



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 15.04.2021

Pronounced on : 19.04.2021

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THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

**C.R.P.MD) .Nos. 515 to 517 of 2021 and
CMP (MD) .No. 2751 of 2021 in CRP (MD) .No. 516 of 2021**

Sivalekshmi : Petitioner is all CRPs/
Petitioner/Plaintiff

Vs.

1.Rajaletchimi
2.Bharathi : Respondents in all CRPs/
Respondents/Defendants

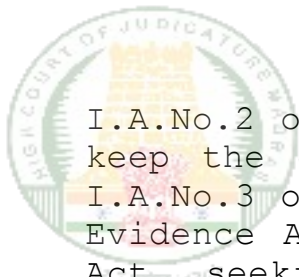
COMMON PRAYER:- Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 18.01.2021 passed in I.A.Nos.3, 4 and 2 of 2020 in O.S.No.363 of 2018 on the file of the Sub Court, Eraniel.

For petitioner : Mr.F.X. Eugene in all C.R.Ps.

COMMON ORDER

These revisions are directed against the orders passed in I.A.Nos.3, 4 and 2 of 2020 in O.S.No.363 of 2018 on the file of the Sub Court, Eraniel.

2. The revision petitioner is the plaintiff and he filed a suit in O.S.No.47 of 2011 on the file of the Sub Court, Padmanabapuram claiming the relief of specific performance in pursuance of an oral sale agreement dated 03.01.2010 and for declaration that the settlement deed dated 05.01.2011 executed by the first defendant in favour of the second defendant is null and void and for permanent injunction restraining the defendants from disturbing the possession of the plaintiff in the suit property. It is evident that the suit was transferred to the Court of Subordinate Court, Eraniel and the same was taken on file in O.S.No.363 of 2018. It is further evident that when the petitioner's witness PW.3 was in witness box, the above three applications came to be filed. The application in



I.A.No.2 of 2020 is filed under Section 151 CPC seeking orders to keep the compact CD produced by the plaintiff in safe custody; I.A.No.3 of 2020 is filed under Section 45A and 65B of the Indian Evidence Act and under Section 79A of the Information Technology Act seeking orders directing the Director, TNSFL (Tamil Nadu Service Forensic Laboratory), Physics Division, Chennai to record the voice of persons listed in the petition and to compare the same with the voice found in the Compact Disc produced by P.W.3 and I.A.No.4 of 2020 is filed under Order 7 Rule 14(iii) and Section 151 CPC seeking orders to recieve the documents i.e., CD taken by PW.3 allegedly containing conversation between the plaintiff and others.

3. Admittedly, first defendant is the maternal aunt of the plaintiff. It is the specific case of the revision petitioner / plaintiff that the first defendant has agreed to sell 23 Cents of her property to the plaintiff at the rate of Rs.10,000/- per cent and on the basis of the said oral agreement dated 03.01.2010 the plaintiff has paid the entire sale consideration of Rs.2,30,000/- to the first defendant in the presence of her family members, that the first defendant had also delivered the possession of the property, that the plaintiff subsequently came to know on 02.02.2011 that the first defendant had executed a settlement deed in respect of the suit property along with some other property in favour of her daughter 2nd defendant and that since the first defendant has refused to execute the sale deed in favour of the plaintiff, she was constrained to file the above suit.

4. The defendants have filed their written statement disputing the oral sale agreement alleged by the plaintiff and they are contesting the suit.

5. The plaintiff by alleging that when the plaintiff along with her family members went to the house of the first defendant on 06.02.2011 and requested the first defendant to execute the sale deed, that the conversation took place at that time between the first defendant and her family members with the plaintiff, her husband and others present was recorded in the mobile phone of Selvan, that subsequently, the same was recorded in the CD and when the same was attempted to be marked, the same was objected by the other side and that therefore, the plaintiff was constrained to file the above applications.

6. Though the plaintiff has taken a stand that the conversation that took place was recorded and was very much available, the same was not at all referred in the plaint nor in the evidence of the plaintiff. The plaintiff has no-where whispered as to when he came to know about the recording of conversation and the availability of CD. Though the plaintiff has



alleged in the plaint that she went to the residence of the first defendant on 06.02.2011 along with her family members and demanded the first defendant to cancel the settlement deed executed and to execute the sale deed, she has not whispered about the said Selvan, alleged to be a mediator in the transaction.

WEB COPY 7. The plaintiff was not permitted to exhibit the CD allegedly containing the conversation that took place on 06.02.2011 between the first defendant and his family members on the one side and the plaintiff and her family members on the other side in the presence of mediators.

