

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 25.08.2021	Orders pronounced on 09.09.2021
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Coram

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(PD) Nos.1675 to 1677 of 2021

and

C.M.P.Nos.12964, 12966 and 12969 of 2021

Shabana ... Petitioner in C.R.P.(PD).1675 of 2021

Meherunisa ... Petitioner in C.R.P.(PD).1676 of 2021

Kalisa ... Petitioner in C.R.P.(PD).1677 of 2021

Vs

Dr.A.K.Faziluddin (died)

1. Hafsa Zainuddin

2. Shameema Hafsa

3. Rafica Zainu Nishtar

4. Ayub Zainuddin

(Respondents 2, 3 & 4 represented by their
Power Agent Mr.Ayub Zainuddin)

5. Subaida

6. Sharine

7. Mujib

8. Najib

... Respondents in all CRP. (PD)s.

These Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the order dated 06.03.2021 passed in a common memo filed by the petitioners dated 11.12.2020 in RCOP Nos.1738 of 2015, 1735 of 2015 and 1724 of 2015 respectively by the learned XI Small Causes Judge, Chennai.

For Petitioner in all CRP. (PD)s. ... Mr.P.K.Sabapathi

COMMON ORDER

These Civil Revision Petitions have been filed challenging the order passed by the learned XI Small Causes Judge, Chennai, on 06.03.2021 in a common memo filed on 11.12.2020.

2. The learned counsel for the petitioners in all Civil Revision Petitions submitted that the petitioners/tenants filed a memo dated 11.12.2020 alleging that certain documents have been marked through PW.1 and he also filed additional proof affidavit with additional documents. While marking the additional documents, learned counsel for the petitioners raised objections for marking the additional documents.

Learned Rent Controller recorded the objections and allowed the respondents/landlords to mark the additional documents, subject to proof and relevancy. Fourth respondent filed additional proof affidavit and marked certain additional documents, when the learned counsel for the petitioner was not present. The documents sought to be relied are two sale deeds dated 05.02.1945 and 15.11.1947. Only certified copies of the sale deeds have been marked. Unless the original sale deeds are produced, the certified copies of sale deeds cannot be marked. Therefore, it was prayed for directing the respondents/landlords to produce original sale deeds for verification. He further submitted that the learned Rent Controller, without considering the objections properly, passed a docket order on 06.03.2021 stating that certified copies of documents are permissible in law and that the objections with regard to the documents can be considered at final stage of deciding the case. Against the said order, the present Civil Revision Petitions have been filed.

3. Learned counsel for the petitioners/tenants submitted that the certified copies of the documents cannot be permitted to be allowed in

evidence, unless satisfactory reasons are given for the non-availability or/and non-production of original documents. In the case before hand, there is no foundation laid for producing the certified copies of documents, which are secondary evidence. Unless the original sale deeds are produced and compared with certified copies, the genuineness of the certified copies of the documents produced cannot be appreciated. Without considering this objection, learned XI Small Causes Judge, Chennai, held that this issue can be decided at the final stage of enquiry. Therefore, learned counsel for the petitioners seeks to set aside the docket order dated 06.03.2021 of the learned XI Small Causes Judge, Chennai passed in the common memo filed on 11.12.2020. In support of his submissions, he relied on the following judgments reported in

- (i) ***1995 Supp (1) SCC 462 (Government of A.P and others ..vs.. Karri Chinna Venkata Reddy and others) ;***
- (ii) ***2020 (5) CTC 490 (Jagmail Singh and others ..vs.. Karamjit Singh and others) ;***
- (iii) ***2021 (3) CTC 492 (Rasipuram Lorry Owner's Association represented by its President ..vs.. M.Velayutham) ; and***

(iv) **2001 (3) SCC 1 : AIR 2001 SC 1158 (Bipin Shantilal Panchal ..vs.. State of Gujarat and another).**

4. Reading of the judgments reported in **2020 (5) CTC 490 and 2021 (3) CTC 492 (cited supra)** shows that the foundation has to be laid with plausible reasons for producing secondary evidence. The non-availability, inability to produce original documents should be brought before the court, only then secondary evidence can be produced in terms of Sections 65 and 66 of Indian Evidence Act. It is seen from the judgment reported in **1995 Supp (1) SCC 462 (cited supra)**, the Hon'ble Apex Court held that when the issue of genuineness of the documents is an aspect, it goes to the root of the matter.

