



C.R.P.(MD)Nos.1044 & 1045 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 19.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(MD)Nos.1044 & 1045 of 2019

and

C.M.P.(MD)No.5732 of 2019

C.R.P.(MD)No.1044 of 2019

Jeyarathnam ... Petitioner/ 2nd Respondent /2nd Defendant

Vs.

1.Samuel Nickson

2.Davidson Packaseelan ... Respondents 1 &2 /Petitioners/
Plaintiffs

3.Jebaveeran ... 3rd respondent / 1st respondent /
1st defendant

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 03.08.2018, passed in I.A.No.328 of 2018 in O.S.No.20 of 2014, on the file of the District Munsif of Tiruchendur.

For Petitioner : Ms.P.Jessi Jeeva Priya

For Respondents : Mr.M.P.Senthil for R1 & R2

: No appearance for R3



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For Petitioner : Ms.P.Jessi Jeeva Priya

For Respondents : Mr.M.P.Senthil for R1 & R2

COMMON ORDER

The instant Civil Revision Petitions have been filed against the order, dated 03.08.2018, passed in I.A.Nos.328 & 329 of 2018 in O.S.No.20 of 2014, on the file of the District Munsif, Tiruchendur.



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2. The revision petitioner is the second respondent / second defendant, the respondents 1 and 2 herein are the petitioners / plaintiffs and the third respondent herein is the first respondent/ first defendant before the Court below.

3. For the sake of convenience, the parties are referred to according to their litigative status before the trial Court.

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4. The plaintiffs have filed the suit for the relief of declaration and possession, and also for the prayer compelling the first defendant to produce the original Will, dated 30.07.1992, and for other reliefs.

5. It appears that, during the pendency of the said suit, the plaintiffs have filed an application under Section 151 of the Civil Procedure Code, seeking leave of the Court to mark the photocopy of the Will, dated 30.07.1992 as a document before the Court below. Such relief was prayed, on the premise that the original Will, dated 30.07.1992 is in the control and custody of the first respondent, who is none other



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than the father of the plaintiff. Apart from the above prayer, in order to prove such Will, the plaintiffs have already submitted the registered copy of the Will. It is the further submission of the plaintiffs that when they have taken summons to the attestors, the said summons were returned with an endorsement that those attestors were “dead”. It is also the further submission of the plaintiffs that, they have also summoned the Sub Registrar, where the said Will was registered. However, the staffs from the Sub Registrar office deposed before the Court that they were not in practice of getting signature of the attestors.

6. It is the further submission of the plaintiffs that since the attestors are not alive, now the signature of the attestors also needs to be proved. However, in the registration copy, no such signature of the attestors is available so also before the Sub Registrar office. The plaintiffs further submits that fortunately, they have the photocopy of the Will, which contains the signature of the attestors. Hence, to prove the signature of the attestors, through the photo copy of the Will, they prayed to mark the said document.



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7. The said application was stoutly objected by the respondent /second defendant, on the ground that the plaintiffs though having possession of such document at the time of filing of the suit, the non filing of the said document at the earliest stage would be viewed against the plaintiffs. Further the defendant contended that only to fill-up the *lacunas*, such documents are attempted to be filed before this Court. Therefore, prayed to dismiss the petition.

8. After hearing both sides, the Court below has allowed the application with the finding, that unless the photocopy is produced, the plaintiffs had no opportunity to prove signature of the deceased attestors.

9. Aggrieved with the said finding, the instant Civil Revision Petition in C.R.P.(MD)No.1044 of 2019 has been filed by the second defendant.

10. The learned counsel for the second defendant (revision petitioner herein) would vehemently contend that, when the plaintiffs



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were in possession of the photocopy of the Will, even while filing the suit, the non production of the same would dis-entitle them to submit the same at the belated stage. It is also the further submission of the petitioner that, unless the foundation to produce the secondary evidence, the question of producing the photocopy will not arise. Therefore, contended that the very order passed by the Court below is liable to be interfered.

