



CRP.(PD).No.1303 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2022

CORAM:

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

CRP.(PD).No. 1303 of 2017

and

CMP.No. 6076 of 2017

KS.Eswari

... Petitioner

Versus

1. K.S. Easwaran

2. Deivanayaki

3. Samukatha

...Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, praying to eschew the document marked as Ex.D67, vide order dated 28.02.2017 from the evidence in O.S.No. 96 of 2011 on the file of Sub Court, Gobichettipalayam.

For Petitioner : Mr.V.P.K. Gowtham

For Respondent-1 : Mr.Zeenath Begum

For RR 2 and 3 : Mr.V.Rajesh



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ORDER

This Civil Revision Petition has been filed to eschew the document marked as Ex.D67, vide order dated 28.02.2017, from the evidence in O.S.No.96 of 2011 on the file of Sub Court, Gobichettipalayam.

2. Heard both sides and perused the materials available on record.

3. On a perusal of the records, it is seen that the petitioner/plaintiff filed the suit in O.S.No. 96 of 2011 before the Subordinate Court, Gobichettipalayam, for partition and other consequential reliefs. The respondents/defendants have contested the suit by way of filing written statement. Before the trial Court, trial has also commenced and plaintiff's side witness has been examined and defendants' side evidence was also examined as DW1 to DW3. After re-examination of DW3-Sreethar, on the side of the respondents/defendants, he has produced the Statement of Accounts Transaction Abstract for the period from 01.10.2011 to 28.02.2017, which was already marked as Ex.P.58 as Ex.D67. The petitioner/plaintiff has raised objection by stating that already, the same was marked by Ex.P.58, and in spite of production of the document



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before the trial Court, it was allowed to be marked by stating that at the time of disposing of the case, the validity of the said issue will be decided.

4. The learned counsel appearing for the revision petitioner submitted that the trial Court has failed to consider the 2nd respondent's witness had already marked a document as Ex.P.58 in the chief examination and thereafter, the petitioner's counsel during cross-examination marked the very same document as Ex.D67, which are copies of the transactions maintained by on M/s.Sakthi Sugars Private Limited. Even though an objection was raised by the petitioner counsel without considering the same, the document was once again marked as Ex.D67. Hence, the trial Court has failed to consider that the petitioner had objected for the marking of the document which is against Section 65-B of the Indian Evidence Act, and without considering the same, the document was allowed to be marked as Ex.D67. But the learned counsel for the respondents argued that, instead of filing an application to eschew the said document, the present revision is not maintainable, either in law or on facts.

5. It is an admitted fact that Statement of Account Transaction was already marked as Ex.P58. When the same document was once again



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marked it was objected to and in spite of such objection it was marked as Ex.D67 is not warranted. The trial Court has permitted to mark Ex.D67 erroneously and as such, the order passed on 28.02.2017 is totally erroneous, unjust and unfair and hence, this Court is inclined to allow the revision.

6. Accordingly, the Civil Revision Petition is allowed. The trial Court is directed to dispose of the suit in O.S.No. 96 of 2011 on the file of Sub Court, Gobichettipalayam, within a period of six months from the date of receipt of a copy of this order. Both parties are directed to co-operate for the trial. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

08.11.2022

msm

Speaking Order : Yes/No

To

1. The District Munsif Court, Dharapuram.
2. The Section Officer, V.R. Section, High Court, Madras.

T.V.THAMILSELVI, J.



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