



CRP.Nos.2293 & 2620 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.02.2023

Pronounced on : 22.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.Nos.2293 & 2620 of 2019 and
CMP.Nos.14962 & 17302 of 2019

CRP.No.2293 of 2019

- 1.R.Kasiviswanathan
- 2.R.Balasubramanian
- 3.Ramayya Iyer Valliammal Trust
Rep. by (i) R.Kasiviswanathan,
Managing Trustee,
(ii)R.Balasubramaniam,
Joint Managing Trustee
- 4.Vahini Trust rep. by
R.Kasiviswanathan,
Managing Trustee,
(ii) R.Balasubramaniam,
Joint Managing Trustee

... petitioners

Vs.

- 1.R.Venkatasubramaniam @ R.V.S.Manian,
- 2.V.Shankar
- 3.V.Ganesan



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4.Dr.R.Mohanram

5.Bala Hariharan

6.R.V.Veeramani

7.R.V.Ramasubramanian

8.R.V.Viswanathan

9.R.Veni

(Notice to the respondents 4 to 9 is not necessary) ... Respondents

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 18.06.2019 made in Notice in Trust OP.No.46 of 2016 on the file of the learned Principal District Court, Erode.

For Petitioners : Mr.N.Manokaran

For Respondents

For R1 to 3,

6 to 9 : Mr.M.K.Kabir,
Senior Counsel
for Mr.M.Jayaraman

R4 & 5 : Given up

CRP.No.2620 of 2019

1.R.Kasiviswanathan

2.R.Balasubramanian

3.Ramayya Iyer Valliammal Trust

Rep. by (i) R.Kasiviswanathan,
Managing Trustee,

(ii)R.Balasubramaniam,
Joint Managing Trustee,



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4. Vahini Trust rep. by
R. Kasiviswanathan,
Managing Trustee,
(ii) R. Balasubramaniam,
Joint Managing Trustee

... petitioners

Vs.

1. R. Venkatasubramaniam @ R. V. S. Manian,
2. V. Shankar
3. V. Ganesan
4. Dr. R. Mohanram
5. Bala Hariharan
6. R. V. Veeramani
7. R. V. Ramasubramanian
8. R. V. Viswanathan
9. R. Veni

... Respondents

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 20.09.2018 passed in IA.No.669 of 2018 in OP.No.46 of 2016 pending on the file of the learned Principal District Court, Erode and to allow the civil revision petition.

For Petitioners : Mr. M. Narayanaswamy

For Respondents

For R1 to 3,

6 to 9 : Mr. M. K. Kabir,
Senior Counsel
for Mr. M. Jayaraman

R4 & 5 : Given up



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COMMON ORDER

The civil revision petition in CRP.No.2293 of 2019 has been filed to set aside the order dated 18.06.2019 made in Notice in Trust OP.No.46 of 2016 on the file of the learned Principal District Court, Erode, thereby allowed the 'notice to produce document' in OS.No.46 of 2016. The civil revision petition in CRP.No.2620 of 2019 has been filed to set aside the fair and decretal order dated 20.09.2018 passed in IA.No.669 of 2018 in OP.No.46 of 2016 pending on the file of the learned Principal District Court, Erode thereby dismissed the application to strike out the names of the third petitioner and respondents 4 to 8 in the main OP.

2. The petitioners are respondents 2,3,9 & 10 in the Trust O.P. filed by the respondents 1 to 3 herein. Respondents 1 to 3 filed Trust OP.No.46 of 2016 on the file of the learned Principal District Judge, Erode under Section 34 of Indian Trusts Act seeking permission to sell the petition mentioned properties. The case of the respondents 1 to 3 herein is that one, Venkatasubba Iyer owned properties at Erode. He had two sons and he had executed settlement deed in favour of his two sons i.e. V.Ramayya Iyer and



