



C.R.P(PD)Nos.1048 & 1049 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P(PD).Nos.1048 & 1049 of 2017

and

CMP.Nos.5080 & 5081 of 2017

A.Jayapal

..Petitioner in both CRPs'

Vs.

M.Devasigamani

..Respondent in both CRPs'

Common Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the order and decreetal order in I.A.Nos.1308 & 1309 of 2016 in O.S.Nos.775 & 771 of 2006 on the file of the Princial District Munsif Court, Vellore dated 02.02.2017.

For Petitioner in both CRPs : Ms.R.Sripriya for

Mr.V.Raghavachari

For Respondent in both CRPs : Mr.A.Gowthaman

COMMON ORDER

Since arguments were argued in both the revision petitions, it is only prudent that a common order is passed.

1/10



C.R.P(PD)Nos.1048 & 1049 of 2017

2.C.R.P.No.1048 of 2017 has arisen out of an order dated 02.02.2017 passed in I.A.No.1308 of 2016 in O.S.No.775 of 2006, which suit is now pending on the file of the Principal District Munsif Court at Vellore. C.R.P.No.1049 of 2017 had been filed against an order dated 02.02.2017 in I.A.No.1309 of 2016 in O.S.No.771 of 2006, which suit is also pending on the file of the Principal District Munsif Court at Vellore.

3.Both the aforementioned suits in O.S.Nos.771 & 775 of 2006 had been instituted by the same plaintiff, A.Jayapal, who is also the revision petitioner in both the revision petitions herein. O.S.No.771 of 2006 had been filed seeking a direction against the defendant therein / respondent herein to pay a sum of Rs.61,670/- stating that the aforesaid amount was arrears of rent payable to the plaintiff / Jayapal and also for the costs of the suit.

4.O.S.No.775 of 2006, had been filed seeking a judgment against the defendant for payment of a sum of Rs.61,670/- again claiming arrears of rent payable to the plaintiff. The property, for which the said rent is claimed,



C.R.P(PD)Nos.1048 & 1049 of 2017

is a residential premises at ground floor bearing Old Door No.19/D, New Door No.59/4, Chunnamambukkara Street, Vellore. The same premises is the subject property in both the suits.

5.Both the parties had an occasion to come earlier before this Court by filing two revision petitions in the aforementioned two suits in CRP(PD)Nos.4091 & 4092 of 2014. The defendant in the two suits, Devasigamani was the revision petitioner in the aforementioned two revision petitions. Necessity to file the said two revision petitions arose owing to an order passed in I.A.No.140 of 2014 in O.S.No.771 of 2006 and in I.A.No.141 of 2014 in O.S.No.775 of 2006. I refer to the order in the earlier Civil Revision Petitions because they appear to be quite connected with the issues raised in the present Civil Revision Petitions.

6.I.A.Nos.140 & 141 of 2014 in the two suits had been filed by the defendant, under Section 65 of the Indian Evidence Act, seeking permission to mark xerox copy of the rental agreement dated 28.07.2005 as secondary evidence. It necessitated the learned judge hearing the Civil



Revision Petitions to first examine or whether any such agreement in the nature of a rental agreement had actually been entered into. If the original is available and could not be produced, the sufficient reasons should be given for producing the secondary evidence / xerox copy and not the original. The learned Judge, during the hearing of the said revision petitions, examined the provisions under Section 63 of the Evidence Act and conditions which permit marking of secondary evidence and thereafter, had observed as follows:-

“11.The petitioner is seeking to mark xerox copy of the rental agreement dated 28.07.2005 entered between the respondent's father Annamalai Chettiar and petitioner. According to the petitioner, original rental agreement was with Annamalai Chettiar till his death and after his lifetime, the same is with the respondent. The respondent denied the existence of the said rental agreement dated 28.07.2005 and contended that the petitioner has fabricated alleged rental agreement for the purpose of the suits in order to avoid payment of arrears of rent. The respondent contended that the property was settled to his mother on 09.04.1958 for her lifetime and subsequently, to the respondent absolutely. On the date of settlement, respondent's mother took possession of the property and filed R.C.O.P.No.12 of 1997 for eviction of the petitioner from the shop No.19/3 and eviction was



ordered. Subsequently, respondent filed R.C.O.P.Nos.1 and 2 of 2005 for eviction of the petitioner from the shop Nos.19/D and 19 and obtained an order of eviction and took possession of three shops through Court by way of filing E.P. The respondent has marked the said documents to substantiate his claim. The respondent has also filed orders obtained in R.C.O.Ps filed by his mother as well as by him and delivery of possession to the respondent. In addition to that, the respondent also filed earlier proceedings in O.S.No.837 of 2005. In all the above proceedings, the petitioner has not mentioned about the existence of the rental agreement dated 28.07.2005.”

