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C.R.P. No. 593 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2023

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THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 593 of 2023
and C.M.P. No.4740 of 2023

Valli

... Petitioner

Vs

1. Thangavel
2. Easwaran

... Respondents

PRAYER : Civil Revision Petition filed under Art. 227 of the Constitution of India, praying to set aside the order and decree dated 19.10.2022 in I.A.No.5 of 2022 in O.S.No.762 of 2016 on the file of IV Additional District Munsif Court, Salem.

For Petitioner : Mr.R.Rajarajan

For Respondents : Mr.V.Sekar

ORDER

Challenging the order in I.A.No.5 of 2022 in O.S.No.762 of 2016 dated 19.10.2022 passed by the learned IV Additional District Munsif, Salem, the petitioner has filed this Civil Revision Petition.



C.R.P. No. 593 of 2023

2. The Revision Petitioner is the plaintiff who filed an application before the trial Court seeking to cancel Ex.B1 and Ex.B2 which were marked in OS.No.762 of 2016 on the file of the IV Additional District Munsif, Salem. Originally, O.S.No.762 of 2016 has been filed for permanent injunction and the suit was posted for trial and PW1 was examined. During cross examination, one photograph along with the CD was marked as Ex.B1 and Ex.B2 on the side of the defendant, which ought to have been marked either through the person who took the photo or the person responsible for taking that photo, besides not enclosed with Form 65B certificate, which is mandatory as per the Indian Evidence Act. Therefore, she prays to cancel Ex.B1 and Ex.B2 which were marked. The defendant stated that during cross examination, the photograph was shown to the plaintiff and she admitted that she is found in the photo, and accordingly, the CD was also marked as Ex.B2. Mere marking of the documents does not amount to proof or admission of the entire contents, and hence the learned trial Judge dismissed the suit application in I.A.No.5 of 2020. By challenging the said order, the petitioner has preferred this Revision.



C.R.P. No. 593 of 2023

WEB COPY

3. The learned counsel for the petitioner / plaintiff argues that the defendant ought to have marked the photo and CD along with Form 65B certificate through proper witness.

4. The learned counsel for the respondent / defendant submits that mere marking of the document would not amount to proof or admission of the contents and the learned trial Judge is having every discretion to decline the document. To support his contentions, the learned counsel for the respondent relied on the following authority of ***the Hon'ble Supreme Court reported in (2001)3 Supreme court Cases 1, Bipin Shantilal Panchal vs. State of Gujarat and another***, it which it is held as follows:

"14. When so recast, the practice which can be a better substitute is this; Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial Court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be



C.R.P. No. 593 of 2023

decided at the last stage in the final judgment. If the Court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the Court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed."

5. Accordingly, the said ratio is to be followed, but, coming to the facts of the case, that during the cross examination of PW1, the photo and CD were shown to her and she admits that she is found in the Photo. Immediately, the photo and CD, marked as Ex.B1 and Ex.B2. But on perusal of her deposition she denied the same, her deposition as follows:-

"என்னிடம் காண்பிக்கப்படும் புகைப்படத்தில் காட்டப்படும் நபர் யார் என்றால் நான் இல்லை. என்னிடம் காண்பிக்கப்படும் புகைப்படத்தில் காட்டப்படும் வீட்டில்தான் என் தகப்பனார் குடியிருந்தார் என்றால் சரிதான். அந்த புகைப்படம் குறுந்தகடுடன் பிவாசாஆ 1. 2 ஆக குறியீடு செய்யப்படுகிறது."



C.R.P. No. 593 of 2023

WEB COPY

6. Though she admits the portion of the contents of the document, she denied the portion of part of the said photograph. As per the ratio laid down by the Hon'ble Supreme Court in the above decision, the photograph can be marked by the witness during cross examination. Accordingly, the learned trial Judge marked the said document, but however, it clearly reveals that the authenticity of the document has to be proved.

7.To support his contentions, the learned counsel for the respondent relied on the following authority of ***the High Court of Madras reported in "2006(2) CTC 43, P.Rama Srinivasa Rao vs.N.Ragavan"***, it which it is held as follows:

"15. If the photograph in the hands of the cross-examiner is marked during cross-examination, how could the party who called the witness could cross-examine the witness as to the accuracy of the photograph. Hence though the photograph is admissible, it cannot be marked during the cross examination of the opponent or his witnesses. It is always desirable to produce the photographs by examining the person who took the photographs or by the party who is



C.R.P. No. 593 of 2023

WEB COPY

relying on the photographs or at whose instance the photographs were taken. It cannot be marked during cross-examination of the opponent or his witnesses."

16. In the case in hand, document is the photograph of the new construction by the plaintiff. Since the photograph has been produced by the defendant, the photographer must have been engaged by the defendant, who would have taken photographs according to the instruction given by the defendant. Plaintiff cannot speak to the correctness /accuracy or otherwise of that photograph. Mere admission of the plaintiff that it is a photograph would not amount to correctness / accuracy of the photography or the angle of the building thereon. புகைப்படம் சாட்சியிடம் காட்டப்பட்டபது, புகைப்படம் என்று ஒப்புக்கொண்டார். Though the plaintiff has admitted that the document is a photograph, the same cannot be marked through him since he has not taken the photograph".

8. The person who took the said photo is a right person to speak about the accuracy. Therefore, though petitioner admit the portion of the contents, denied the remaining part, hence photos marked through her is not a proper procedure.



C.R.P. No. 593 of 2023

WEB COPY

9. Hence, the deposition with regard to the content of the photograph has to be kept in the deposition but with regard to marking Ex.B1 and Ex.B2 is ordered to be recalled and liberty is given to mark said photograph through person who took the photograph, and also permitted to mark the CD along with Form 65B certificate. Thus, to mark the CD, affidavit along with Form 65B certificate has to be enclosed.

10. Accordingly, Civil Revision Petition is partly allowed. Consequently connected miscellaneous petition is closed. The evidence of P.W.1 are kept in tact and only the marking of the photo alone is deleted.

15.03.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation: Yes/No

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C.R.P. No. 593 of 2023

T.V.THAMILSELVI, J.

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To

1. The No.IV Additional District Munsif,
Salem.
- 2.The Section Officer, VR Section,
High Court of Madras.

C.R.P.No. 593 of 2023
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8\8