11. The learned counsel for the petitioner would also further submit that, the very Ruling in **2001-3-SCC-1 (Bipin Shantilal Panchal Vs. State of Gujarat and another)** has no application to this case.

12. He would further submit that the above judgment has been further modified in the judgment reported in **2021-10-SCC-598 (Criminal Trials Guidelines Regarding Inadequacies and Deficiencies Vs. State of Andhra Pradesh and others)**.

13. Per contra, the learned counsel for the plaintiffs (respondents herein) would submit that, the very suit was filed for



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production of original Will and would further submit that they have already submitted the available registration copy of the Will before the Court below. It is also the submission that they took effort to prove the Will, through attestors and that when the attestors become died, they have also taken steps to produce the signature of the attestors from the Sub Registrar office. Since the witness from the Sub Registrar Office had stated that, no signature of the attestors is available, it necessitated the plaintiffs to file the photocopy of the Will, which is available in their hand. Therefore, contended that the very order passed by the Court below is well considered one and is not required any interference.

14. I have given my anxious consideration to the either side submissions.

15. The sum and substance of the submissions of the learned counsel for the defendant is that unless the original Will produced, the proof of the Will can't be decided and that, the question of producing xerox copy does not arise as the secondary evidence is inadmissible.



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16. However, the learned counsel for the plaintiffs would invite the attention of the court to the averment, and would contend that, since the very control and custody of the Will is with the first defendant, the very suit has been filed for production of the original Will by the first defendant. Therefore, in such background of the pleadings, expecting the plaintiffs to produce the original Will is illogical.

17. The learned counsel for the second defendant would also urge before this Court that, having possession of the photocopy and the non production at the earliest stage would cause great suspicion about the veracity of the photocopy. However, while this Court perusing the copy of the plaint, the plaintiffs have already produced the Registered copy of the Will. According to the plaintiffs, due to the subsequent development of death of, even the attestors, the production of the photocopy becomes essential. Because, now they are also constrained to prove the signature of the attestors, as the attestors are also now no more.



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18. At this juncture, it is useful to refer the judgment of the Supreme Court reported in **2001-3-SCC-1 (Bipin Shantilal Panchal Vs. State of Gujarat and another)**. Though the judgment has arisen out of the criminal case, in many Civil cases, the Hon'ble Supreme Court has followed the precedents of the above reported judgment. To cite few in **AIR-2020-SC-1140 (Z.Engineers Construction Pvt. Ltd. Vs. Bipin Bihari Behera)** and **AIR-2020-SC-2666 (Dhanpat V. Sheo Ram (Deceased) through L.Rs)**, the Hon'ble Supreme Court has followed the **Bipin Shantilal Panchal** judgments (cited supra). Apart from that, when we speak about the evidence, the Evidence Act, it is common for both the Civil and Criminal case. Therefore, the contention that the ratio of the **Bipin Shantilal Panchal's case** (cited supra), will not be applicable to the civil case, is irrational and liable to be rejected.

19. At the same time, the learned counsel for the second defendant would invite the attention of this Court, about the latest judgment of the Hon'ble Supreme Court reported in **2021-10-SCC-598 (Criminal Trials Guidelines Regarding Inadequacies and Deficiencies**



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Vs. State of Andhra Pradesh and others). In the said judgment, while explaining Section 148 of the Evidence Act, the Hon'ble Supreme Court has held as follows:-

