

**Muthukumar Vs. Viswanathan**

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**Court :** Chennai

**Decided On :** Jun-27-2014

**Judge :** The Hon'ble Ms. Justice R.Mala

**Appellant :** Muthukumar

**Respondent :** Viswanathan

**Judgement :**

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED : 27.06.2014  
CORAM : THE HONOURABLE Ms.JUSTICE R.MALA C.R.P.(PD) No.2140 of  
2014 and M.P.No.1 of 2014 Muthukumar ..Petitioner versus Viswanathan  
..Respondent Prayer:- Civil Revision Petition is filed under Article 227 of  
Constitution of India, against the fair and decreetal order dated 05.08.2013 in  
I.A.No.490 of 2013 in O.S.No.1 of 2011 on the file of the Principal District Munsif  
Court, Virudhachalam.

For Petitioners : Mr.A.S.Narasimhan

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated  
05.08.2013 in I.A.No.490 of 2013 in O.S.No.1 of 2011 on the file of the Principal  
District Munsif Court, Virudhachalam.

2.The respondent herein as a plaintiff filed a suit for declaration of title and also injunction restraining the defendant to interfere with the possession and alienate the suit property and also for other reliefs.

The revision petitioner/defendant has filed a written statement and contested the suit.

After framing of issues and when P.W.1 was in witness box, through him Ex.A4 Photostat copy of the partition deed, which is between Subramaniam Pillai and his brotheRs.dated 23.04.1966 was marked.

Even though the defendant raised objection, Ex.A4 was marked.

So the defendant/revision petitioner has come forward with the application in I.A.No.490 of 2013 for eschewing Ex.A4.

The trial Court, after hearing both sides, dismissed the application, against which, the present revision petition is preferred by the defendant/revision petitioner.

3.Learned counsel for the revision petitioner submitted that the Ex.A4/Photostat copy of the partition deed is inadmissible in evidence and hence, he prayed for allowing of this revision petition.

To substantiate his arguments, he relied upon the following judgments: (i) The Division Bench judgment of this Court reported in 2009 (4) CTC842(Shanthi Kawarbai and others v.

Sushila).(ii) (2009) 6 SCC681(Ram Suresh Singh v.

Prabhat Singh alias Chhotu Singh and another).4.At the time of admission, argument of the learned counsel for the petitioner is heard in length.

5.On perusal of the typed set of papeRs.it reveals that the respondent herein as a plaintiff filed a suit for declaration of title and also for injunction restraining the defendant to interfere with the possession and encumber the property.

Originally, the suit properties belong to his maternal grand mother namely, Sivaparvathi Achi, who got the same by way of settlement.

After her death, her legal heirs partitioned the property as per the Partition deed dated 23.04.1966, in which, D schedule property is allotted to the father of the plaintiff namely, Ranganathan Pillai.

D schedule property consists of Items Nos.1 to 3 of the suit properties and fourth item of the suit property has been purchased by Ranganathan Pillai, who executed settlement deed in favour of her son/plaintiff on 09.09.2004.

On that basis, the plaintiff is in possession and enjoyment of the same.

Since the defendant attempted to deny his title and interfere with the possession of the plaintiff, he filed suit for the above said reliefs.

6.The defendant/revision petitioner, in the written statement, disputed only the settlement deed dated 09.09.2004 stating that subsequently the settlement deed gets cancelled and hence, the plaintiff should not claim title over the suit property.

But thereafter, the defendant has come forward with the application in I.A.No.490 of 2013 disputing the registered partition deed dated 23.04.1966 executed between Subramaniam pillai and his brothers and one of the brothers is the said Ranganathan Pillai.

In the written statement, the defendant has not stated anything about this aspect.

7.Now this Court has to decide whether Ex.A4 Photostat copy of the partition deed has to be eschewed?.

Before that this Court has to consider the decisions relied upon by the learned counsel for the revision petitioner: (i) In the Division Bench judgment of this Court reported in 2009 (4) CTC842(Shanthi Kawarbai and others v.

Sushila).in para-25, it was held as follows: 25.Apart from the above, before the trial Court, the plaintiff has relied upon Ex.P10, letter, and also Ex.P11, letter, alleged to have been written by the plaintiff to the defendant on 6.10.1988.