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V.Sakaranarayana Iyer. Later, the said Sankaranarayana Iyer had executed sale deed with regards to his half share and the said Ramayya Iyer became absolute owner of the entire property. Thereafter, the said Ramayya Iyer and his wife i.e. Valliammal found Trust in the name of 'V.Ramayya Iyer Valliammal Trust' on 05.01.1970 through the registered Deed of Trust contributing Rs.5,000/- each from the Hindu undivided family funds from his account. Thereafter, on 14.09.1992, both had executed supplementary deed with certain modified clauses for the original Trust Deed. On the same day, the said V.Ramayya Iyer created another Trust by name 'Vahiny Trust' contributing a sum of Rs.1,000/- from the said account. Both the trusts were found as private trust with object of providing better living beneficiaries to male heirs of the founders only.

2.1 Thereafter he had executed settlement deed on 05.01.1970 in respect of two buildings in favour of the Trust 'V.Ramayya Iyer Valliammal Trust'. Again on 15.09.1992, he had executed Will bequeathing four numbers of remaining house and vacant site properties in favour of another Trust called 'Vahiny Trust'. The petitioners and the respondents are the legal heirs of the said Ramayya Iyer. Therefore, they came forward with the petition seeking permission under Section 34 of the Trusts Act to sell the schedule mentioned



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property and deposit the sale proceeds into the bank in the name of the Trust for further development of Trust. All the respondents were added as necessary parties to the proceedings in order to avoid the multiplicity of proceedings.

Respondents 1 to 3 herein filed the following documents:

(a) 05.01.1970 - *“V.Ramayya Iyer Valliammal Trust”*
copy of regd. Deed of Trust (xerox)

(b) 14.09.1992 – *Supplemental deed reg. V.Ramayya Iyer*
Valliammal Trust” (xerox)

(c) 14.09.1992 – *“Vahini Trust” copy of regd. Deed of*
Trust (xerox)

(d) 01.01.1973 – *Settlement deed executed by*
R.Balasubramaniam (xerox)

(e) 15.09.1992 – *Xerox copy of Will executed by*
V.Ramayya Iyer

3. Resisting the same, respondents 2, 3, 9 & 10 in Trust OP / the petitioners herein filed counter in support of their case. They also admitted those documents and they also relied upon the very same documents in their counter. However, they produced xerox copy of those documents, whereas the petitioners herein admittedly possessed those original documents. Therefore, notice was issued to produce the documents to the counsel on behalf of them,



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thereby directed to produce the following original documents which are in their custody in the next hearing date. The documents are as follows:

(a) 05.01.1970 - *“V.Ramayya Iyer Valliammal Trust”*

copy of regd. Deed of Trust

(b) 14.09.1992 – *Supplemental deed reg. V.Ramayya Iyer Valliammal Trust”*

(c) 14.09.1992 – *“Vahini Trust” copy of regd. Deed of Trust*

(d) 01.01.1973 – *Settlement deed executed by R.Balasubramaniam*

(e) 15.09.1992 – *Copy of Will executed by V.Ramayya Iyer*

(f) 30.05.1951 – *Settlement deed executed by Venkatasubba Iyer in favour of V.Ramayya Iyer and V.Sankaranarayana Iyer(regn.copy)*

(g) 30.05.1951 – *Sale deed executed by V.Sankaranarayana Iyer in favour of V.Ramayya Iyer (regn.copy)*

3.1 The said notice was also filed before the court. On receipt of the said notice to produce documents, the petitioners herein filed memo of counter to the notice to produce those documents and contended that as per the sub-clause (2) of proviso to Section 66 of Evidence Act, a secondary evidence can be adduced and no notice to produce those documents is required. They also



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filed petition under Order 1 Rule 10(2) and Section 151 of CPC to strike out the names of the third petitioner and respondents 4 to 8 in the main petition on the ground that the main petition is with regards to the matter of two trusts i.e. 'V.Ramayya Valliammal Trust' and 'Vahini Trust'. They are not trustees as per the Trust Deeds and as such they are not necessary parties to the main petition. They are neither trustees nor beneficiaries of the two Trusts and as such they are not necessary parties. Respondents 1 to 3 herein filed counter and stated that the main intention of the author of the Trusts is that the family of the Trustees must be benefited and certainly not that the benefits should be enjoyed by the individuals as per their whims and fancies. They become beneficiaries from and out of the share given to their family members. For a fair adjudication of the petition, they should not be exonerated and they are necessary parties. The notice to produce those documents was allowed and the petition filed to strike out those names in the original petition was dismissed.

