(2009) 11 MAD CK 0184

Madras High Court

Case No: C.R.P. (PD) No. 2438 of 2007

Kumaravel		APPELLANT
	Vs	
Naina Mohammed		RESPONDENT

Date of Decision: Nov. 6, 2009

Acts Referred:

- Constitution of India, 1950 - Article 227

Citation: (2010) 1 MLJ 632

Hon'ble Judges: S. Rajeswaran, J

Bench: Single Bench

Advocate: N. Suresh, for the Appellant; R. Meenal, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S. Rajeswaran, J.
The petitioner is challenging the Order dated 25.04.2007 made in I.A. No. 424 of 2007 in O.S. No. 269 of 2004 on the file of the Principal District Munsif, Villupuram.

2. The plaintiff in O.S. No. 269 of 2004 is the revision petitioner herein.

3. O.S. No. 269 of 2004 has been filed by the plaintiff for a recovery of a sum of Rs. 47,600/- with interest on the basis of a pronote from the respondent/defendant. The case of the plaintiff is that the suit promissory note was executed by the respondent/defendant in favour of one Prakash for a sum of Rs. 35,000/- and the same was made over by the said Prakash to the petitioner/plaintiff. Even though the plaintiff sent a notice dt.20.09.2003 calling upon the respondent/defendant to pay the amount, the respondent/ defendant failed to do so. Hence, the above said suit.

4. The respondent/defendant filed a written statement denying the execution of the pronote itself in favour of one Prakash as claimed by the petitioner/plaintiff. According to the respondent/ defendant, his signature in the pronote might have

been forged by the petitioner/plaintiff''s father and therefore it is a created pronote in the hands of the said Prakash.

5. Trial has commenced and the petitioner /plaintiff took steps to serve summons on the said Prakash, but the said Prakash refused to appear before the court. According to the petitioner/plaintiff the said Prakash in C.C. No. 20/2006 before Criminal Court deposed that the respondent/defendant executed a pronote in his favour and the same was made over to the petitioner/plaintiff by him. Therefore, the said deposition is very vital to prove the case of the petitioner/plaintiff and hence he filed I.A. No. 236 of 2007 to recall P.W.2. The said application was allowed and P.W.2 Sakthivel was recalled by the trial Court. Thereafter, the petitioner filed I.A. No. 424 of 2007 to permit him to file the document namely, the deposition of Prakash in C.C. No. 20 of 2006. This was opposed by the respondent/defendant by filing a counter, wherein it was stated that he had nothing to do with the criminal proceedings in C.C. No. 20 of 2006 between the said Prakash and the petitioner/plaintiff''s brother Sakthivel. And therefore, the deposition of Prakash cannot be marked in this suit. It was also pointed out that the respondent/defendant is not a party in the criminal proceedings. The trial court by order dt.25.04.2007 dismissed I.A. No. 424 of 2007 on the ground that when the respondent/defendant denies the execution of the suit pronote and when he is not a party in C.C. No. 20 of 2006, the said document could not be marked as evidence in this case. Aggrieved by the order dt.25.04.2007, the above Civil revision petition has been filed by the plaintiff in O.S. No. 269 of 2004 under Article 227 of the Constitution of India.

6. Heard the learned Counsel for the petitioner and the learned Counsel for the respondent. I have also gone through the entire documents available on record.

7. The learned Counsel for the petitioner relying on the judgment of the Hon''ble Supreme Court reported in AIR 2001 SC 1158 (Bipin Shantilal Panchal v. State of Gujarat) submitted that the admissibility of deposition should not have been decided by the trial court at the interlocutory application stage and the same should have been considered at the time of passing the final judgment. Therefore, he prayed for allowing the C.R.P.

8. Per contra, the learned Counsel for the respondent/defendant relying on the judgment of Hon''ble Supreme Court reported in V.M. Mathew Vs. V.S. Sharma and others, submitted that when the said Prakash was not at all cross examined by the respondent/defendant and in fact the respondent/defendant was not in a position to do so as he was not a party, then the deposition should not be marked as an evidence. Therefore, she submits that the trial court has rightly dismissed the application.

9. I have considered the rival submissions carefully with regard to facts and citations.

10. The case of the petitioner/plaintiff is that the respondent/defendant executed a pronote in favour of one Prakash and the said Prakash made over the same to the petitioner/plaintiff. The defendant''s case is that he never executed a pronote in favour of the said Prakash and the suit pronote is an act of forgery and creation. According to the petitioner/plaintiff, the said Prakash in C.C. No. 20 of 2006 deposed that the respondent/defendant executed a pronte in his favour and the same was made over by him in favour of the petitioner/plaintiff. Therefore, the petitioner/ plaintiff wanted to mark the same through P.W.2 who is a party in the criminal proceedings.

11. It is true that the Hon''ble Supreme Court in AIR 2001 SC 1158 (cited supra) has held as follows:

12. It is an archaic practice that during the evidence collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the Court does not proceed further without passing order on such objection. But the fall out of the above practice is this: Suppose the trial court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the appellate or revisional Court, when the same question is re-canvassed, could take a different view on the admissibility of that material in such cases the appellate Court would be deprived of the benefit of that evidence, because that was not put on record by the trial Court. In such a situation the higher Court may have to send the case back to the trial Court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by overselves. Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or re-moulded to give way for better substitutes which would help acceleration of trial proceedings.

13 When so recast, the practice which can be better substitute is this: Whenever an objection is raised during 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 advantage. 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.

15 We, therefore, make the above as a procedure to be followed by the trial Courts whenever an objection is raised regarding the admissibility of any material or any item of oral evidence.

12. In the present case, this was not followed and in fact, the trial Court considered the admissibility of the deposition and held that the same is inadmissible in evidence. At the same time, I am of the considered view that it is not desirable to remand the matter back to the trial Court to mark that document subject to its admissibility and objection. First of all, the suit is of the year 2004 and already the evidence of the plaintiff was closed. Further, the admissibility of the documents was rightly decided as the respondent/defendant is not at all a party in the criminal proceedings and he was not in a position to cross examine the said Prakash to controvert his evidence. The rejection of the application by the trial Court is inconsonance with the law laid down by the Hon''ble Supreme Court in AIR 1996 SC 109 (cited supra). Therefore, I do not find any illegality nor infirmity in the order of the trial Court prejudicing the interest of the petitioner/plaintiff warranting interference by this Court under Article 227 of the Constitution of India.

13. Hence, I do not find any merit in the Civil Revision petition and the same is dismissed. No cost.

14. Considering the fact that the suit is of the year 2006 and already the evidence of the plaintiff is almost over, I direct the trial Court to dispose of the suit within a period of four months from the date of receipt of a copy of this order, on merits and in accordance with law.