8. Section 3 of the Indian Evidence Act, 1872 defines the document and the same would mean any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter. The word "Evidence" means and includes all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry and such statements are called oral evidence and that all the documents including the electronic records produced for the inspection of the Court and such documents are called documentary evidence. Section 22(a) of the Indian Evidence Act, contemplates that oral admissions as to the contents of electronic records are not relevant, unless the genuineness of the electronic record produced is in question.

9. It is necessary to refer Sections 45A, 65A and 65B of the Indian Evidence Act, 1872:

"45A. Opinion of Examiner of Electronic Evidence: - When in a proceeding, the Court has to form an opinion on any matter relating to any information transmitted or stored in any computer resource or any other electronic or digital form, the opinion of the Examiner of Electronic Evidence referred to in Section 79A of the Information Technology Act, 2000, is a relevant fact.

65A. Special Provisions as to evidence relating to electronic record- The contents of electronic records may be proved in accordance with the provisions of Section 65-B.

65B. Admissibility of electronic records: (1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this



computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

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(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:-

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purpose of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material, part of the said period, the computer was operating properly or, if not, then in any respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computer, whether, -

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of



all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,-

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned sub-section (2) relate,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate and for the purposes of this sub-section it shall be sufficient for a matter to be stated to be best of the knowledge and belief of the person stating it.

(5) For the purpose of this section -

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment."



10. Section 65A of Evidence Act states that the contents of electronic records have to be proved as evidence in accordance with the requirements of Section 65B, which in turn, speaks of admissibility of electronic records which deals with existence and contents of electronic records being proved once admissible into evidence.

11. Section 65B (1) begins with a non absentee clause and makes it clear that any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be also a document and shall be admissible in any proceedings without further proof of production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible. Section 65B (2) refers to the conditions that must be specified in respect of a computer output. It is pertinent to mention that the conditions mentioned in sub Sections 2(a) to 2(d) must be satisfied cumulatively. Sub Section (4) contemplates that a certificate is to be produced that identifies the electronic record containing the statement and describing the manner in which it is produced or given particulars of the device involved in the production of that electronic record to show that the electronic record was produced by a computer, by either a person occupying a responsible official position, in relation to the operation of the relevant device or a person who is in the management of the relevant activities whichever is appropriate.

12. A three Bench Judgment of the Hon'ble Supreme Court in the case of **Arjun Panditrao khotkar Vs. Kailash Kushanrao Gorantyal dated 14.07.2020 in Civil Appeal Nos. 20825 to 20826 of 2017** has held that the required certification under Section 65B (4) is not necessary, if the original document itself is produced.

13. Both Sections 65A and 65B were inserted through the Indian Evidence (Amendment) Act, 2000 and form part of Chapter V of the Evidence Act, which deals with the documentary evidence.

14. The above three Judges Bench of the Hon'ble Supreme Court, while answering the reference, has clarified the interpretation of Section 65B as there were inconsistent views and upheld the view expressed by the Hon'ble Apex Court in the case of **Anvar P.V. Vs. P.K. Basheer and others** reported in **2014 (10) SCC 473** and held that production of a certificate shall not be necessary when original electronic record is produced, that the original electronic record can be adduced directly as evidence if the owner of the computer / Tablet / mobile phone steps into the witness box and establishes that the device where the information



is first stored is owned / operated by him and that if the "Computer" where the electronic record was first stored happens to be part of a "computer network" or "computer system" (as defined under the Information Technology Act, 2000) and it is not possible to bring such a network / system physically to the Court, then secondary copies can be produced along with the certificate stipulated by Section 65B(4) of the Indian Evidence Act.

15. In the case on hand, admittedly the plaintiff has neither produced the primary source i.e., the mobile phone, through which the conversation was allegedly recorded nor the certificate contemplated under Section 65B (4) along with the secondary copy of the electronic record i.e., Compact Disc.

16. In view of the law declared by the Hon'ble Supreme Court, the Compact Disc produced by the plaintiff, in the absence of certificate under Section 65B(4) of the Indian Evidence Act, cannot be admitted in evidence. Considering the above, the question of receiving the compact disc or ordering to place the same in the safe custody of the Court does not arise. Hence, the decision of the trial Court in dismissing all the three applications cannot be found fault with and consequently, this Court is not inclined to admit the revisions.

17. In the result, all the revision petitions are dismissed at the admission stage itself. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar (CS)

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To

The Subordinate Judge, Eraniel.

+3 CC to Mr.F.X.EUGENE, Advocate (SR-16660 to 16662[F] dated 20/04/2021)

order made in
C.R.P.MD).Nos. 515 to 517 of 2021 and
CMP (MD).No. 2751 of 2021 in CRP(MD).No. 516 of 2021
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KM(03.06.2021) 7P 5C