

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(PD) No.2827 of 2017
and C.M.P.No.13339 of 2017

1. Kalavathi
2. Indirani
3. Chandra
4. Shantha

... Petitioners

Vs.

1. Manickavel
2. Sumathi
3. Yagachitra
4. Chakravarthi
5. The Sub Registrar,
Erode Registration Department,
Erode District Registration Office,
Erode.

... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 20.06.2017 made in I.A.No.1481 of 2016 in O.S.No.110 of 2015 on the file of the First Additional Sub Court, Erode.

For Petitioners : Mr.N.Manokaran
For Respondents
For R1 : Mr.Zeenath Begum
R2 to R4 : Not ready in notice.

ORDER

This Civil Revision Petition has been filed as against the fair and decreetal order dated 20.06.2017 passed by the learned First Additional Sub Judge, Erode, in I.A.No.1481 of 2016 in O.S.No.110 of 2015, thereby dismissing the petition to condone the delay in filing the recorded CDs and receive the same in evidence.

2. The petitioners are the defendants 1 to 4 in the suit filed by the first respondent herein for declaration declaring that the deed of cancellation execution by the deceased Kamalam dated 15.12.2014, the canceling the gift settlement dated 21.11.2014 as null and void. While pending the suit, the petitioners filed petition to condone the delay in filing the recorded CDs and receive the same as evidence. The Court below dismissed the same for the reason that the CDs produced by the petitioners are not accompanied with the certificate as contemplated under Section 65B(4) of the Indian Evidence Act. Further the videograph has to be obtained from the Government office.

3. The learned counsel appearing for the petitioners would submit that the first respondent and his wife were very much present in the Registrar office and they knew the execution of Ex.A.2 and Ex.A.3. They were present in the registration proceeding of Ex.A.2 and Ex.A.3 and it was recorded in the CCTV camera. The footage were obtained by the petitioners and it has to be marked as evidence before the trial Court. In support of his contention he relied upon the judgment reported in **(2001) 3 SCC 1** in the case of ***Bipin Shantilal Panchal Vs. State of Gujarat and anr.***, as follows:-

"13. It is an archaic practice that during the evidence collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. But the fall out of the above practice is this: Suppose the trial court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the appellate or revisional court, when the same question is re-canvassed, could take a different view on the admissibility of that material

in such cases the appellate court would be deprived of the benefit of that evidence, because that was not put on record by the trial court. In such a situation the higher court may have to send the case back to the trial court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or re-moulded to give way for better substitutes which would help acceleration of trial proceedings.

14. *When so recast, the practice which can be a better substitute is this: 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 (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.)

15. 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."

The Hon'ble Supreme Court of India held 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 marked the objected document tentatively as an exhibit in the case subject to such objection to be decided at the last stage in the final judgment.

4. The Court below dismissed the petition for the reason that the CDs which were sought to be marked did not support with the certificate issued by the authority concerned as contemplated under Section 65B(4) of Indian Evidence Act. If at all the petitioners failed to produce the certificate to prove the CDs which were sought to be marked, it can be rejected at the time of final judgment. Further the objections raised by the first respondent, at the time of marking the evidence, can be reconsidered and decided at the time of final judgment. Therefore, the order passed by the trial Court is perverse and liable to be set aside.

5. In view of the above discussions, the order dated 20.06.2017 passed by the learned First Additional Sub Judge, Erode, in I.A.No.1481 of 2016 in O.S.No.110 of 2015, is hereby set aside. The CDs which were sought to be marked by the petitioners can be marked with objections. It is made clear that its applicability and admissibility can be considered at the time of judgment.

6. Accordingly, this Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

05.03.2021

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order

rts

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G.K.ILANTHIRAIYAN, J.

rts

To

1. The First Additional Sub Judge,
Erode
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



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