4. The learned counsel for the petitioners in CRP.No.2293 of 2019 would submit that they have not disputed the existence of the documents listed in the notice to produce and as such there is absolutely no need to produce those documents before the court. All the documents are very much available in



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the Office of the Sub Registrar and they can very well apply for the certified copies of the same and mark those documents before the court. The certified copies of the same can be very well received in evidence as contemplated under Section 57(5) of the Registration Act, 1908. In fact, certified copy of those documents can be received in the form of secondary evidence under Sections 63 and 65 of the Evidence Act, 1872. The production of original documents is not necessary when the existence of the documents is admitted as per Section 70 of the Indian Evidence Act.

4.1 He further submitted that without even quoting any provision of law, simply filed notice before the court. In support of his contention, he relied upon the judgment of this Court in the case of *Abdul Rashid Sahib Vs. Ramachandran and another* reported in (2022) 3 CTC 667, wherein it is held that unless a court decides to proceed ex parte, no court should act solely on a memo of the counsel of the party conceding the substantive right of the party viz-a-viz the subject matter of the suit, or right of defence, for passing any non-adjudicatory decree or appealable orders. It is advisable that in every case where the court chooses to act on any memo of the counsel, it is required to evaluate the consequences of acting on such memo. After all in a functional



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audit of its performance only the courts become accountable to the litigant in particular, and public general, and its imprudence in mindlessly acting on the memo of the counsel, it may invite embarrassment upon itself. In no case the court can pass a decree or order which it is not competent to pass, or which violates any of the mandatory provisions of law.

5. The learned counsel for the petitioners in CRP.No.2620 of 2019 submitted that the main petition itself has been filed under Section 34 of Indian Trusts Act for selling the property of the Trust in which the persons who were not trustees are not proper and necessary parties. Deletion of their names in the petition would not any way prejudice the respondents. In respect of selling the properties mentioned in the petition, they are no way connected and as such they are not necessary parties to the proceedings. They are all legal heirs of the daughters of the founders of the Trust. As per the Trust Deed, only the sons alone are entitled to / beneficiaries. That being the case, inclusion of the legal heirs of the daughters is absolutely unnecessary and any way their presence would be of no use to decide the issue involved.



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6. Per contra, the learned Senior Counsel appearing for the respondents would submit that the petitioners categorically admitted those documents which were directed to be produced. In fact, they also relied upon the very same documents in their counter. There is absolutely no prejudice would be caused to the petitioners on direction to produce those documents before the court. He further submitted that Section 65 of the Indian Evidence Act is very clear about the situation in which secondary evidence can be accepted. At the same time, secondary evidence is to be given only to prove the existence, condition or contents of a document and nothing beyond that. Before secondary evidence is adduced, a proper foundation is to be laid for not producing the primary evidence. At the same time, the admission of the document must be unclaimed the benefit of Section 70 of the Indian Evidence Act. Therefore, there is no hardship to either party in producing all the documents mentioned in the notice. Therefore, the court below rightly directed to produce those documents and it is not required any interference by this Court. He also relied upon the judgment of the Hon'ble Supreme Court of India in the case of *H.Siddiqui(dead) by LR's Vs. A.Ramalingam* reported in (2011) 4 SCC 240, with regards to admissibility of secondary evidence. The Hon'ble



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Supreme Court of India held that admitting signature in the photocopy of the document, does not amount to admitting the contents of the document. Where original documents are not produced at any time, nor, any factual foundation has been led for giving secondary evidence, it is not permissible for the court to allow a party to adduce secondary evidence. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. Secondary evidence relating to the contents of a document is inadmissible, until the non production of the original is accounted for. Therefore there is absolutely nothing wrong by direction issued by the court below to produce the original documents by the petitioners herein.

