



C.R.P(MD)No.2174 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.R.P(MD)No.2174 of 2019
and
C.M.P.(MD)No.11376 of 2019

1.N.Ravichandran

2.N.Saravanan ... Petitioners/ /Plaintiffs

.Vs.

Nallammal ... Respondent / 1st Defendant

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order, passed in I.A.No. 898Of 2018 in O.S.No.371 of 2013, dated 18.10.2019, on the file of the Principal District Munsif, Karur.

For Petitioners : Mr.K.Suresh

For Respondent : Mr.P.Santhana Krishnan

ORDER

The plaintiffs filed a suit for declaration and injunction and have taken out an application in I.A.No.898 of 2018, to receive an unregistered Panchayat Vardhamanam, dated 30.09.1992, as secondary evidence in support of their case.



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2. The case of the revision petitioners as plaintiffs was that before filing the said application, they had called upon the respondent / defendant to produce the original of the said document, which according to the plaintiffs, was in the custody of the respondent / defendant. To the said memo, the respondent / defendant filed her objections stating that there was no such document executed between the parties as alleged by the plaintiffs and that no such document was available with the respondent / defendant.

3. The application before the trial Court was resisted by the respondent / defendant on the same ground that the document was not a genuine document and that the original was not with the respondent / defendant and in such circumstances, it cannot be allowed to be marked as secondary evidence.

4. The trial Court dismissed the said application taking note of the objections of the respondent / defendant and also on the ground that the parties to the documents were not alive and therefore, the said document cannot be marked as an exhibit on the side of the plaintiffs.



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5. Aggrieved by the said order of the trial Court, the plaintiffs have preferred the Civil Revision Petition, challenging the order on the ground that the trial Court has failed to consider the purpose and intent of Section 65 of the Indian Evidence Act; the trial Court failed to consider that the revision petitioners / plaintiffs had complied with the provisions of Sections 65 and 66 of the Indian Evidence Act; no prejudice would be caused to the respondent / plaintiff, if the said document was received as an additional evidence; the revision petitioners / plaintiffs' father was a signatory to the said document and therefore, it can be marked through the revision petitioners, viz., plaintiffs.

6. I have heard Mr.K.Suresh, learned counsel for the revision petitioners / plaintiffs and Mr.P.Santhana Krishnan, learned counsel for the respondent / defendant.

7. The learned counsel for the revision petitioners would submit that the trial Court has committed an error in dismissing the said application on the grounds that the parties to the said document were not alive and therefore, the same cannot be received as evidence and further,



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in view of the stand taken by the respondent / defendant that the original was not available with the defendant, the said document cannot be received even as secondary evidence.

8. The learned counsel for the revision petitioners / plaintiffs would rely on the following judgments:

(i) ***L.S.Sadagopan (Died) V. K.S.Sabarinathan*** reported in ***2001-SCC-Online (Mad.)-713***;

(ii) ***Sri.Sai Educational Trust, rep. by its Founder & Managing Trustee R.Kalyani V. N.Palanivelu*** reported in ***2014-SCC-Online(Mad.)1916***; and

(iii) ***D.Sarasu V. Jayalakshmi*** reported in ***2001-4-CTC-266***,

for the propositions that the photostat copies can be received in evidence, even if the case of the person seeking to produce the same was that the original was in the custody of the opposite party and the opposite party has denied its very existence; xerox copies can be received as secondary evidence and relevancy and admissibility of the document can be considered at the time of final disposal of the suit; though the original document is the best evidence in a case, where the originals were either lost or with a third party or some other party, then the secondary evidence



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is admissible. The learned counsel for the revision petitioners/plaintiffs prays for the revision petition being allowed.

9. Per contra, Mr.P.Santhana Krishnan, learned counsel for the respondent / defendant would contend that none of the decisions on which reliance was placed by the learned counsel for the revision petitioners / plaintiffs would not apply to the facts of the present case, for the simple reason that the document sought to be produced by the revision petitioners / plaintiffs is an unregistered agreement and the genuineness of the said agreement had been stoutly denied by the defendant and in such circumstances, the document cannot be received.

10. I have paid my anxious consideration to the rival submissions and I have also perused the documents placed before me, by way of typed set of papers, including the impugned order. I have also gone through judgments on which reliance is placed by the learned counsel for the revision petitioners.

11. The document which is sought to be produced by the revision petitioners / plaintiffs is an unregistered agreement, which had been



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entered into between the father of the revision petitioners / plaintiffs and the respondent / defendant. Notice was given following the procedure under Section 66 of the Indian Evidence Act, calling upon the respondent / defendant, to produce the original of the said agreement and the respondent has filed her objections stating that she has not signed any such agreement and no such agreement is in her custody.

12. The trial Court has dismissed the application on the ground that when the respondent / defendant has denied the very existence of the said agreement and the other signatory of the said agreement was not alive, the said agreement cannot be marked as an evidence. However, the trial Court also accepted the contention of the respondent / defendant on the ground that the respondent has denied the genuineness of the said document. However, it is for the plaintiffs to independently establish the truth and genuineness of the agreement. The plaintiffs complied with the mandate of Section 66 of the Indian Evidence Act, by calling upon the respondent / defendant to produce the original agreement and to such notice given under Section 66 of the Indian Evidence Act, the respondent / defendant has filed her objections stating that the agreement was not genuine and that in any event, it is not with her. Merely because the respondent /



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defendant has taken such a stand, it cannot deprive the plaintiffs of an opportunity to rely on the document to establish their case. However, it is made clear that merely because the said document is allowed to be marked on the side of the plaintiffs, the burden will be on the plaintiffs to establish the admissibility, truth and genuineness of the document independently, since the specific defence taken by the respondent / defendant is that the said document is not genuine and she has not signed the said document.

13. Subject to the above direction, the trial Court shall receive the photostat copy of the Vardhamanam dated 30.09.1992 as evidence, to be marked as exhibit through P.W.1, one of the plaintiffs' in the box. It is open to the respondent / defendant to cross-examine the plaintiffs as to the veracity of the document and also independently disprove the genuineness of the said document. However, it is made clear that the document being admitted as secondary evidence, the burden is on the plaintiffs to establish the truth and genuineness of the said document.



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14. In fine, the Civil Revision Petition is allowed and the impugned order dated 18.10.2019, in I.A.No. 898 of 2018 in O.S.No.371 of 2013, on the file of the Principal District Munsif, Karur, is hereby set aside. Considering that the suit of the year 2013, the trial Court shall expedite the trial and in any event, complete the trial within a period of four months from the date of receipt of copy of this order. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Index:Yes/No
Internet:Yes/No
NCC:Yes/No
Ls

16.11.2023

To

1. The Principal District Munsif,
Karur.

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



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P.B.BALAJI,J.

Ls

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