



C.R.P. Nos.2346 & 2347 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 26.10.2022

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THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.Nos.2346 & 2347 of 2017

and

C.M.P. No. 11057 of 2017

K.Venkatesan,
S/o. Late Kupaiah Chettiar

... Petitioner in
both C.R.P.s

Versus

1. C.K.Nataraj,
S/o. Late Keppaiah Chettiar

2. C.K.Balakrishnan,
S/o. Late Keppaiah Chettiar

... Respondents in
C.R.P.No.2346/2017

1. C.K.Nataraj,
S/o. Late Keppaiah Chettiar

2. C.K.Balakrishnan,
S/o. Late Keppaiah Chettiar

3. S.Rajalakshmi,
W/o. Sri Rangan

4. D.Saraswathi,
W/o. P.T.Dhamodharan

5. R.Parvathi,
W/o. Ramachandran



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6. G. Nagarathinam,
W/o. Govindaraj

7. K.Dhanalakshmi,
W/o. Krishnamoorthy

... Respondents in
C.R.P.No.2347/2017

PRAYER in C.R.P.No. 2346 of 2017 : Civil Revision Petition is filed under Art. 227 of Constitution of India, praying to set aside the fair and decreetal order dated 13.03.2017 in I.A.No. 143 of 2017 in O.S.No.498 of 2009 on the file of III Addl. District and Sessions Judge's Court, Coimbatore.

PRAYER in C.R.P.No. 2347 of 2017 : Civil Revision Petition is filed under Art. 227 of Constitution of India, praying to set aside the fair and decreetal order dated 13.03.2017 in I.A.No. 197 of 2017 in O.S.No.498 of 2009 on the file of III Addl. District and Sessions Judge's Court, Coimbatore.

For Petitioners in
both C.R.P.s : Mr.C.R.Prasanan

For Respondents in
both C.R.P.s : Mr.S.Kadarkarai for R1

Mr.Karthik Ranganathan for R2

COMMON ORDER



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The Revision Petitioner herein is the first defendant in the suit in

O.S.No. 498 of 2009 on the file of III Addl. District and Sessions Court, Coimbatore, which was filed by the 2nd respondent/plaintiff for the relief of partition and other consequential reliefs against defendants 1 to 7.

2. The said suit was contested by the defendants by filing their written statement. Issues were framed and on the side of plaintiff, P.W.1 was examined, at that time, the 2nd defendant filed an application in I.A.No. 143 of 2017 praying the court to condone the delay in producing the documents 1 to 3 viz., xerox copy of order issued by income tax department dated 27.11.1976, Will dated 23.01.1999 said to be executed by father of 2nd defendant in favour of 2nd defendant and xerox copy of agreement dated 06.12.2000 between Keppaiah Chettiar, Ponnammal and defendants 3 to 7, named as Vardhamana Agreement. The said application was strongly objected by the Revision Petitioner/1st defendant stating that Will cannot be marked during the cross-examination of P.W.1 and the same should be marked only through attesting witness and also raised objections with regard to marking of other documents. The 2nd defendant also filed another application in I.A. No. 197 of 2017 under Sec.65(a) of Indian Evidence Act seeking permission to mark xerox copy of Vardhamana Agreement dated



06.12.2000. The said application was also strongly objected by this petitioner/1st defendant stating that with regard to the said document, there is no pleading in the written statement and without the pleading, it cannot be marked or produced on the side of defendants, besides there is no particulars with regard to original document and without which, the document cannot be produced or marked on the side of defendants.

3. Both the applications were jointly heard by the trial judge and on considering the both side submissions, the trial judge held that there is no stipulation under Sec. 68 of Evidence Act that the Will should be marked only through attesting witness. For that, he relied the authority held in the case of *Valliathal and another vs. P.Duraisamy and another* reported in **2014 (2) MWN 508**. By relying the said authority, the trial court held that there is no bar in marking the Will through a propounder. With regard to proof of document dated 06.12.2000, xerox copy of Vardhamana agreement, the trial court held that already the 2nd defendant issued notice to the defendants 3 to 7 to produce original document and the same was replied that they are not having such document. Hence, he seeks permission of the court to produce xerox copy of the said document, which is permissible in law. Accordingly, he was permitted to produce the xerox copy of



Vardhamana Agreement. Challenging the findings of the trial court, the 1st defendant preferred these Civil Revision Petitions.

4. The learned counsel for Revision Petitioner submitted that in the suit, the revision petitioner herein is the 1st defendant and according to him, the 2nd defendant colluded with the plaintiff and making some arrangement in getting the property denying the right of 1st defendant. Now, the 2nd defendant attempted to mark the document through P.W.1 as such it is not permissible in law. But, the trial court without appreciating the facts and circumstances, allowed the said applications. Hence, he prayed to set aside the orders passed by the trial court.

5. By way of reply, the learned counsel for 2nd respondent/plaintiff submitted that only the evidence of P.W.1 was begin and the evidence was not fully cross-examined on the side of plaintiff, at that time, the 2nd defendant seeking permission of the court to produce the document and he has not taken any steps to mark the document. In support of his contentions, he relied upon the authorities laid down in the case of **Karthik Meyyappan vs. Sri Sutha Devi** reported in **2016 (3) MWN 148** and in the case of **Srinivasa Naicker vs. Kalappan Alias Kalipandi and others** reported in **CDJ 2013 MHC 2484**. But, the learned counsel for 1st defendant also



submitted that the 2nd defendant filed applications only to drag on the proceedings, but taken steps to mark the documents through P.W.1.

6. Considering both side submissions and on perusal of records, it reveals that already the 1st defendant took a defence that 2nd defendant colluded with the plaintiff. In such circumstances, the alleged Will is supposed to be marked not through P.W.1 and as per the settled preposition, the same can be marked through one of the attesting witness of the Will. Accordingly, these Civil Revision Petitions are allowed and the findings of the learned trial judge in I.A.Nos. 143 and 197 of 2017 are set aside. With regard to production of Vardhamana Agreement, as rightly pointed out by the 1st defendant's counsel, there is no specific pleading in the written statement and it is settled preposition, without pleading, a document cannot be permitted to mark. Furthermore, the 2nd defendant not stated about Vardhamana Agreement specifically in his written statement nor he stated about the particulars of original document. Without furnishing such particulars and also without the pleading, now the 2nd defendant attempted to produce the xerox copy of Vardhamana agreement through P.W.1, as such, is not permissible in law. But, the trial court failed to appreciate that



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legal aspect and erroneously allowed the applications and the same are liable to be set aside.

7. In the result, these Civil Revision Petitions are allowed and the findings of the learned trial judge in I.A.Nos. 143 are 197 of 2017 are set aside. The authorities relied on by the 1st respondent are not applicable to facts of the present case. However, the 2nd defendant is permitted to mark Will through attesting witness in compliance of Sec.65 (a) and Sec.68 of Evidence Act and the trial court is directed to proceed with the trial and dispose the suit within a period of six months from the date of receipt of copy of this order. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

26.10.2022

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To

III Addl. District and Sessions Judge,
Coimbatore.

T.V.THAMILSELVI, J.



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