6.1 Insofar as the application to strike out the names in the original petition, he submitted that it does not arise and it is a premature stage. The main petition is filed seeking permission to sell properties in which they are also beneficiaries. Therefore, they are just and necessary parties and they were rightly impleaded as parties to the petition.

7 Heard, Mr.N.Manokaran, the learned counsel for the petitioners in CRP.No.2293 of 2019, Mr.M.Narayanaswamy, the learned counsel for the



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petitioners in CRP.No.2620 of 2019 and Mr.M.K.Kabir, learned Senior Counsel appearing for the respondents in both the civil revision petitions.

8. While pending the petition seeking permission to sell the properties belongs to the Trusts, respondents 1 to 3 herein issued notice to produce documents to the counsel of the petitioners herein. They also filed it before the court. The only contention raised by the petitioners is that without quoting any provision, the notice to produce documents was filed before the court and it is impermissible in law. Admittedly respondents 1 to 3 herein relied upon those documents and they filed xerox copy of those documents along with the original petition. The petitioners herein categorically admitted those documents and they also relied upon the very same documents and they are in possession of all original documents. They resisted the petition seeking permission to sell the property mainly on that the permission sought for was not in the interest of welfare of the objects set out by the authors of the Trust. Respondents 1 to 3 are attempting to delegate the powers of the Board of Trustees and seeking order to convert the immovable properties of the Trusts into cash in order to usurp the power of the Board of the Trustees. On receipt of notice to produce documents, the petitioners herein also filed memo of counter.



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It revealed that both the petitioners herein as well as respondents 1 to 3 herein categorically admitted the execution of Will and admitted all the documents and it shall be sufficient proof of its execution. Section 62 of the Evidence Act deals with primary evidence and Section 63 deals with secondary evidence. Section 65 of the Evidence Act deals with cases in which the secondary evidence relating to documents may be given. Section 66 of the Evidence Act deals with the Rules as to notice to produce the original. In order to produce the secondary evidence, one should satisfy the requirements specified under Section 65 of the Indian Evidence Act unless and otherwise the party who is in possession of the original documents must be ordered to produce the original before the court. Whereas the present petition has been filed for seeking permission to sell the properties belong to the Trusts. Therefore, no prejudice would be caused for the petitioners herein to produce the original documents in order to decide the petition.

9. The Hon'ble Supreme Court of India held that the secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. Secondary evidence relating to the contents of a document is inadmissible, until the non production of the original



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is accounted for. Therefore, the court below rightly directed the petitioners herein to produce those documents and this Court finds no infirmity or illegality in the order passed by the court below. Accordingly, the civil revision petition in CRP.No.2293 of 2019 is liable to be dismissed.

10. Insofar as the civil revision petition in CRP.No.2620 of 2019, though they are the legal heirs of the daughters of the said Ramaiyya Iyer, the main petition has been filed seeking permission to sell the Trust properties. Respondents 1 to 3 and the father of the petitioners 2 and 3 i.e. Late R.Vaikundapathy are the sons and respondents 4 and 8 and one, (late) Ganga Venkateswaran are the three daughters of late V.Ramaiyya Iyer and Valliammal. Therefore, they are necessary and proper parties to decide the petition seeking permission to sell the properties. Further, whether they have right over the property or not to be decided only in the main OP. Therefore, they are proper and necessary parties to decide the petition and the court below rightly dismissed the application and this Court finds no infirmity or illegality in the order passed by the court below. Accordingly, the civil revision petition in CRP.No.2620 of 2019 is also liable to be dismissed.



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11. In the result, both the civil revision petitions are dismissed.

Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

22.02.2023

Speaking/non-speaking
Index : Yes/No
Internet : Yes
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G.K.ILANTHIRAIYAN, J.

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To

The learned Principal District Court,
Erode

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