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CRP.No.998 of 2017

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 07.02.2024**

**CORAM:**

**THE HONOURABLE MR.JUSTICE S.SOUNTHAR**

**CRP.No.998 of 2017**

**and**

**CMP.No.4884 of 2017**

S.Venkatasamy

...Petitioner

Vs.

1.L.Jesuraja

2.V.Ravichandran

3.S.Stalin

4.D.Kaluaram

5.P.Augustein

6.The Sub-Registrar

Sub-Registrar Office, Sembium

Chennai 600 012.

7.P.Anbumani

...Respondents

**Prayer:** Civil Revision Petition filed under Article 227 of the Constitution of India, to allow the CRP setting aside the fair and decreetal order of the



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learned VI Assistant City Civil Judge, Chennai, dated 07.12.2016 in  
IA.No.11298 of 2016 in OS.No.7165 of 2011 and to order the said IA.

For Petitioner : Mr.T.M.Hariharan

For Respondents : Mr.K.S.V.Prasad for R1  
R2 to R5 – Note available  
Mr.V.Jeevagiridharan for R6  
Additional Government Pleader  
R7 – served – No appearance

### **ORDER**

This Civil Revision Petition is filed challenging the order passed by the Court below dismissing the petition filed to eschew the xerox copy of the death certificate and legal heir certificate of K.Ramayee marked as Ex.A2 and Ex.A3.

2. The respondents herein filed a suit seeking declaration that the registered power of attorney dated 02.06.2006 allegedly executed by K.Ramayee in favour of one Ravichandran was null and void and also for consequential declaration of various sale deeds came into existence, subsequent to the power of attorney as void.



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3. According to the respondents/plaintiffs, K.Ramayee died on 15.10.1985 and her daughters Easwari and Karupppayee through their power agent Gurusamy sold the property to the plaintiffs on 23.04.1986. The sale deed in favour of the respondents were produced as plaint Doc.No.1 and the death certificate and legal heir certificate of K.Ramayee were produced as plaint Doc.Nos.2 & 3.

4. The petitioner/5<sup>th</sup> defendant herein filed a written statement denying the genuineness of death certificate and legal heir certificate of K.Ramayee in the written statement. According to the petitioner, K.Ramayee executed a registered power of attorney in favour of the first defendant Ravichandran on 02.06.2006 and in pursuance of the same, he sold the property to the second defendant. The petitioner herein is claiming right under other defendants.

5. The first respondent was examined as PW1 and through him the death certificate and legal heirs certificate of K.Ramayee were marked as



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Ex.A2 and Ex.A3 without any objection. The matter was posted for recording the evidence of the defendant's side. At this stage, the fifth defendant in the suit filed the instant application seeking to eschew the death certificate and legal heirs certificate of K.Ramayee which were marked as Ex.A2 & Ex.A3. The petitioner is seeking to eschew those documents mainly on the ground that those two documents are created for the purpose of claiming over the suit properties. The Court below dismissed the application by observing that the petitioner is entitled to contest the suit by examining the witnesses and the allegations about the document can be discussed at the time of final disposal of the suit.

6. The learned counsel for the petitioner submitted that if the documents marked are perse inadmissible, the question of admissibility can be raised by the parties at any time. In this regard, the learned counsel for the petitioner relied on the following judgments.

1) In ***R.V.E.Venkatachala Gounder Vs. Arulmigu Viswesaraswami and another***, reported in ***(2003) 8 SCC 752***.



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2) In *Girijanandini Devi and others Vs. Bijendra Narain Choudhary*, reported in *AIR 1967 SC 1124*.

3) In *Balamani Vs. Kailasam Konar*, reported in *2000-1-L.W.476*.

7. The learned counsel for the petitioner further submitted that in view of Section 65 (e) & (f) of the Indian Evidence Act and proviso, only certified copy of the public documents referred in Sections 65 (e) (f) of the Indian Evidence Act are admissible and no other kind of secondary evidence is admissible.

