



C.R.P(MD)No.1685 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.06.2023**

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.1685 of 2022

and

C.M.P(MD)No.7408 of 2022

M.Murugan

...Petitioner/Petitioner/
Defendant

Vs.

T.S.Mani Nadar

...Respondent/Respondent/
Plaintiff

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., to call for the records relating to the fair and decreetal order dated 27.06.2022 made in I.A.No.24 of 2018 in O.S.No.107 of 2017 on the file of the Subordinate Judge, Tiruchendur and set aside the same.

For Petitioner : Mr.T.Antony Arulraj

For Respondent : Mr.M.P.Senthil

ORDER

The present Civil Revision Petition has been filed against the fair and decreetal order, dated 27.06.2022 made in I.A.No.24 of 2018 in O.S.No.107 of 2017 on the file of the Subordinate Judge, Tiruchendur.



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2. The petitioner is the defendant in O.S.No.107 of 2017. The respondent has filed the above suit for specific performance of unregistered sale agreement dated 20.07.2009, which has been marked as Exhibit A1. After the documents were marked by the respondent/plaintiff as Exhibit A1, the petitioner has filed I.A.No.24 of 2018 under Order 13 Rule 3 and 4 of C.P.C to reject Exhibit A1, dated 20.07.2009 as irrelevant inadmissible documents. By the impugned order, the Sub Court, Tiruchendur has dismissed the application filed by the petitioner with the following observations:

" 6. Admittedly, perusal of records reveals that, the suit has been filed by the present respondent as plaintiff seeking the relief of Specific Performance and it is found that in the suit, trial has commenced and PW1 has been examined, his proof affidavit has been recorded, Ex.A1 to A6 have been marked on 21.11.2017 and when the suit was posted for cross examination of PW1 by the defendant/present petitioner, this interlocutory application has been filed and as a result of the same, the suit is found to have been pending at PW1 cross stage itself for more than 4 years till date.

7. While analyzing the provision of law under which the present petition has been filed, it is found that, Order 13 Rule 3 CPC clearly reveals that, the court may at any stage of the suit reject the documents which it considered irrelevant or otherwise inadmissible recording the ground of such rejection. Further Rule 4 generally deals with the endorsements to be made on documents admitted in evidence.



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8. Further while analyzing Ex.A1, the document sought to be rejected in the present petition, it is found to be a duly notarized true copy of an unregistered sale agreement dated 20.07.2009, signed by the concerned Notary advocate mentioning it as a true copy and affixing his notary sign in each and every page of it.

11. Firstly considering the facts and circumstances involved in the case it is found that, in the plaint pleadings and also in the proof affidavit of the one through whom Ex.A1 has been marked, it has been specifically stated that, the original sale agreement dated 20.07.2009 was handedover by the respondent/plaintiff to his previous counsel and since he had lost it on 16.07.2012, the already existed photo copy of the sale agreement duly notarized which was claimed to be in the custody of the respondent/Plaintiff had been given by him, to his counsel and based on it the present suit has been instituted and the said photo copy duly notarized has been marked as Ex.A1. Further it is also specifically pleaded that, the previous counsel of the respondent/plaintiff had preferred a complaint before the Tiruchendur, Police station on the same day on 16.07.2012 itself and the same day also obtained a certificate to that effect. Further it has also been specifically pleaded and oral evidence have been adduced that, the paper publication regarding the loss of original sale agreement has been given in the "Malai Murasu" news paper on 26.02.2013 and thereafter on 16.03.2013 the sub Inspector of Police of Tiruchendur, Police station has given a certificate that the lost document was unable to be traced. It is pertinent to note that the copy of the complaint dated 16.07.2012 by the respondent's previous counsel lodged before the concerned police station regarding the loss of the original sale agreement along with the CSR receipt issued by the concerned police station has been produced and marked as Ex.A4 and connected paper publication subsequently made on 22.02.2013 in an attempt to trace the lost document has been produced and marked as Ex.A5 and also the certificate issued by the concerned police on



