

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.2.2009

Coram:

THE HONOURABLE MR.JUSTICE G.RAJASURIA

C.R.P.(PD).No.319 of 2006
and
C.M.P.No.2814 of 2006

Venkatraman

... Petitioner

vs.

Ramesh

... Respondent

This civil revision petition is filed against the order dated 12.4.2005 passed in I.A.No.375 of 2005 in O.S.No.446 of 2002 by the I Additional District Munsif, Erode.

For Petitioner : No appearance
For Respondent : No appearance

ORDER

Inveighing the order dated 12.4.2005 passed in I.A.No.375 of 2005 in O.S.No.446 of 2002 by the I Additional District Munsif, Erode, this civil revision petition is focussed.

2. The long and short of the relevant facts, which are absolutely necessary and germane for the disposal of this civil revision petition would run thus:-

The revision petitioner/plaintiff filed the suit O.S.No.446 of 2002 before the I Additional District Munsif, Erode, seeking mandatory as well as permanent injunction by setting out the following prayers:

"அ(1) தாவா 1வது அயிட்ட சொத்தை தடமாகவும் தாவா 2 வது அயிட்ட சொத்தின் பேரில் பாலம் அமைத்து தாவா 3 வது அயிட்ட சொத்துக்கு அதை பொதுத்தடமாக பிரதிவாதி மாற்றியிருப்பதை கோர்ட்டார் நிர்ணயிக்கும் ஒரு தேதியில் நீக்கவேண்டுமாயும் தவறும் பட்சத்தில் கோர்ட்டரே பிரதிவாதியின் செலவில் பதிதாக அமைக்கப்பட்ட பாலத்தையும் தடத்தையும் நீக்கிக்கொடுக்க வேண்டுமாயும் ஒரு செயல் உறுத்துக்கட்டளை பரிகாரம் வழங்கியும்

அ(2) பிரதிவாதி மற்றும் அவரை சேர்ந்தவர்களுக்கும் இந்த தாவா 1வது அயிட்ட சொத்தை பொதுத்தடமாகவும் தாவா 2வது அயிட்ட சொத்தின் பேரில் பாலம் அமைக்காதவாறு தடுத்தும் தாவா 2வது அயிட்ட சொத்துக்கு அவைகளை பொதுத்தடமாக காட்டாது தடுத்தும் ஒரு நிரந்தர உறுத்துக்கட்டளை பரிகாரம் வழங்கியும் இ.ம.எண்.244/03 ல் பிறப்பிக்கப்பட்ட உத்தரவின்படி திருத்தப்பட்டது.

(ஆ) இந்த தாவா செலவு, தொகையை வாதிக்கு பிரதிவாதி செலுத்த வேண்டுமென்றும்."

3. The defendant entered appearance and contested the matter. Whereupon trial commenced and P.W.1 was examined on plaintiff's side. While so, I.A.No.375 of 2005 was filed by the plaintiff under Order 18 Rule 17 of C.P.C. seeking permission of the Court to recall P.W.1 for re-examination, so as to mark a xerox-copy of the alleged order passed by the Municipal Commissioner, Erode, on 6.8.1976. After hearing both sides, the lower Court dismissed the said I.A. Being disconcerted and aggrieved by the order of the lower Court, this civil revision petition is focussed on various grounds, inter alia thus:-

The lower Court failed to take into consideration the reality that despite the plaintiff having taken steps to summon the concerned authorities, so as to get the certified copy of the said document dated 6.8.1976 he could not succeed, because those authorities could not produce such document due to non-availability; as such the plaintiff filed the said I.A. for getting P.W.1 recalled and to mark the xerox-copy of the said order dated 6.8.1976.

4. A bare poring and perusal of the order of the lower Court, including the typed set of papers, would demonstrate and display, evince and expatiate that the lower Court dismissed the application on the ground that xerox-copy per se cannot be entertained.