*“15. Apart from Section 148, there are other provisions of the Evidence Act (Sections 149-154) which define the ground rules for cross examination. During questioning, no doubt, the counsel for the party seeking cross examination has considerable leeway; cross examination is not confined to matters in issue, but extends to all relevant facts. However, if the court is not empowered to rule, during the proceeding, whether a line of questioning is relevant, the danger lies in irrelevant, vague and speculative answers entering the record. Further, based on the answers to what (subsequently turn out to be irrelevant, vague or otherwise impermissible questions) more questions might be asked and answered. If this process were to be repeated in case of most witnesses, the record would be cluttered with a jumble of irrelevant details, which at best can be distracting, and at worst, prejudicial to the accused. **Therefore, this court is of opinion that the view in Bipin Shantilal Panchal should not be considered as binding. The presiding officer therefore, should decide objections to questions, during the course of the proceeding, or failing it at the end of the deposition of the concerned witness. This will***



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*result in de-cluttering the record, and, what is more, also have a salutary effect of preventing frivolous objections. In given cases, if the court is of the opinion that repeated objections have been taken, the remedy of costs, depending on the nature of obstruction, and the proclivity of the line of questioning, may be resorted to. Accordingly, the practice mandated in **Bipin Shantilal Panchal** shall stand modified in the above terms.”*

(Emphasis supplied by this Court)

20. As per the above judgment, as rightly submitted by the learned counsel for the defendants, the ratio of the **Bipin Shantilal Panchal** case (*cited supra*) has been modified and has held that the objection to the questions has to be decided during the course of proceedings or failing it at the end of the deposition of the witness concerned. So with the above observation, the ratio of the **Bipin Shantilal Panchal** case has been modified.

21. Here, the main objection of the defendant is that the xerox copies of the Will cannot be read into the evidence. Therefore, the same can't be marked. However, on perusal of Section 65 of the Evidence Act, when the original shown in the possession or power of the opposite



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party, then the secondary evidence may be given.

22. Through **The Criminal trial guidelines cases** (cited supra), the *Bipin Shantilal Panchal's* case (cited supra) ratio has been modified. While closely reading the paragraph No.15, of **The Criminal trial guidelines cases** the same dealt in respect of the objections to the questions, and there is no reference as to the documents. However, the ultimate finding of **The Criminal trial guidelines case** (cited supra) is to give a finding in respect of the objection either during the course of proceeding or at the end of the deposition of the concerned witness. Therefore, keeping the above aspect in mind, while considering this case, even at the worse, document must be received. However, regarding objection to the marking of the document should be adjudicated either during the course of the evidence or at the end of the deposition. Therefore, unless the document is received, there may not be any occasion to the Court to consider the objection. Therefore, even as per the above ratios, the merits of the document or admissibility of the document cannot be gone into at the threshold before receiving the same in evidence.



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23. In this case, the very plaint contains a prayer directing the first defendant to produce the original Will. Therefore, this Court is of the firm view that the plaintiffs have laid a foundation so as to lead a secondary evidence in the shape of the photocopy. Therefore, this Court finds no infirmity in the order passed by the Court below. However, it is made clear that the order passed by the Court below permitting the petitioners to mark the xerox copy of the Will is subject to proof and relevancy. Hence, C.R.P.(MD)No.1044 of 2019 is dismissed.

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24. The petitioners have also filed an application under Order 7 Rule 14 (3) C.P.C., seeking permission to receive the xerox copy of the Will. This Court in the above Civil Revision Petition in C.R.P.(MD) No. 1044 of 2019 has permitted the petitioners to mark the documents subject to the proof and relevancy. Further more, it is pertinent to mention here that while filing the application, the petitioners filed its registration copy, though the other form of the document to which, leave sought for is not included in the suit. However, the same is only a



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photocopy. Therefore, the order passed by the Court below permitting the document to be received in evidence subject to proof and relevancy is liable to be confirmed. Hence, C.R.P.(MD)No.1045 of 2019 is dismissed.

25. In the result, both the Civil Revision Petitions stand dismissed. There shall be no order as to cost. Consequently, connected Miscellaneous Petition is closed.

19.09.2023

NCC : Yes/No
Index : Yes/No
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To

1.The District Munsif,
Tiruchendur.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN.,J.

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Order made in
C.R.P(MD)Nos.1044 & 1045 of 2019

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