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16.03.2013 that the lost document was unable to be traced has been produced and marked as Ex.A6

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16. Further while analyzing the provision of law, section 65 of Indian Evidence Act 1872, sub clause (c) makes it clear that, when the original has been destroyed or lost secondary evidence may be given regarding that document. Further section 63 of the Indian Evidence Act 1872 makes it clear that, Secondary Evidence means copies made from the original by mechanical processes, which ensure and includes accuracy of the copy and also copies made from or compared with the original. Applying the above legal provisions of law to the present case on hand, this court is of the view that Ex.A1 can prima facie be considered as a secondary evidence, since the respondent/plaintiff has specifically pleaded in the plaint itself and has also adduced oral and documentary evidence to putforth his case that, the original of which had been lost by his previous counsel. Hence this court also in the light of decision referred above hereby decides that, there does not exist any legal necessity at present to totally reject Ex.A1 as prayed for in the petition and on that ground the present petition is devoid of merits. However in the interest of justice this court is of the considered view that it would be proper to order that the already marked Ex.A1 be considered as a document marked subjected to objection raised on the side of the petitioner/defendant in the suit and the admissibility of the same shall be decided in the final Judgment.

In the result this petition is ordered in the following term that, the document Ex.A1 marked in the main suit shall be considered as one marked subject to objection raised on the petitioner/defendant side on the ground of its admissibility and the same shall be decided at the time of final Judgment in the suit. Parties are directed to bear their own costs."



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3. In the other paragraphs of the impugned order, the learned Subordinate Judge, Tiruchendur has referred to the law settled by this Court and by the Hon'ble Supreme Court as detailed below:

1. The Doveton-Corrie Protestant Schools Association Vs Dr.Prof Geoffery K.Francis reported in 2012 (6) CTC 648.

2. Sajanraj Vs P.Narasimman in C.R.PPD)No.964 of 2014.

3. J.Yashoda Vs K.Shobha Rani in Appeal (Civil) 2060/2017

4. C.G.Jeyaraman and another Vs C.Gangadharan reported in 2011 (2) CTC 642.

5. D.Sarasu Vs.Jayalakshmi

6. Radha Ammal (Died) Vs Manthi Reddiar reported in 2008 (4) TNLJ 208 (Civil)

7. Bipin Shantilal Panchal Vs State of Gujarat and another reported in (2001) 3 SCC 1.

4. The case of the petitioner is that the agreement dated 20.07.2009 was misplaced by the Advocate on 16.07.2012. However, the suit was filed in the year 2017. Therefore, the suit was clearly barred by law. That apart, it is submitted that the suit was filed only to extract money from the petitioner. It is submitted that the document being an unregistered



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sale agreement that to a photo copy, the Court cannot mark the document.

5. A reading of the record indicates that Exhibit A1, dated 20.07.2009 was marked as early as on 21.11.2017. I.A.No.24 of 2018 was filed on 24.01.2018 under Order 13 Rule 3 and 4 to reject Exhibit A1, dated 20.07.2009. I.A.No.24 of 2018 was dismissed on 27.06.2022. The admissibility, relevancy and proof of execution of the Exhibit A1, dated 20.07.2009 can be decided at the time of arguments. The petitioner may have a case on merits. However, the suit instituted by the respondent can neither be dismissed or the plaint rejected nor the Exhibit A1 dated 20.07.2009 can be rejected as irrelevant or inadmissible at the interlocutory stage. The suit is based on Exhibit A1 dated 20.07.2009. Therefore, there is no merit in challenge to the impugned order.

6. The learned Subordinate Judge, Tiruchendur shall endeavour to dispose of the suit in O.S.No.107 of 2017 as expeditiously as possible preferably within a period of 9 months from the date of receipt of copy of this order. All the issues relating to limitation and relief for alternate prayer is left open to be canvassed at the time of final hearing.



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7. The present Civil Revision Petition stands dismissed with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

19.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The learned Subordinate Judge,
Tiruchendur.
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

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