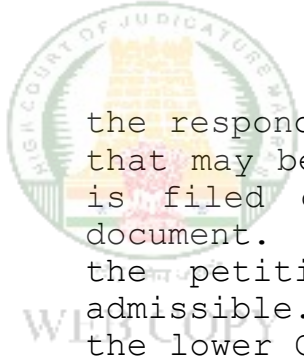
For Respondents : Mr.A.Arumugam
for M/s.Ajmal Associates

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ORDER

This Civil Revision Petition is preferred against the order passed in the memo filed in I.A.No.438 of 2011 in O.S.No.186 of 2010 on the file of the District Munsif Court, Tiruchendur.

2.The revision petitioner filed the suit in O.S.No.186 of 2010 on the file of the District Munsif Court, Tiruchendur, for declaration of title and for consequential injunction in respect of the suit property. During the pendency of the suit, the second defendant in the suit filed an application in I.A.No.438 of 2011 for reception of few documents which are stated in the petition. One of the documents that was sought to be marked is the affidavit filed by a dead person confirming a oral Hiba by one Mahdum Meera Sahib in favour of his son Jamal Mohideen. The affidavit that was filed along with the documents is only a certified copy of a document which is the xerox copy of the original and which was marked as Ex.R1 in a previous suit in O.S.No.137 of 2008 after comparing with original. It appears that an objection was raised as to the marking of a certified copy of the document which was marked as Ex.R1 and hence a memo was also filed by the defendant in I.A.No.438 of 2011. In the memo, the learned District Munsif passed an order permitting



the respondents to mark the documents subject to any other objection that may be filed by the revision petitioner. The present revision is filed challenging the order of the lower Court to mark the document. The prime submission of the learned Counsel appearing for the petitioner was that the document is neither stamped nor admissible. Though admissibility can be decided and relegated by the lower Court at a later time, the learned Counsel's submission is that in view of the specific provision under Order XIX of C.P.C., an affidavit of a dead person cannot be marked especially when the Court is not in a position to call the dead person for cross examination.

3.The learned counsel appearing for the respondents submitted that under Section 32 of Evidence Act, a statement of a person can always be marked as document and it will be admissible in evidence subject to the provisions of Section 32 of Indian Evidence Act which permits only such of those statements as it was explained in the provision. The learned Counsel appearing for the petitioner has no objection for marking a document subject to the proof and relevance of the document. The learned Counsel appearing for the petitioner himself admits that the document is admissible in evidence as it is a statement of a person against his own interest. The revision petitioner can always raise his objection with regard to the proof, evidentiary value and relevance of the document at the time of trial.

4.With the above observation, the order of the lower Court is confirmed. The Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(AD-I)

/True Copy/

Sub Assistant Registrar(CS)

To

The District Munsif,
Tiruchendur.

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate SR-54715

C.R.P (PD) (MD) No.1003 of 2013
15.03.2019

srm
SP/PK/04.04.2019 : 2P/3C