5. At this juncture, my mind is reminiscent and redolent of the trite proposition of law that a xerox-copy of a document before the civil Court cannot be entertained in view of the obvious reason that there will be no authenticity relating to such document. The lower Court correctly adverted to Section 63 of the Indian Evidence Act, considered the matter and rejected the application. Simply because the plaintiff could not secure either the certified copy or the office copy of the alleged order dated 6.8.1976, he cannot be allowed to mark unauthenticated xerox copy of the document. The

rationale behind such embargo for marking xerox-copy is that valuable civil right of a person should not be jeopardised by entertaining such dubious evidence. If at least the document sought to be marked is a certified copy under challenge of the opponent or such like documents, then subject to proof it could be marked by adhering to the decision of the Honourable Apex Court reported in AIR 2001 Supreme Court 1158 (Bipin Shantilal Panchal vs. State of Gujarat and another), certain excerpts from it would run thus:

"13. 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.)

14. The above procedure, if followed, will have two advantages. First is that the time in the trial court, during evidence-taking stage, would not be wasted on account of raising such objections and the court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior court, when the same objection is re-canvassed and reconsidered in appeal or revision against the final judgment of the trial court, can determine the correctness of the view taken by the trial court regarding that objection, without bothering to remit the case to the trial court again for fresh disposal. We may also point out that this measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses."

However, here the xerox-copy is per se cannot be allowed to be marked even though marking is different from proving a document. Hence, I could see no infirmity in the order passed by the lower Court.

6. In the result, there is no merit in the revision petition. Accordingly, the revision is dismissed. No costs. Connected miscellaneous petition is closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

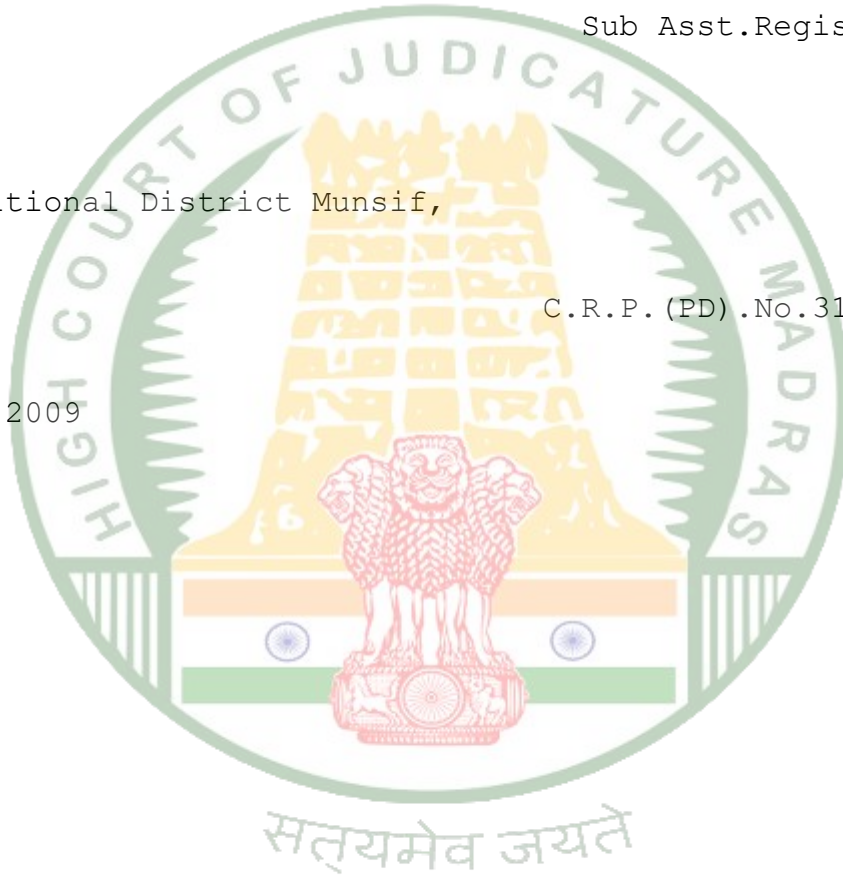
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To

The I Additional District Munsif,
Erode.

C.R.P. (PD).No.319 of 2006

SSR (CO)
RVL 09.03.2009



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