

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

THE HON'BLE MR.JUSTICE KRISHNA S. DIXIT

WRIT PETITION No.53805 OF 2015 (GM-CPC) DATED:02-07-2019

Sri. P.Mukundan S/ o Late G. Parthasarathy Vs. Smt. Radhika Vasudevan W/ o Sri. Vasudevan and Others

ORDER

Petitioner being the defendant No.3 in respondents civil suit in O.S.No.25874/2010 is invoking the writ jurisdiction of this Court seeking invalidation of the order dated 20.11.2015, a copy whereof is at Annexure- A. Learned XV Additional City Civil and Sessions Judge, Bengaluru, has refused to direct the respondents-plaintiffs to mark the subject documents put in their evidence since they were produced by the petitioner herein on the order of the Court below made at the request of the plaintiff side. The respondents having entered appearance through their counsel oppose the writ petition.

2. Learned counsel for the petitioner argues that subject documents having been produced by the petitioners on the direction of the trial Court made at the instance of the respondent-plaintiffs who have pressed the same into evidence, Court is not justified in letting them go without marking the same from their series of exhibits; the counsel submits, the text of Sec 163 of the Evidence Act, 1872 being mandatory, there is error apparent on the face of the impugned order warranting Co indulgence of this Court.He banks upon the decisions of the Madras and Bombay High Courts in support of his assertion.The learned counsel appearing for the respondents makes submission in justification of the impugned order.

3. I have heard the learned counsel for the petitioner and the learned counsel for the respondents.I have perused the petition papers.I have adverted to at the decisions cited at the Bar.

4. It is not in dispute that the subject documents were produced before the Court pursuant to its direction obtained from the respondent-plaintiffs who have admitted the documents in their evidence having inspected the same.The Court below despite request from the petitioners to have the said documents marked by the plaintiffs from plaintiffs?Penenan side, has let them go unmarked on the ground that it is unfair on the part of the Court to compel the plaintiffs to mark the documents from their series when they are unwilling.

5. Sec.163 of the Indian Evidence Act reads as under:

" 163 Giving Giving,, as evidence, of document called for and produced on notice:-When a party calls for a document which he has given the other party noti to produce, and such document is produced and inspected by the party calling for its production Prty, he is bound to give it as evidence if the it requires him to do so "..

The language of this Section is as plain as can be and therefore leaves no room for interpretation.It's a strongest case of litera legis.In Law of Evidence by Woodroffe & Amir Ali, 20th Edition atp.5528 & 5529, the underlying rationale of this Section is stated as under:

" The reason for the rule is that it would give an unconscionable advantage to a party to enable him to pry into the affairs of his adversary, without at the same time subjecting him to the risk of making whatever he inspects evidence for both parties. Where a party to a case calls for a document from the other party and inspect the same, he takes the risk making it evidence for both parties ".

6. The Madras Madras High Court in the case of RAJAGOPALA AYYANGAR Vs. RAMANUJA AYYANGAR AND OTHERS in AIR 1923 Mad607. NAGPUR BENCH OF Ceann BOMBAY HIGH COURT in the case of LILADHAR RATANLAL VYAS Vs. HOLKARMAL SOHAN LAL, AIR 1959 BOMBAY 528 and the Allahabad High Court in the case of P prose UNION OF INDIA Vs. FIRM VISHUDH GHEE VYOPAR MANDAL, AIR 1953 ALLAHABAD 689 having interpreted the above provision of law, have echoed what the learned authors of great repute have stated supra.

In the above circumstances, this writ petition succeeds; the Court below shall cause the marking of the subject documents from the side of the plaintiffs and process the matter further.

No costs.