8. The learned counsel for the respondent submitted that when Ex.A2 & Ex.A3 were admitted in evidence, the petitioner herein failed to make any objection and the ground now raised by the petitioner that Ex.A2 & Ex.A3 are not genuine documents can be gone into at the time of final disposal of the suit and hence, there is no need to eschew the said documents.



The learned counsel for the respondent further submitted that when the original documents are not available with the person, it is always open to him to mark a photocopy of the same.

9. In support of his contention, he relied on the judgment of the Hon'ble Apex Court in ***R.V.E.Venkatachala Gounder Vs. Arulmigu Viswesaraswami and another***, reported in (2003) 8 SCC 752.

10. According to the petitioner, K.Ramayee executed a registered power of attorney in favour of the first defendant on 02.06.2006 and the petitioner claims title under the first defendant. As per the case of the first respondent/plaintiff K.Ramayee died even on 15.10.1985 and her daughters namely Easwari and Karuppayee executed a power of attorney in favour of one Gurusamy on 13.02.1986 and from the said Gurusamy, the defendant purchased the suit property on 23.04.1986. Therefore, whether K.Ramayee died on 15.10.1985 itself and whether Easwari and Karuppayee are heirs of K.Ramayee are the questions which have to be decided based on the evidence to be let in by the parties. The documents in question namely Ex.A2 & Ex.A3



were produced along with the plaint. The petitioner herein even in his written statement objected the genuineness of the documents. However, when Ex.A2 and Ex.A3 were marked as exhibits, there was no objection and therefore, those two documents were marked as Ex.A2 & Ex.A3. Now, the petitioner has come up with the application to eschew the documents. Along with this application, the petitioner also filed an application in IA.No.11299 of 2016 for framing additional issues. The said application was disposed by the Court below by a common order. The four additional issues which have been framed are as follows:

*“i) Whether Ramayee died on 15.10.1985?, ii) Whether Easwari and Karuppayee are daughters of Ramayee?, iii) Whether the plaintiff is the owner of the suit property? And (iv) Whether the suit is maintainable without seeking a prayer for declaration of title over the suit property?”*

**11.** Therefore, now issues have been framed with regard to the death of K.Ramayee and legal heir status of Easwari and Karuppayee. The



petitioner herein raised objection with regard to the admissibility of Ex.A2 & Ex.A3 on the ground that secondary evidence is not admissible in view of Section 65 (e) & (f) of the Indian Evidence Act. The Court below dismissed the application filed by the petitioner by observing that the genuineness of the documents produced by the first respondent can be gone at the time of disposal of the suit. However, the Court below has not said anything regarding the question of admissibility of the documents. The petitioner herein raised serious objection with regard to admissibility of the secondary evidence namely photo copy of the death certificate and legal heirs certificate by relying on Section 65 (e) & (f) of the Indian Evidence Act.

**12. In *Bipin Shantilal Panchal Vs. State of Gujarat, reported (2001) 3 SCC***, while considering power of Court to mark documents, when objection is raised by other side during course of trial, the Hon'ble Apex Court observed as follows:

*“13. It is an archaic practice that during the evidence-collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such*



*objection. But the fallout of the above practice is this: Suppose the trial Court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the appellate or the revisional court, when the same question is recanvassed, could take a different view on the admissibility of that material in such cases the appellate court would be deprived of the benefit of that evidence, because that was not put on record by the Trial Court. In such a situation the higher court may have to send the case back to the trial court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or remoulded to give way for better substitutes which would help acceleration of trial proceedings.*

*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 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.”*

In view of the law laid down by the Hon'ble Apex Court in ***Bipin Shantilal Panchal's case***, the objections raised by the petitioner shall be recorded and the documents Ex.A2 & Ex.A3 shall be treated as marked subject to the objection with regard to the admissibility of secondary evidence. The question of admissibility in Ex.A2 & Ex.A3 can also be considered at the time of final disposal of the suit.



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**13.** With this clarification, this Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

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**To**

The VI Assistant City Civil Judge, Chennai.



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