7.The observations made aforesaid had become final and is binding on the parties. Neither of the parties, particularly, the respondent herein / defendant in the two suits, had thought it prudent or necessary or appropriate to question the findings. Therefore, it can be taken that the said findings had also been accepted by the parties.

8.It has been very clearly stated by the learned Judge in the two revision petitions namely, CRP(PD)Nos.4091 & 4092 of 2014, that even in earlier proceedings, the defendant had not mentioned about the existence of the rental agreement dated 28.07.2005. It was also observed that there was



a contention raised that the said agreement, had been fabricated for the purpose of the suit to avoid payment of arrears of rent.

9.I reiterate that I am only stating the observations of the learned Single Judge, which observations, still stand.

10.It is for the learned Principal District Munsif, Vellore to take a decision whether such observations are binding on the issues to be adjudicated. I will leave that issue open but, certainly, the same fact cannot be reagitated once again. That is precisely what appears to have happened by filing I.A.No.1308 of 2016 in O.S.No.775 of 2006 and I.A.No.1309 of 2016 in O.S.No.771 of 2006. Both the Interlocutory Applications had been filed by the respondent herein / defendant. The reliefs sought in both the Interlocutory Applications were practically the same namely, to examine witnesses, and also to take summons through the Court for examining the respective witnesses to produce a document. That particular document is the agreement dated 28.07.2005. There has been a very serious observations made suspecting existence of such document or the veracity of such document in the earlier proceedings. In the teeth of that particular observation, admissibility of the alleged rental agreement dated 28.07.2005



itself is an issue, which will have to be answered by the Principal District Munsif adduce, since if a document is produced, it would remain a document and to be covered and be considered as an evidence it will have to be first admissible in manner known to law. If document is not admissible, it cannot even be marked or taken on file. Conversely, all documents which had been marked or given an exhibit number cannot also be stated to be admissible and such issue can be based at a later stage. Relevancy is another issue. Further the document will also have to be proved in manner known to law.

11.The learned Principal District Munsif while considering I.A.Nos.1308 & 1309 of 2016, had however entered into a discussion on Section 65 of the Evidence Act, 1872 and gone into the contours of such provision and observed that the petition had been filed seeking to examine witnesses. There cannot be any quarrel about examination of witnesses to adduce oral evidence. It had been also observed by the Principal District Munsif that the xerox copy of the agreement dated 28.07.2005 had already been filed and that, the Hon'ble Apex Court in a catena of decision, had



stated that photocopy may be received in evidence but its admissibility will be decided in the main suit. Unfortunately the catena of judgments have not been listed by the learned Principal District Munsif to bring light of the ratio made in those decisions. The learned Principal District Munsif should have considered the fact that said agreement had come into scrutiny by a learned single judge of this very Court and instead of relying on a catena of the Apex Court judgments he could very well have glanced at what the learned judge in CRP(PD)Nos.4091 & 4092 of 2014 had observed and taken those observations as a bench mark to decide about admissibility of such a document. When it is alleged that the said document itself had been created for the purpose of the suit to avoid payment of rental arrears then, unless the original is produced, xerox copy can never be marked.

12.I am afraid that the learned Principal District Munsif had misdirected himself, with respect to marking of the xerox copy. Provision of law provides marking of the secondary document but, at the same time, plausible reasons will have to be given as to what happened to the original and in whose possession such original is and, the reason for not marking the original or not being able to produce the original. Relying on a xerox copy



C.R.P(PD)Nos.1048 & 1049 of 2017

will not be help to the respondent herein. They will have to adduce evidence again orally but the document cannot be produced so long as the judgment in C.R.P(PD)Nos.4091 & 4092 of 2014 stands.

13.I view of the above observations, I would interfere with the order passed in I.A.Nos.1308 & 1309 of 2016 dated 02.02.2017, both filed in O.S.Nos.775 of 2006 & 771 of 2006 respectively.

14.Both the revision petitions are allowed. The respondent is permitted to let in oral evidence alone and that oral evidence may be subjected to cross-examination in the manner known to law. No costs. Consequently, connected miscellaneous petitions are closed.

15.The learned Principal District Munsif, Vellore may bestow some attention on the disposal of the suit, since it is complained that it is now pending on the file of the said Court for the past of 16 years. The learned Principal District Munsif Court ensure that the suit is disposed of atleast on or before 31.10.2022.

16.03.2022

kkn

Index:Yes/No

Internet:Yes/No

9/10



C.R.P(PD)Nos.1048 & 1049 of 2017

Speaking/Non-speaking order

WEB COPY

C.V.KARTHIKEYAN, J.

KKN

To:-

The Principal District Munsif Court,
Vellore.

C.R.P(PD).Nos.1048 & 1049 of 2017
and
CMP.Nos.5080 & 5081 of 2017

16.03.2022

10/10