IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P. No.2241 of 2019
and C.M.P.No.14540 of 2019

1.Sampathkumar

2.Mrs.Leela

3.Minor Harini
Rep.by her Mother & Guardian Mrs.Leela

4.Minor Bavadharani
Rep.by her Mother & Guardian Mrs.Leela

.. Petitioners

vs.

1.Mrs.Thilaga Sulochana

Dwaragadas (Died)

2.Punjab National Bank
Oppanakara Street Branch,
Coimbatore – 641 001.

3.Punjab National Bank,
Ramnagar Branch,
Coimbatore – 641 001.

4.Punjab & Sindh Bank,
Oppanakara Street Branch
Coimbatore – 641 001.

5.Lakshmi Vilas Bank,
Gondampalayam Bank,
Coimbatore – 30.

6.Kotak Mahindra Bank
Skanda Square
727, Avinashi Road,
Coimbatore – 641 002.

7.Integrated Enterprises (India) Ltd.,
Depositor Division,
1st Floor,
Kences Tower,
No.1, Ramakrishna Street,
North Usman Road,
T.Nagar,
Chennai – 600 017.

8.Karvy Consultants Limited,
Depositor Participant,
21, Avenue 4, Street No.1,
Banjara Kills,
Hyderabad -35 and
Branch Office:
SNV Chambers, First Floor,
D.No.482/483, Cross Cut Road,
Opp.Power House,
Gandhipuram,
Coimbatore – 641 012.

9.Kotak Securities Ltd.,
Bakhtawar
1st floor,
229, Nariman Point
Mumbai – 21 and
Branch Office:
Shop No.1437, 1st Floor,
Red Rose Chambers,
Trichy Road, Coimbatore – 641 018. .. Respondents

Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order of the V Additional District Judge's Court at Coimbatore, dated 29.03.2019 in I.A.No.330 of 2018 in O.S.No.654 of 2010.

For Petitioners	:	Mr. Valliappan P.
For Respondents (R1)	:	Mr.A.Ramkumar(No appearance)
(R2 & R3)	:	Mr.M.L.Ganesh(No appearance)
(R4 to R9)	:	No appearance

ORDER

The Civil Revision Petition arises against the fair and decreetal order of the V Additional District Judge's Court at Coimbatore, dated 29.03.2019 in I.A.No.330 of 2018 in O.S.No.654 of 2010.

2. The 1st defendant in O.S.No.654 of 2010 is the Civil Revision Petitioner herein. The plaintiff/daughter has filed a suit for Partition. She wanted to file the deposition of her father made before the Income tax authorities as a part of the record in the suit. She did not have the original, but was able to procure a photostat copy from her father's Auditor Mr.Alagirisamy. She marked the Photostat copy of the same. To

unmark the said document, an application was filed in I.A.No.643 of 2010. The said application was dismissed by the trial Court, against which, a revision was preferred in C.R.P.(PD).No.4719 of 2013. The revision was allowed on 08.02.2017, stating that as the document does not comply with the requirements of Section 65 of the Indian Evidence Act, the Photostat copy cannot be received in evidence.

3. After allowing of C.R.P.(PD).No.4719 of 2013, the plaintiff/petitioner took out an Interlocutory Application in I.A.No.330 of 2018 for the purpose of summoning the Commissioner of Income Tax, Coimbatore to produce the sworn statement of Mr.M.Balasubramanian, who is the father of the petitioner and the 1st respondent. This was opposed by the first respondent/Civil Revision petitioner. The objection was overruled and the application was allowed. The Court permitted taking out of summons to the Income Tax Department. Challenging the same, the present Civil Revision Petition has been filed.

4. Heard Mr.P.Valliappan, learned Senior counsel appearing for Mr.Dheeraj, learned counsel for the civil revision petitioner and none represents the respondents.

5. Perusal of the records shows that Ex.A11 was “Unmarked” by an order of this Court as it did not comply with the requirements of Section 65 of the Indian Evidence Act.

6. Mr.P.Valliappan, learned Senior Counsel for the civil revision petitioner would argue that since the Civil Revision Petition in C.R.P.(PD).No.4719 of 2013 was allowed on 08.02.2017, the petitioner cannot be permitted to summon the record. He would further urge this Court to hold since there are no pleadings with respect to document, the summoning of the original from the Income Tax Department cannot be permitted.

7. I am unable to accept both the contentions of the learned Senior counsel for the civil revision petitioner. What was originally unmarked was the attempt of the plaintiff to mark a photostat copy without complying with the requirements of Section 65 of the Indian Evidence Act. Now the plaintiff wants to summon the original from the Income Tax Department. This will be a step towards compliance of requirements of Section 65 of the Indian Evidence Act. The defendant cannot dictate to the plaintiff as to in what manner she has to produce the evidence. The

same rule holds vice-versa. It is the positive assertion of the plaintiff that her father came before the Income Tax authorities and had given statement with respect to the manner of acquisition of properties. That is a relevant fact to be seen at the time of final disposal of the suit. The plaintiff can be permitted to produce evidence to substantiate her case. It is the specific pleadings that Mr.M.Balasubramanian had given the sources and the manner in which the property devolved on him to the Income Tax Department. The statement made by the father would certainly help both parties in order to arrive at a just and proper conclusion with respect to the title. Further issuance of summons is the discretionary order. The learned trial Judge has exercised discretion, unless and until it is arbitrary and capricious, I should not interfere under Article 227 of the Constitution of India.

8. In the light of the above, the civil revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

14.08.2023

Index:Yes/No
Neutral Citation:Yes/No
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To:

The V Additional District Judge's Court,
Coimbatore.

V. LAKSHMINARAYANAN, J.

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