



WEB COPY



O.S.A.No.10 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2025

CORAM :

**THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

**O.S.A.No.10 of 2025
and CMP No.1028 of 2025**

P.Balasubramanyam

.. Appellant

VS

1. Gopalan
2. G.Vidya

.. Respondents

Prayer : Appeal filed under Order XXXVI Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent Act against fair and decreetal order dated 09.01.2025 in T.O.S.No.38 of 2021 (O.P.No.994 of 2019).

For Appellant : Ms.G.Sumitra

JUDGMENT
(Delivered by C.KUMARAPPAN..J)

The instant Original Side Appeal has been filed as against the order

<https://www.mhc.tn.gov.in/judis> of the learned single Judge dated 09.01.2025, wherein the learned single



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Judge has permitted marking of xerox copy of a document, viz., death summary.

2. The main contention put forth by the learned counsel is that the xerox copy of the document, which is sought to be marked is not accompanied with a certificate in accordance with Section 65B of the Evidence Act, 1872 and therefore the same is inadmissible. In support of her contention, she relies on the judgment of the Hon'ble Supreme Court in *R.VE.Venkatachala Gounder V. Arulmigu Viswesaraswami & V.P.Temple and another* reported in (2003) 8 SCC 752.

3. We have given our anxious consideration to the submissions made by the learned counsel for the appellant.

4. The decision in *R.VE.Venkatachala Gounder* (supra) deals with the issue as to when objection is to be raised and the classification of the objection, viz., i) that the document sought to be proved is itself inadmissible and ii) directed not against the admissibility of the document but against mode of proof thereof on the ground of irregularity or insufficiency.

5. However, what we deal in the present case is whether admissibility of document can be gone into at the time of trial. In this regard, it is more appropriate to refer to the judgment of Hon'ble Supreme



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Court in *Bipin Shantilal Panchal V. State of Gujarat and Ors.* reported in

AIR 2001 SC 1158, wherein the three Judge Bench of the Hon'ble

Supreme Court held that whenever, an objection is raised to mark the document, those document may be marked subject to his objection and the admissibility or otherwise of the same can be decided at the last stage in the final judgment. The relevant portion of the judgment reads as follows:

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.'

6. It is relevant to note that the aforesaid judgment of the Hon'ble Supreme Court has not been brought to the notice of the Hon'ble Supreme Court while deciding the matter in *R.VE.Venkatachala Gounder* (supra).



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7. Hence, it is too pre-mature to go into the admissibility or otherwise of the subject document at the very threshold. Therefore we see nothing untoward in order dated 09.01.2025, wherein the learned single Judge has directed to Registry to list the matter before the learned Additional Master for marking of the xerox copy of the death summary.

8. However, we make it clear that such marking is subject to the objections, if any, raised by the appellant.

9. Accordingly, this Original Side Appeal is disposed as above.
Connected Miscellaneous Petition is closed.

[A.S.M., J] [C.K., J]
06.02.2025

Index:Yes/No
Speaking order/Non-speaking order
Neutral Citation:Yes/No
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