5. Coming to the facts of the case. It is seen from the proof affidavit filed by the fourth petitioner in RCOP - Rafica Zainu Nishtaar that the first petitioner in the RCOP filed proof affidavit and three exhibits have been marked and he has been cross examined. Subsequently, he filed additional proof affidavit and Exs.P4 to P11 were marked and the case

was pending for cross examination with regard to the additional proof affidavit and additional documents. He died on 14.05.2018. Therefore, fourth petitioner filed proof affidavit along with Exs.P4 to P15 (which had been already marked) to re-mark them as Exs.P16 to P26. Thus, it is clear from the affidavit that Exs.P16 to P26 now sought to be marked had already marked as Exs.P4 to P15 through PW.1. Considering the objections raised by the learned counsel for the petitioners herein, the learned Judge reiterated that Exs.P4 to P11 were marked through PW.1 after recording the objections raised by the petitioners herein, and subject to proof and relevancy. Thus, it is clear that the objection to mark these documents had already been recorded when PW.1 was examined. On the death of PW.1, now Exs.P4 to P11 are sought to be re-marked again through PW.2. It is seen that the respondents/landlords obtained certified copies from the Court and marked these documents. In the facts and circumstances of the case, re-marking of Exs.P4 to P11 through PW.2 cannot be faulted. Already these documents had been marked by PW.1 and objection raised by the petitioners/tenants was recorded and those documents had been marked subject to proof and relevancy. Learned

counsel for the petitioners has also relied on the judgment reported in ***2001 (3) SCC 1 : AIR 2001 SC 1158 (Bipin Shantilal Panchal ..vs.. State of Gujarat and another)***. It is observed in this judgment that a Court may proceed to mark the documents and decide its admissibility at the last stage of the final judgment. That was what precisely done in this case.

6. With regard to the submissions that the documents/certified copies are not readable, learned counsel for the respondents/landlords is directed to ensure that the readable copies of registered or certified copies are produced before the Court. If they are in possession of original documents, original documents can be produced and after verification with the certified copies, they can be taken back by the respondents/landlords. In this view of the matter, this Court finds no reason to interfere with the docket order passed in the memo by the learned XI Small Causes Judge, Chennai on 06.03.2021.

7. Accordingly, the docket order of the learned XI Small Causes

Judge, Chennai dated 06.03.2021 is confirmed and these Civil Revision Petitions are dismissed. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.

09.09.2021

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Index : Yes / No
Internet : Yes / No
Speaking order : Yes / No

To,

1. The XI Judge, XI Small Causes Court, Chennai.

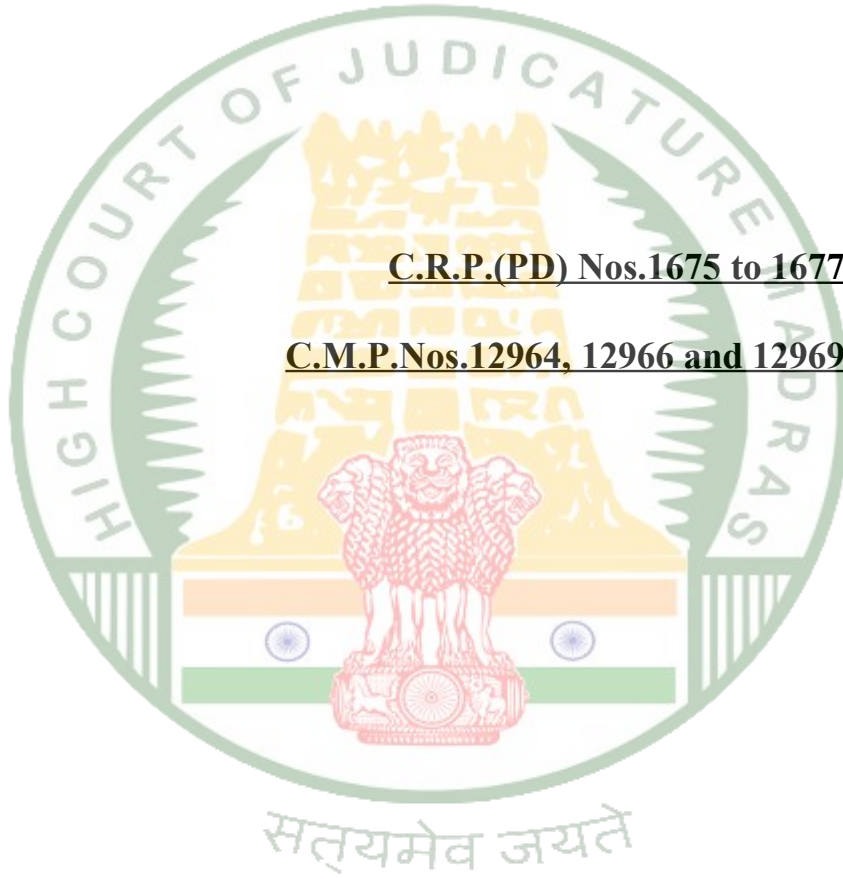


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G.CHANDRASEKHARAN, J.

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