



C.R.P(MD).No.316 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.02.2024

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

**C.R.P(MD)No.316 of 2024
and
C.M.P.(MD)No.1441 of 2024**

Karuppuchamy

... Petitioner

Vs

Sivakumar

... Respondent

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 20.11.2023 made in I.A.No.705/2023 in O.S.No.548 of 2022 on the file of the Subordinate Court, Oddanchatram and allow the petition.

For Petitioner : Mr.K.Vijayanand

ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order dated 20.11.2023 made in I.A.No.705/2023 in O.S.No.



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548 of 2022 on the file of the Subordinate Court, Oddanchatram and allow the petition.

2. A suit in O.S.No.35 of 2014 and later renumbered as O.S.No. 548 of 2022, was filed by the respondent herein on the basis of the promissory note for recovery of money with costs. The petitioner herein appeared and filed his statement. During the trial process, a petition in I.A.No.705 of 2023 was taken out by the petitioner under Order 8 Rule 1(a)(3) and 151 of C.P.C., to condone the delay in producing the document, with the following averments:

2(i). In the written statement he has stated that the suit promissory note is a forged document. There was a dispute between one Ravikumar and the petitioner herein over starting of a petrol bunk. The said Ravikumar with the help of the plaintiff and others created the suit promissory note. To prove the above said fact only, he wants the documents to be produced. There was a delay occurred in getting the document.



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2(ii) That was resisted by the respondent stating that the issue between the revision petitioner and one Ravikumar is not connected with the issue now pending before the trial Court. The documents now sought to be produced are also no way connected and relevant.

3. After hearing both the parties, the trial Court, partly allowed the petition, admitting the document No.1 and rejected the document No.2 on the ground that it is only a photocopy. Against which this revision petition has been preferred by the petitioner on the ground that since the original document is not available with him, he is entitled to produce and mark the photocopies of the documents.

4. Heard both sides.

5. It is seen that the original document is not available at the hands of the petitioner for the reason that he is not a party to the document No. 2. It is mentioned that one Palani has filed application in the name of Gandimathi W/o.Ravikumar, before the Bharat Petroleum Corporation Limited. To prove the motive, he wants to mark the document. But in



what way it is going to help the case of the petitioner is a matter for consideration by the trial Court. But the original document is not in the custody of the petitioner and hence, the photocopies which is a secondary evidence, cannot be permitted to be received, unless he satisfied the requirement of Section 65 of the Indian Evidence Act, 1872, which reads as under:

" 65. Cases in which secondary evidence relating to documents may be given.— Secondary evidence may be given of the existence, condition or contents of a document in the following cases: —

(a) when the original is shown or appears to be in the possession or power —

of the person against whom the document is sought to be proved,

of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or



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when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in 1 [India] to be given in evidence;

(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents."



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6. Absolutely, no such steps have been taken by the petitioner before requesting the Court to admit the secondary evidence. So liberty is granted to the petitioner to comply Section 65 of the Indian Evidence Act, before producing the photocopies mentioned in his petition.

7. With the above said liberty, this Civil Revision Petition is disposed of, by confirming the order of the learned Subordinate Judge, Oddanchatram, dated 20.11.2023 made in I.A.No.705/2023 in O.S.No. 548 of 2022. No costs. Consequently, connected miscellaneous petition stands closed.

13.02.2024

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

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To

- 1.The Subordinate Court, Oddanchatram.
- 2.The Record Keeper, VR Section,

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Madurai Bench of Madras High Court, Madurai.

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G.ILANGO VAN, J.

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