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Court : Kerala

Decided On : Oct-10-1985

Reported in : AIR1986Ker196

Judge : K.T. Thomas, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 40, Rule 1 - Order 43, Rules 1 and 2; [Evidence Act, 1872](#) - Sections 76, 77 and 79; Civil Rules of Practice - Rule 239(3)

Appeal No. : C.R.P. No. 1632 of 1983-E

Appellant : Thatha

Respondent : Paru and ors.

Advocate for Def. : A.P. Chandrasekharan and; G. Sreekumar, Adv.

Advocate for Pet/Ap. : N. Viswanatha Iyer, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

K.T. Thomas, J.

1. The short question raised in this revision is as to the maintainability of an appeal wherein a carbon copy of the impugned order without a certificate in full compliance with Section 76 of the [Evidence Act, 1872](#) has been produced. The District Judge before whom that appeal was filed has overruled the preliminary objection regarding the maintainability and that order is under challenge in this revision.

2. The matter arose from a suit for partition in which a preliminary decree was passed by the trial Court and the final decree proceedings are still pending. The 1st defendant was appointed as receiver by the trial Court. Later, an application was filed by the plaintiff for removing the 1st defendant from receivership and to appoint another receiver from the panel of receivers. That application was dismissed by the trial Court against which the plaintiff has preferred an appeal as CM.A. No. 18 of 1982 before the District Court. A carbon copy of the impugned order has been produced in appeal. The defendants raised a preliminary objection in the District Court on the ground that a carbon copy is not a sufficient substitute for copy of a decree and at any rate it is not a certified copy and as such the appeal is liable to be dismissed in limine. The learned District Judge heard the preliminary objection and passed the impugned order holding that the carbon copy produced is sufficient to make the presentation of the appeal valid.

3. The learned counsel for the petitioner has contended first that the appeal should have been presented with a certified copy of the order appended with a table of costs as provided in Rule 186 of the Civil Rules of Practice. When the attention of the learned counsel was drawn to the fact that the preliminary objection raised in the lower Court was not on the basis of the non-appending of a table of costs in the carbon copy of the order, the learned counsel has confined his argument to the only point that the carbon copy produced cannot be regarded as certified copy as per the provisions in Section 76 of the Evidence Act.

According to him, the Appeal should have been found not maintainable on that sole ground itself. If the carbon copy produced in appeal is not a certified copy of the order, even the learned counsel for the respondents has conceded that the presentation of the appeal is defective, but he contends that when there is

substantial compliance with Section 76 of the Evidence Act the carbon copy must be treated as a certified copy for all purposes including the purpose of appeal. Thus, the point centres round the question whether the carbon copy produced along with the appeal is a certified copy of the order.

4. Before dealing with this question, an idea about the relevant features of the carbon copy produced would be useful for appreciating the contentions raised by both sides. The last sheet of the said copy bears the signature of the Principal Munsiff, who passed the order, and below that the following short order is quoted:

'Counsel for petitioner-plaintiff orally prays for issue of carbon copy of this order. Issue carbon copy on payment of requisite charges.'

The Principal Munsiff had put his signature again. Further down, the appendix regarding the witnesses and exhibits is given and the Principal Munsiff has affixed his signature or initials again. The docket portion contains the usual endorsement indicating the name of the applicant and date of the application etc. Besides all those, the Examiner of the Court has endorsed that 'carbon copy granted as per order on LA. 685/82, dt. 26-3-82'. The seal of the Court is seen affixed on the first page of the order. These are the main relevant features to be borne in mind when considering the question raised in this revision. What the said copy does not contain is a certificate that it is the true copy of the document.

5. Section 76 of the [Evidence Act, 1872](#) reads thus :

'Certified copies of public documents.--Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorised by law to make use of a seal; and such copies so certified shall be called certified copies.'

(Explanation omitted)

6. It is contended that any copy which is not in compliance with the said section cannot be called a certified copy, and the order of a Court being a public document there is no proof of it under Section 77 of the Evidence Act without the production of a certified copy. The learned District Judge has relied on a passage in the decision reported in *Joint Agrl. Marketing Advisor v. Baby*, 1982 Ker LT 850 and held that a carbon copy issued to a party would be sufficient for the purpose of filing the appeal. In the said decision Poti, J. (as he then was) was considering the maintainability of a writ appeal in which the carbon copy of the order alone is produced. The pertinent observation of the learned Judge is very useful in this context also and hence those observations are quoted below :

' 'Duly certified' need not necessarily be by express words of certification. Sufficient authenticity in the copy supplied to the party to indicate that it is not an unofficial or informal copy, but a copy officially issued by the Court under the authority of the Court would be sufficient to treat it as a duly certified copy.'

The said decision is sought to be distinguished on facts by the learned counsel for the petitioner, on the ground, that what is considered therein is the scope of Rule 128 of the High Court Rules, 1971 (Kerala), where the insistence is only on the production of a copy 'duly certified' and in such a case the provisions of Order XLI, Rule 2 of the Code of Civil Procedure are not applicable. No doubt, the said rule applies to an appeal presented under Order XLIII, Rule 1 of the Code of Civil Procedure by virtue of the provisions in Rule 2 of that Order. Even then, the line of argument adopted by the learned counsel to distinguish the decision of Poti, J. (as he then was) cannot be accepted in view of Rule 159 of the High Court Rules, which provides that the procedure prescribed in the Code of Civil Procedure for appeals shall apply so far as may be to writ appeals also. It is pertinent in this context to refer to Rule 239 of the Civil Rules of Practice which is almost similarly worded as Rule 128 of the High Court Rules. As per Sub-rule (3) of Rule 239 of the Civil Rules of Practice 'any party to a proceeding may immediately after the judgment or order is pronounced, apply orally to the Court for a carbon copy thereof, and if the Court so directs, a carbon copy duly certified will be issued to the party.....'.

Thus the reference to the said rule indicates that the carbon copy issued by the High Court in an Original Petition stands on the same footing as that of a carbon copy issued by the Civil Court, so far as the production of it in an appeal is concerned. Therefore the observation of Poti, J. (as he then was) quoted above is not distinguishable on the ground sought to be made out by the learned counsel for the petitioner.

7. A legal presumption is created by Section 79 of the Evidence Act as to the genuineness of every document 'purporting to be a certified copy' which purports to be duly certified by any officer duly authorised thereto. There is some importance to the proviso to that section which says that it is enough that such document 'is substantially in the form and purports to be executed in the manner directed by law in that behalf. When the law has created a legal presumption in favour of the genuineness of a document when it is in substantial compliance, though not in strict compliance with the provisions for the certification of a copy, it is an added ground to strengthen the view that a carbon copy as produced in this case can be treated as a certified copy. No particular form as such is prescribed in Section 76 and hence if the copy produced contains the necessary particulars by which its authenticity can be inferred, the same can be treated as a certified copy of the order.

8. In the above view, I hold that the carbon copy produced along with the appeal is a certified copy of the order appealed against and as such the presentation of the appeal with that carbon copy can be treated as a valid presentation. Therefore, the District Judge was right in overruling the preliminary objection raised before the Court. This revision is, accordingly, dismissed, without any order as to costs.