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C.R.P.No.4920 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.4920 of 2024 &
CMP.No.27646 of 2024

1.D.M.Ameer Akbar
2.Shabina Banu
3.Parveen Banu
4.D.A.Anvarul Asmath
5.D.A.Fathima Benazeer .. Petitioners

Versus

1.D.M.Kadar Basha
D.Muhammad Ishaq (Died)
2.D.M.Muhammad Aslam
3.D.M.Kadar Ibrahim
A.K.Fathima Beebi (Died)
4.Jekitha Thasleem
5.Farida Banu
6.Pamitha Banu
7.N.A.Basheer Ahmed
8.N.A.Anwar Ali
9.Dilshad Begum
10.Apshara Banu
11.D.M.Abuthakeer
12.Ayisha Jasmin
13.Apasarabanu
14.Abubakkar
15.Usmankani .. Respondents



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Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order passed by the learned Principal District Judge, Dharmapuri passed in I.A.No.10 of 2024 in O.S.No.41 of 2016 dated 13.09.2024.

For Petitioners : Mr.A.Mohamed Ismail

For Respondents : Mr.M.Mustaq Ahmed

ORDER

The civil revision petition challenges the order passed by the learned Principal District Judge, Dharmapuri in I.A.No.10 of 2024 in O.S.No.41 of 2016 dated 13.09.2024.

2. O.S.No.41 of 2016 is a suit for partition and separate possession. The details regarding the suit need not be gone into for the purpose of disposal of this revision.

3. When the matter was at the stage of trial, the plaintiff issued a notice under Order XII Rule 8 of the Code of Civil Procedure to the first defendant. He called upon the first defendant to produce the alleged



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Muchalika dated 06.09.1993. The court also passed an order directing the first defendant to produce the document.

4. Unfortunately, the first defendant passed away on 19.07.2020. Thereafter, the defendants 2 to 4, 6 and 7, who are the legal heirs of the deceased first defendant, pleaded that they are also not in possession of the document.

5. Being left with no other alternative, the plaintiff filed a petition to mark the photostat copy of the document in evidence. This was opposed by the defendants stating that there is no question of joint family amongst Muslims, and that, as the very existence of the document dated 06.09.1993 is in dispute, the same cannot be permitted to be received as secondary evidence.

6. The learned Trial Judge, after hearing both sides, allowed the application permitting the plaintiff to mark the document subject to the relevancy and proof. Aggrieved by the same, the defendants are in revision before me.



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7. I heard Mr.A.Mohamed Ismail for the civil revision petitioners and Mr.M.Mustaq Ahmed for the caveator.

8. Mr.Mohamed Ismail pleads that by contents of the document, it requires compulsory registration under Section 17 of the Registration Act. As the registration has not been carried out, the document is inadmissible in evidence. His primary plea seems to be that the order which was passed on 19.07.2020 was one against a dead person and in addition, he points out that the defendants 2 to 4, 6 and 7 have denied the document. Therefore, the plaintiff cannot produce the same.

9. I have carefully analysed the submission of Mr. Mohamed Ismail and Mr.Mustaq Ahmed for the respective parties.

10. In order to produce secondary evidence, it is necessary that the party complies with the requirements of Section 65. Under Section 65(a) of the Evidence Act, a party is entitled to produce secondary evidence regarding the existence, condition or contents of a document when he has issued a notice to produce in terms of Section 66, and the party to whom



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such a notice is addressed does not produce the same. Apart from that, the original should be shown in possession or power of a person, who is out of ready, or not subject to, the process of the court.

11. In this case, the specific plea of the plaintiff is that the document dated 06.09.1993 is in possession of the first defendant. He had also called upon the first defendant to produce the document. The court also agreed with the plaintiff and directed the first defendant to produce the same. Unfortunately, on the date of passing of the order, the first defendant was no more.

12. Mr.Mohamed Ismail states that the order is nullity as it has been passed against a dead person. Though it is a very inviting plea, since the defendants 2 to 4, 6 and 7 are the legal representatives of the deceased first defendant, they would be bound to produce the document, in case, the document is in their possession. On the contrary, as pointed out above, the said defendants have stated that the document is not available with them. The plaintiff has complied with Sections 65(a) and 66 of the Evidence Act and yet the original is not before the court. The only option left with the



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plaintiff is to produce a copy thereof. As it complies with requirements of Section 65(a) of the Indian Evidence Act, I do not find any objection in receiving the said document in evidence.

13. Mr.Mohamed Ismail draws my attention to illustration 'b' under Section 136 of the Indian Evidence Act. This arises at a stage where the court decides on the admissibility of the document. The court can decide on the admissibility once the document is produced before the court.

14. The learned Trial Judge has been cautious enough to state that the document will be received subject to the proof, relevancy and admissibility. Since the plaintiff has complied with the requirements of Order XII Rule 8 of the Code of Civil Procedure read with Section 65(a) of the Indian Evidence Act, he is entitled to produce the document before the court.

15. Once a document is exhibited before the court, it is for the defendants 2 to 4, 6 and 7 to object on its admissibility, on the ground of want of registration. At that stage, the court can always look into proviso to Section 49 of the Registration Act and decide whether it can be used for any



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collateral purpose. That stage is yet to arise. All that the learned Trial Judge is done is to receive the document.

16. In the light of the above discussion, with the liberties that have been granted to the defendants by the learned Trial Judge being sustained, this civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

16.12.2024

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Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no

To

The Principal District Judge, Dharmapuri



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V.LAKSHMINARAYANAN, J.

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