

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.01.2020

Coram

The Honourable Mr. Justice M.M.SUNDRESH
and
The Honourable Mr. Justice KRISHNAN RAMASAMY

Original Side Appeal No.415 of 2018
& CMP No.18827 of 2018

Arun Kumar (@ Arun Kumar Ashkaran)
Suit(Flat) No.10, 4th Floor, Chandrapuri Apartment,
Chennai-600 112. ... Appellant

Vs.

1.Kalpna Mehta since deceased
being represented by her Legal Heirs
2.Lalith Mehta
3.Abhisek Mehta
4.Abhinay Mehta
All are residing at
No.6, Dr. T.V. Naidu Road, Chetpet,
Chennai-600 031. Respondents

Original Side Appeals are filed under Order XXXVI Rule 1 of the Original Side Rules read with Section 15 of the Letters Patent against the fair and decretal order dated 17.11.2017 made in A.No.6281 of 2017 in C.S.No.964 of 2010.

Application praying that this Hon'ble court be pleased to pass an order to Eschew/Expunge the Evidence recorded during corss examination of P.W.1 dt:11/08/2017 at page 6 of P.W.1's evidence as "My letter dated 17.11.2007 which contains my signature is marked as Ex.D1"and subsequent recording of evidence in context with Exhibit D1 either in the form of question & answer or otherwise along with Letter dated 17.11.2007 marked as Exhibit D1.

For Appellant : Mr.Rajendra Prasad Tayal

For Respondents: Mr.Perumbulavil Radhakrishnan

COMMON JUDGMENT

(Judgment of the Court was delivered by
M.M.SUNDRESH, J.)

This original side appeal is preferred by the appellant being aggrieved against the order dated 17.11.2017 passed in A.No.6281 of 2017 in C.S.No.964 of 2010, by which, the learned single Judge has held as follows:

"I do not think such an allegation would amount to sufficient cause to expunge the evidence. The admission have been made in the cross examination and the very purpose of cross examination would be lost if such an allegation is accepted to expunge or eschew the evidence of the witness. However, it is left open to the witness, to explain the circumstances under which such an admission was made in his re-examination subject to that liberty, this application is dismissed and it is for the Court to accept the explanation or not."

2. The learned counsel appearing for the appellant submits that the document has been wrongly marked through the appellant on a wrong understanding. Therefore, the application ought to have been allowed.

3. We do not find any error in the order passed by the learned single Judge. The appellant has filed a suit for specific performance. During the trial, the appellant was shown a document to identify the signature. On such identification, the document has been marked. Now it is the case of the appellant that the said statement has been made on a wrong basis since the document was not shown properly and translation was not done correctly. As rightly held by the learned single Judge the same would not be a ground to expunge the evidence. The learned single Judge has protected the interest of the appellant giving liberty to him to explain under which circumstance the re-examination made. In such view of the matter, we do not find any reason to interfere with the order of the learned single Judge and the original side appeal stands dismissed. No costs. We make it clear that the dismissal of the appeal will not stand in the way of the appellant seeking re-examination. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

raa

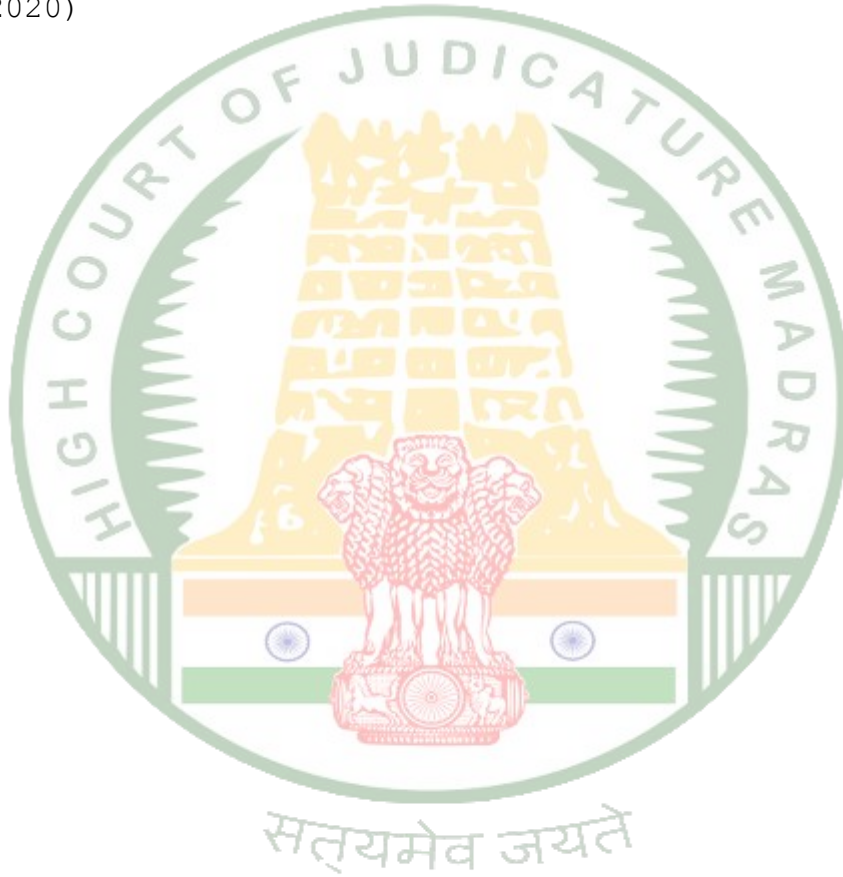
To

1.The Sub Assistant Registrar,
Original Side, High Court, Madras.

+1cc to Mr.Rajendra Prasad Tayal, Advocate SR.4148

O.S.A.No.415 of 2018

SR(CO)
CB(10/03/2020)



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