



C.R.P.(PD) No.3953 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2021

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

C.R.P.(PD) No.3953 of 2019 &
C.M.P.No.26086 of 2019

V.R.Munavar Ahamad

...Petitioner

Vs.

1.M/s.V.Abdul Jabbar Sahib and Sons
represented by its partner V.K.Abdul Aleem
186 Chitteri Road, Ariyur, Vellore Taluk and District
2.V.R.Abdul Rasheed
3.V.K.Abdul Aleem
4.V.I.Mohammed Ghouse
5.V.K.Abdul Jabbar
6.V.K.Abdul Haleem
7.V.I.Ali Kalandar
8.V.R.Zahoor Ahmed
...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the order in I.A.No.1 of 2019 in O.S.No.150 of 2018 dated 3rd October 2019 on the file of the Principal District Judge, Vellore.

For Petitioner	: Ms.R.Simran for Mr.V. Raghavachari
For Respondents	: Mr.K.M.Aasim Shehzad



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ORDER

The Civil Revision Petition is directed against the order of learned Principal District Judge, Vellore dated 03.10.2019 in I.A.No.1 of 2019 in O.S.No.150 of 2018.

2. The revision petitioner is the plaintiff in the suit in O.S.No.150 of 2018. The suit was filed for the following reliefs:

i. to take the accounts of the 1st defendant partnership firm M/s V. Abdul Jabbar Sahib and sons and the partnership firm's name, trade mark, symbol, monogram, movable and other immovable properties belonging to the 1st defendant partnership firm to be taken in to accounts while determining the assets of the firm and while the accounts of the firm is taken.

ii. To appoint an Advocate receiver to wind up the 1st defendant partnership firm and to take the accounts of the 1st defendant partnership firm.

iii. To grant a permanent injunction restraining the defendants from carrying on any business under the name and style of the M/s V. Abdul Jabbar Sahib and sons in any place and not to manufacture and sell the beedis under the name and style of Goat Mark Beedis etc.,

iv. To direct the defendants to pay the cots of the suit and such other suitable order as this Hon'ble Court deems fit and proper may be passed and justice rendered.



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3. During the pendency of the suit, the revision petitioner filed I.A.No. 1 of 2019, to permit the petitioner/plaintiff to produce the partnership deed dated 01.02.2007, executed between the petitioner/plaintiff and the defendants, as secondary evidence and to mark the same as an exhibit on behalf of the petitioner/plaintiff. The petitioner also produced the xerox copy of the partnership deed dated 01.02.2007.

4. A counter affidavit was filed raising an objection that the procedure laid down under Section 66 of the Indian Evidence Act, 1872, should be strictly complied with and that the secondary evidence is not admissible unless the party in possession of the document gives a notice to produce it, as prescribed in law. It is stated that the petitioner did not issue any notice to produce the document, therefore, the petitioner cannot maintain the application.

5. The lower Court accepting the stand taken by the respondents/defendants dismissed the application on the ground that the petitioner/plaintiff has failed to issue a notice to produce the original document as contemplated under Section 66 of the Indian Evidence Act.



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6. It is necessary to refer to Section 65 and Section 66 of the Indian Evidence Act, which are extracted below:-

65. Cases in which secondary evidence relating to documents may be given.— Secondary evidence may be given of the existence, condition or contents of a document in the following cases: —

(a) when the original is shown or appears to be in the possession or power — of the person against whom the document is sought to be proved, of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of section 74; 34

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in 1 [India] to be given in evidence;

(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court and the fact to be proved is the general result of the whole collection.



In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible. In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

66. Rules as to notice to produce.- *Secondary evidence of the contents of the documents referred to in section 65, clause (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, [or to his attorney or pleader,] such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case:*

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it: --

- (1) when the document to be proved is itself a notice;*
- (2) when, from the nature of the case, the adverse party must know that he will be required to produce it;*
- (3) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force;*
- (4) when the adverse party or his agent has the original in Court;*
- (5) when the adverse party or his agent has admitted the loss of the document;*



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(6) when the person in possession of the document is out of reach of, or not subject to, the process of the Court.

7. Under Section 65 of the Evidence Act, secondary evidence can be given when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved. In the present case, the possession of original by the respondent is not disputed. Though the admission is not in writing, the learned counsel for the respondents admit the existence and possession of the document with first defendant. In such circumstances, this Court is of the view that no useful purpose will be served by issuing notice to produce the document especially when the respondent does not deny the photocopy of the original partnership deed dated 01.02.2007 produced by the petitioner as a true copy of the original. The Lower Court could have asked the respondents to specifically state whether the original document is available with them. The Lower Court ought not to have dismissed the application.

8. Learned counsel for the respondents before this Court submitted that the document is available with the respondents and they are prepared to



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mark a photocopy of the document after comparing the same with the original. The respondents have some reservation to hand over the original to the Court. However, learned counsel submit that the original document will be produced for comparing the same with the photocopy that has been filed by the petitioner. It is further requested by the counsel that the lower Court should hand over the original to the respondents after comparing the same. The learned counsel for the petitioners has no objection as the photocopy that is going to be marked by the respondent would solve their problem as their grievances also addressed.

9. In that view of the matter, this Civil Miscellaneous Petition is allowed in part. The order in I.A.No.1 of 2019 in O.S.No.150 of 2018 dated 01.10.2019 is set aside. The photocopy marked by the petitioner/plaintiff shall be compared with the original that will be produced by the respondents, as undertaken by them before this Court. After production of the original copy of the partnership deed, the learned Principal District Judge, Vellore shall compare the photocopy produced by the petitioner as well as the photo copy that may be produced by the



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respondents with the original and certify the same as the true photocopy of the original. The respondents shall produce the document as may be fixed by the lower Court during the Court hours. Accordingly, the Civil Revision Petition is disposed of. Connected miscellaneous petition is closed. No costs.

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ska/AP

Index: Yes/No

Speaking order/Non-speaking order

To

Principal District Judge,
Vellore



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S.S.SUNDAR, J.,

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