



CRP.No.4236 f 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.4236 of 2019
and
CMP.No.27638 of 2019

S.Vasanthi

... Petitioner

Vs.

1.D.Sumathy @ Soumady
2.Krishnamurthy

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decretal order passed in IA.No.481 of 2019 in OS.No.65 of 2014 dated 02.07.2019 on the file of the learned Principal District Judge, Puducherry.

For Petitioner : Mr.R.Natarajan

For Respondents : Mr.D.Ravichander for R1 & R2



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ORDER

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This Civil Revision Petition is filed challenging the order passed by the Court below allowing the application filed by the respondent/plaintiff to lead the secondary evidence.

2. The respondents filed a suit for declaration of title and injunction. According to the respondents, the first respondent/first plaintiff purchased the suit property from one Mallika who appeared to have purchased the same from power agent of one Obenans Lourdu Marie. In the affidavit filed in support of this application, it was stated by the respondents that the said Obenans Lourdu Marie died and her children were settled in France and therefore, the first respondent was not in a position to produce the original documents. However, the respondents produced the xerox copy of the sale deed executed in favour of their vendor. The present application was filed by the respondents seeking leave to lead secondary evidence, on the ground that the respondents had given a sufficient reason for their failure to produce the original documents.



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3. The learned counsel for the petitioner submitted that the respondents have not issued any notice to produce the original documents.

Therefore, the instant application filed by them without issuing notice is not in accordance with law.

4. Per contra, the learned counsel for the respondents submit that the respondents are not aware of the exact whereabouts of the legal representatives of the deceased Obenans Lourdu Marie and therefore, they were not in a position to issue any notice.

5. 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



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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



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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.”

6. In view of law laid down by the Apex Court in ***Bipin Shantilal Panchal*** case, this Court deems it appropriate to permit the respondents to mark xerox copy of the document subject to the objection of the petitioner as to admissibility of the secondary evidence and also the right of the petitioners to cross examine the witnesses of the respondents in these aspects. The merits of objection made by the petitioner with regard to admissibility of xerox copy shall be decided at the time of final disposal.



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7. With this clarification, this Civil Revision Petition is dismissed.

No costs. Consequently, connected Miscellaneous Petition is closed.

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(2/2)

Index : Yes / No

Internet : Yes / No

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To

The Principal District Judge, Puducherry.



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