Now these two letters were relied upon by the learned trial Judge to hold that the plaintiff has all along been ready and willing to perform her part of the contract, and the defendants were not cooperating, and therefore it was a fit case for granting the relief of specific performance.

This Court is at a loss to understand how these documents were relied upon by the trial Court.

These two documents should have been rejected even from the point of evidence.

That apart, these documents should not have been given any evidentiary value at all.

Ex.P10 is stated to be a letter which remained undated and also unsigned, and therefore, it cannot be put in evidence.

As far as Ex.P11 is concerned, it is true that it is dated 6.10.1988, and it also bore the signature of the party.

But, it was only a copy and the original was not available.

There was no notice upon the defendants to produce the original letter.

When the power of attorney of the original defendant was in the box, no question was confronted to him in that regard.

As far as Ex.P11 was concerned, no acknowledgement was filed.

Under the circumstances, Exs.P10 and P11 could not be attached with any evidentiary value and should have been rejected by the trial Court.

But, the trial Court has erroneously relied upon the same. There is no quarrel over the above proposition.

In the above citation, the petitioner is entitled to mark two letters (xerox copies) provided he must fulfill the condition that he is not in a position to file and mark the same in primary evidence.

It is fairly conceded by the learned counsel for the revision petitioner that at the time of marking Ex.A4, he made objection and the same has been marked subject to objection.

In such circumstances, I am of the view, at the time of disposal of main suit, the admissibility of the document has to be decided and at this stage, it is premature to decide whether the document has to be eschewed.

8.Learned counsel for the revision petitioner relied upon another judgment of the Apex Court reported in (2009) 6 SCC681(Ram Suresh Singh v.

Prabhat Singh alias Chhotu Singh and another).wherein it was held that even though xerox copy of the certificate has been marked, it was corroborated by the teacher of the school.

Para-9 and 11 are extracted hereunder: 9.Respondent no.1 claims himself to be a juvenile.

An enquiry was directed to be conducted.

In the said enquiry, evidently, the original register maintained by the Government Secondary School, Nava Nagar was produced.

Date of birth of the said respondent was stated to be 10.02.1987.

Before us, a contention was raised Ram as to whether column no.5 thereof was filled up or not.

An affidavit was filed to show that column no.5 is the statement on the declaration of the father.

We would, therefore, proceed on the said basis.

Respondent no.1 was admitted in the Govt.

Secondary School, Nava Nagar on 22nd January 1996.

He left the school on 31st December 1999.

Certificate was issued on 23rd February 2000 so as to enable him to take admission in another school, namely, Ram Lakhan Singh Yadav High School.

We may not consider the certificate granted by the Principal of the latter school as only a xerox copy thereof was filed inasmuch as the original having not been produced, the same was inadmissible in evidence.

11.

In terms of the provisions of Section 68 of the Juvenile Justice (Care & Protection of Children) Act, 2000, the Central Government has framed Juvenile Justice (Care & Protection of Children) Rules, 2001.

Rule 22 of the said Rules provides for the procedure to be followed in respect of determination of the age of a person.

It indicates that the opinion of the Medical Board is to be preferred only when a date of birth certificate from the school fiRs.attended is not available. But the above citation is not applicable to the facts of the present case.

9.Considering the aforestated circumstances along with the decisions, I am of the considered view, once the document has been marked subject to objection, whether it is an admissible evidence or not has to be decided only at the time of pronouncing judgment.

In such circumstances, the revision petitioner/defendant has come forward with the application to eschew Ex.A4, only with a view to drag on the proceedings.

Furthermore, he has not disputed the partition deed between Subramaniam pillai and his brothers in the written statement and in that, he had only disputed the settlement deed, which was executed by Ranganathan pillai in favour of the plaintiff on 09.09.2004.

So the trial Court has rightly dismissed the application and hence, the impugned order passed by the trial Court does not warrant any interference.

The revision petition is dismissed as devoid of merits.

10.In the result, the Civil Revision Petition is dismissed.

However, the trial Court has every right to decide the matter as to whether Ex.A4 is an admissible evidence.

No costs.

Consequently, connected Miscellaneous Petition is closed.

27.06.2014 Internet:Yes kj To The Principal District Munsif Court, Virudhachalam.

**R.MALA,J.**

kj C.R.P.(PD) No.2140 of 2014 and M.P.No.1 of 2014 27.06.2014

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