



C.R.P.No.4488 of 2017

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2022

CORAM

THE HON'BLE MR. JUSTICE N.ANAND VENKATESH

C.R.P.No.4488 of 2017

and

C.M.P.Nos.6004 of 2020 & 21182 of 2017

K.Rangaraj

... Petitioners

.Vs.

1.K.Sreenivasan

2.A.Kalimuthu Pillai

3.A.Meenakshi

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final order of the IV Additional District Judge, Coimbatore in I.A.No.570 of 2016 in O.S.No.461 of 2015 dated 04.08.2017.

For Petitioner :Mr.K.Venkatasubban



C.R.P.No.4488 of 2017

WEB COPY

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order passed by the Court below in I.A.No.570 of 2016 in O.S.No.461 of 2015 dated 04.08.2017 dismissing the application filed by the petitioner/third defendant under Order XIII Rule 3 of the Code of Civil Procedure to reject Ex.A6 marked through PW1.

2. The first respondent/plaintiff filed a suit seeking for the relief of declaration and for permanent injunction. The pleadings were completed, issues were framed and the case was at the stage of examination of witnesses. During the examination of PW1, Ex.A6 which is the sworn affidavit of the first defendant was marked. At the time of marking this document, no objections were raised. However subsequently the petitioner/third defendant filed an application in I.A.No.570 of 2016 to reject Ex.A6 marked through PW1. This application came to be dismissed by the Court below and aggrieved by the same, this Civil Revision Petition has been filed before this Court.



C.R.P.No.4488 of 2017

WEB COPY

3. Heard Mr.K.Venkatasubban, learned counsel appearing for the petitioner.

4. The learned counsel for the petitioner submitted that Ex.A6 can be marked only through the first defendant and it ought not to have been marked through the plaintiff, who was examined as PW1. The learned counsel submitted that in the affidavit that was marked as Ex.A6, a statement was made to the effect that the Will dated 08.03.2001 was executed by Angappa Pillai in favour of the plaintiff. The petitioner contended that the alleged affidavit is not true and valid document and such an affidavit of a living person ought not to have been marked through PW1.

5. In the considered view of this Court, Ex.A6 is an affidavit (உறுதிமொழி பத்திரம்) which is said to have been executed by the first defendant wherein there is a mention about the Will dated 08.03.2001 and that the same was executed by the Angappa Pillai in favour of the plaintiff.



WEB COPY

This document was marked through PW1 and no objections were raised at the stage of marking the document. The Court below has given a finding to the effect that marking of Ex.A6 through PW1 touched upon the mode or method of proof of the document and it did not relate to the very admissibility of the document. Hence, the Court below gave a finding that this document cannot be rejected subsequently on the objections raised by the petitioner. If at all the petitioner wants to confront this document, it can always be done when the first defendant is in the witness box since this document can be treated as former statement of the first defendant. If the contents of Ex.A6 is to be contradicted, it will always be open to the parties to put it to the first defendant as contemplated under Section 145 of the Indian Evidence Act. In short, the petitioner has not lost any right just because Ex.A6 was marked through PW1. By merely marking a document, that does not mean that the Court will act upon the document and it will depend upon the relevance of the document and also the petitioner will get an opportunity to cross-examine the concerned party and establish his case.



WEB COPY



C.R.P.No.4488 of 2017

6. In view of the above, this Court does not find any infirmity or illegality in the order passed by the Court below. The right that is available to the petitioner has also been made clear in this order. Hence this Court does not find any ground to interfere with the fair and the decretal order of the Court below made in I.A.No.570 of 2016 in O.S.No.461 of 2015.

7. In the result, this Civil Revision Petition stands dismissed. The Court below is directed to dispose of O.S.No.461 of 2015 within a period of four months from the date of receipt of copy of this order and file a compliance report. Consequently, connected miscellaneous petitions are also closed. There shall be no order as to costs.

12.12.2022

Speaking/Non-speaking order

Index: Yes/No

Internet : Yes/No

nsa



WEB COPY



C.R.P.No.4488 of 2017

N.ANAND VENKATESH,J.

nsa

C.R.P.No.4488 of 2017
and C.M.P.Nos.6004 of 2020 & 21182 of 2017

12.12.2022