

A.No.3250 of 2020
in CS.No.196 of 2011
P.RAJAMANICKAM, J.

This application has been filed by the plaintiffs to mark the document Nos.30 to 54 as exhibits on the side of the plaintiffs.

2. Mr.M.Kabir, the learned Senior Counsel assisted by Mr.Anand Sashidharan, the learned counsel for the applicants/plaintiffs has submitted that the first plaintiff's husband Dr.Gopalaswamy filed proof affidavit as PW1 on the side of the plaintiffs and also filed 54 documents. He further submitted that at the time of marking document Nos.30 to 54 as exhibits, the learned counsel for the defendants raised objections as the said documents are xerox copies and they cannot be marked and hence, the learned Additional Master No.III referred the matter to the Court for passing appropriate orders. He further submitted that the applicants are not having originals for the said documents and hence, they filed xerox copies and if the said documents are marked as exhibits that will not cause any prejudice to the other side and therefore, he prayed to direct the learned Additional Master No.III to mark the said documents as exhibits.

3. Per contra, the learned counsel for the respondents/defendants has submitted that since the said documents are xerox copies, unless the applicants gave satisfactory explanation for not producing originals, they are not entitled to adduce secondary evidence and therefore, he prayed to dismiss this application.

4. At this juncture, it would be relevant to refer to the decision in ***Bipin Shantilal Panchal Vs. State of Gujarat and Another*** reported in ***(2001) 3 SCC 1***, wherein a three Judge Bench of the Hon'ble Supreme Court has laid down a procedure to be followed by the trial Courts whenever an objection is raised regarding the admissibility of any material or item of oral evidence before the trial Court. The relevant portion of the said judgment reads as follows:

"When so recast, the practice which can be a better substitute is this: Whenever an objection is abused 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. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the Court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.) The above procedure, if followed, will have two advantages. First is that the time in the trial Court, during evidence taking stage, would not be wasted on account of raising such objections and the Court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior Court, when the same objection is re-canvassed and reconsidered in appeal or revision against the final judgment of the trial Court, can determine the correctness of the view taken by the trial Court regarding that objection, without bothering to remit the case to the trial Court again for fresh disposal. We may also point out that this measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses.”

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5. From the aforesaid decision, it is clear 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, subject to such objections to be decided at the last stage in the final judgment. Further, it is clear that if the said procedure is followed that it would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses. Hence, the Additional Master No.III is directed to make a note of such objections and mark the objected document tentatively as exhibits subject to such objections to be decided at the last stage in the final judgment.

6. With the aforesaid observations, this application is disposed of.

No costs.

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