



A.No.4558 of 2021

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A.No.4558 of 2021
in
C.S.No.691 of 2019
(Comm.Suit)

N.ANAND VENKATESH. J.,

This application has been filed under Section 65(b) of the Indian Evidence Act, 1872 seeking for the leave of the Court to file secondary evidence with respect to 7 documents.

2. The applicant/plaintiff has stated in the affidavit filed in support of the application that document Nos. 1 and 3 were marked in a connected suit and the applicant has made an application for certified copies of these documents and hence, sought for the permission of this Court to mark the certified copies of these two documents.

3. Insofar as the document Nos.4, 7 & 8 are concerned, they are the letters received from 2nd defendant to the plaintiff, a notice sent by the plaintiff to the defendants and acknowledgment card. According to the applicant, the originals are not available and hence, has sought for the leave of this Court to file photo copies of these documents.



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4. Insofar as document No.5 is concerned, the same is the report of a forensic expert and according to the applicant the original was lost by the previous counsel and notarized copy of the same is available with the applicant.

5. The last document pertains to the additional document No.7, which is a certificate of incorporation, which has been downloaded from the website of Registrar of Companies.

6. A counter affidavit has been filed by the 4th respondent and the leave sought for by the applicant has been contested.

7. Heard Mr.V.Praveen Kumar, learned counsel for the applicant and, Mr.N.Nithianandam, learned counsel for the defendants 1 & 2 and, Ms.C.Raajamani Ponnu, learned counsel representing Mr.C.Ramesh, learned counsel for the 3rd defendant and, Mr.B.R.Shankaralingam, learned counsel for the 4th defendant.

8. The suit was at the stage of trial before the learned Additional



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Master No.II and the affidavit of evidence and Ex.P.1 to Ex.P.8 were marked on 26.10.2021. When the applicant wanted to mark secondary evidence of nearly 7 documents, the same was objected by the learned counsel appearing on behalf of the defendants. It is under these circumstances, the applicant has filed this application seeking the leave of this Court to mark secondary evidence.

9. Insofar as the document Nos.1 and 3 are concerned, the applicant is going to mark the certified copies since these documents were already marked in another suit in C.S.No.382 of 2019. Therefore, there cannot be any serious objections in allowing the applicant to mark the certified copies of these two documents.

10. Insofar as, document No.4 is concerned, it is a letter that is said to have been received from the 2nd defendant to the applicant and the applicant claims to have lost the original. This Court does not find any difficulty in allowing the applicant to mark the photo copy of this document.

11. The next document is the report of the forensic expert. A careful



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reading of this document shows that the applicant had approached the forensic expert and had got an opinion. According to the applicant, the original has been lost and what is available is only the notarized copy of the forensic expert opinion. Even assuming that this Court permits this notarized copy to be brought in as a secondary evidence, certainly it cannot be marked through the applicant and it can only be marked through the maker of the document. In the absence of the same, this document cannot be permitted to be marked.

12. Insofar as, document Nos.7 and 8 are concerned, the applicant refers to these two documents in the affidavit filed in support of the application as a legal notice and acknowledgment card for the receipt of the legal notice. Both these claims are found to be not correct. Document No.7 is a letter that was sent to the 2nd defendant by the applicant and it is not a legal notice. Insofar as, acknowledgment is concerned, it is not relatable to document No.7. In view of this glaring discrepancy, both these documents cannot be permitted to be marked.

13. That leaves this Court to deal with the last document namely



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additional document No.7 which is a certificate of incorporation downloaded from the website of ROC. This is a public document and there cannot be any objections in marking it. It goes without saying that the relevancy of the documents that are sought to be marked will be independently gone into at the time of hearing the suit.

14. In fine, the applicant is permitted to mark the secondary evidence with respect to document Nos.1, 3, 4 and additional document No.7. For all the other documents, leave is rejected.

15. This application is disposed of accordingly.

09.12.2021
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