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**(2007) 04 MAD CK 0184**

**Madras High Court (Madurai Bench)**

**Case No:** Civil Revision Petition (PD) (MD) No. 366 of 2007 and M.P. (MD) No. 1 of 2007

Hemalatha

APPELLANT

Vs

K. Vasundharadevi

RESPONDENT

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**Date of Decision:** April 3, 2007

**Acts Referred:**

- Evidence Act, 1872 - Section 145

**Citation:** (2007) 04 MAD CK 0184

**Hon'ble Judges:** S. Nagamuthu, J

**Bench:** Single Bench

**Advocate:** K. Srinivasan, for the Appellant; C. Sundaravadivel, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

S. Nagamuthu, J.

This Civil Revision Petition has been filed by the petitioner, challenging the order dated 13.11.2006 made in I.A. No. 587 of 2006 in O.S. No. 58 of 2004, on the file of the learned I Additional Subordinate Judge, Madurai.

2. Brief facts of the case are as follows:

The respondent herein has filed the suit in O.S. No. 587 of 2006, on the file of the learned I Additional Subordinate Judge, Madurai for specific performance on the basis of a written agreement for sale. The petitioner who is the defendant in the said suit has filed written statement denying the execution of any such agreement in favour of the respondent herein. The respondent/plaintiff and the husband of the respondent were examined as P.W.1 and P.W.4 and few more witnesses were also examined on the side of the respondent. It is stated that during cross examination, P.W.4 has admitted that on an earlier occasion on 10.11.2003, he had given a statement to the Inspector of Police,

Central Crime Branch, Unit I, Madurai in connection with the petition given by the petitioner herein on 10.11.2003. In the said petition it is alleged to have been stated that her signature was obtained by force in many blank stamp papers by P.W.4 and one such stamp paper has been utilised for the purpose of preparing the sale agreement to file the above suit in O.S. No. 58 of 2004.

3. Thereafter, the petitioner herein has filed an application in I.A. No. 587 of 2006, to direct the Inspector of Police, Crime Branch Unit I, Madurai to produce the complaint and the statement given by P.W.4 to the Inspector, which was reduced into writing by him to be used in evidence.

4. The respondent herein has filed a detailed counter before the lower Court. Opposing the application, the learned Counsel would submit that the statement being one from a living person, it is not admissible under law; the said statement relates to a different transaction between P.W.4 and the petitioner herein and it is not relevant to this case. Finally, the learned Counsel would state that by having the said document produced, a new case is sought to be coined by the petitioner, which is not permissible under law.

5. Heard the learned Counsel for the petitioner as well as the learned Counsel for the respondent.

6. I have given careful consideration to the rival contentions made by both the counsel and also perused the materials available on record. At the out set, it is necessary to refer to Section 145 of the Evidence Act, which reads as follows:

145. Cross examination as to previous statements in writing:- A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

7. A reading of the above provision would show that any previous statement, either written or reduced into writing can be used for the purpose of contradicting the maker of the statement, if he happens to be a witness in the case. Admittedly, in this case, P.W.4, who is the husband of the respondent/plaintiff, is a witness and he has also admitted during cross examination that he made such a statement on 10.11.2003 to the Inspector of Police, Central Crime Branch, Unit I, Madurai. u/s 145 of the Evidence Act, the defendant can very well use the said statement for the purpose of contradicting P.W.4 during cross examination. For that purpose, the said document is absolutely necessary and therefore, the lower Court was not right in refusing to send for the said document.

8. The second contention of the learned Counsel for the respondent is that the said statement has got no relevance to the present case, as according to him, it relates to a separate transaction between P.W.4 and the petitioner/ defendant.

9. Per contra, learned Counsel for the petitioner, would contend that there are some portions in the said statement which relate to the transactions involved in this case and there is every relevance for the said statement. In my opinion after all, it is only a previous statement and the maker of the statement namely, P.W.4 alone can explain to the Court whether the said statement relates to the transactions connected with this case or some other transaction. It is open to him to explain while he is cross examined and when the said statement is shown to him. Therefore, on this ground also, we cannot deny the right of the petitioner/ defendant to send for the said statement.

10. The third contention of the learned Counsel for the respondent is that by introducing the said document, a new case is sought to be coined by the defendant. In my opinion, mere production of a document that too for the limited purpose of cross examination would not amount to coining of a new case. Therefore, I am not able to agree with the argument of the learned Counsel for the respondent in this regard also.

11. In the result, the order of the learned I Additional Subordinate Judge, Madurai made in I.A. No. 587 of 2006 in O.S. No. 58 of 2004, dated 13.11.2006, is set aside and the civil revision petition is allowed. The learned I Additional Subordinate Judge, Madurai is directed to summon the required document as early as possible and allow the parties to use the same to the limited extent as indicated above. No costs. Consequently, connected M.P is closed.