
(2014) 04 MAD CK 0133

In the Madras High Court

Case No : C.R.P. (PD) (MD) No. 1089 of 2013 and M.P. (MD) No. 1 of 2013

Kavitha

APPELLANT

Vs

Nallaponnu

RESPONDENT

Date of Decision : 17-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 4, 151
Evidence Act, 1872 — Section 134, 138

Citation : (2014) 4 LW 532

Hon'ble Judges : T. Mathivanan, J

Bench : Single Bench

Judgement

T. Mathivanan, J.—Challenge is made in this memorandum of civil revision petition to the fair and decretal orders dated 17.04.2013 and made in I.A. No. 2027 of 2012 in El. O.P. No. 104 of 2011, on the file of the learned Principal District Judge, Dindigul. The revision petitioner herein is the first respondent in El. O.P. No. 104 of 2011 and petitioner in I.A. No. 2027 of 2012, the first respondent herein is the petitioner in El. O.P. No. 104 of 2011 and first respondent in I.A. No. 2027 of 2012 on the file of the learned Principal District Judge, Dindigul, whereas the respondents 2 to 5 herein are the respondents 2 to 5 in both election original petition as well as the interlocutory application.

2. The revision petitioner, being the first respondent in El. O.P. No. 104 of 2011, has taken out an interlocutory application in I.A. No. 2027 of 2012, under Section 151 of the Code of Civil Procedure, to scrap the proof affidavit of P.W. 3 (examination in chief). This interlocutory application was dismissed by the Election Tribunal viz., the learned Principal District Judge, Dindigul, on 17.04.2013.

3. Being aggrieved by the said order of dismissal, dated 17.04.2013, the revision petitioner has come forward with this memorandum of civil revision petition.

4. Heard Mr. R. Subramanian, learned counsel appearing for the revision petitioner/petitioner/1st respondent, Mr. A. Hariharan, learned counsel appearing

for the 1st respondent/1st respondent/petitioner as well as Mr. J. Gunaseelan Muthiah, learned Government Advocate appearing for the respondents 2 to 5/ respondents 2 to 5/ respondents 2 to 5 and perused the materials available on record.

5. It is manifested from the records that the revision petitioner herein, who is the first respondent in El. O.P. No. 104 of 2011, contested for the post of President, Koovanoothu Village Panchayat Board. The first respondent, who is the petitioner in El. O.P. No. 104 of 2011, was also contesting in the same election. In the said election, the revision petitioner/first respondent polled 653 votes, whereas the first respondent/petitioner polled 652 votes. The revision petitioner/first respondent was declared as the returned candidate and accordingly she has been functioning as the President of Koovanoothu Village Panchayat Board. The difference of vote between the revision petitioner/1st respondent and the 1st respondent/petitioner is only one vote.

6. Challenging the declaration of election results, the first respondent/petitioner has filed the election original petition in El. O.P. No. 104 of 2011. In the said election original petition, an enquiry was conducted and two witnesses were examined on behalf of the first respondent/petitioner. The first respondent/petitioner was proposed to examine one Mummoorthi as P.W. 3 and therefore as contemplated under Order XVIII Rule 4 C.P.C., his proof affidavit was filed as early as on 06.11.2012.

7. In this connection, the revision petitioner/first respondent has contended that P.Ws. 1 and 2 were cross-examined simultaneously, on 19.11.2012 so as to avoid any contradiction and confliction between these two witnesses. The proposed P.W. 3 is none other than the Polling Agent of the first respondent/petitioner. It is the further contention of the revision petitioner/first respondent that the first respondent/petitioner, who was examined as P.W. 1 had admitted in her cross-examination that no material facts were stated in the election original petition. But, in the proof affidavit filed by the proposed P.W. 3, certain extraneous and irrelevant facts have been stated, which are not at all stated in the original petition.

8. It is also the further contention of the revision petitioner/first respondent that if P.W. 3 is subjected to cross-examination, it would amount to acceptance of the facts, which were not at all stated in the election original petition. But, this ground has not been accepted by the Election Tribunal and therefore the Election Tribunal had proceeded to dismiss that application.

9. Mr. R. Subramanian, learned counsel appearing for the revision petitioner/first respondent, in support of his contention, has placed reliance upon the decision in Anil Vasudev Salgaonkar Vs. Naresh Kushali Shigaonkar, , wherein the Honourable Apex Court has explained the meaning of material facts and full particulars as well as it's nature and scope. In this connection, it has been held that "material facts" means all facts necessary to formulate a complete cause of

action and all material facts must be pleaded by the party in support of his case within the period of limitation. Failure to state even a single material fact entails dismissal of election petition. Object and purpose is to enable opposite party to know the case he has to meet. In the absence of pleading, party cannot be allowed to lead evidence.

10. On coming to the instant case on hand, the interlocutory application in I.A. No. 2027 of 2012 is not filed to scrap the evidence of P.W. 1. It may be more relevant to note here that the revision petitioner/first respondent has allowed the first respondent/petitioner to examine two witnesses on her part including herself. Nevertheless the revision petitioner/first respondent has not elucidated the reason sufficiently to scrap the proof affidavit of P.W. 3. It may also be relevant to note here that P.W. 3 has not yet been subjected to cross-examination. Therefore, though the facts, which are found in place in the proof affidavit of P.W. 3, were not stated in the original petition, it would not be the reason to eschew or to scrap the proof affidavit of P.W. 3.

11. Mr. A. Hariharan, learned counsel appearing for the first respondent/petitioner, in support of his contention, has placed reliance upon the decision in Laxmibai (Dead) thr. L.Rs. and Another Vs. Bhagwantbuva (Dead) thr. L.Rs. and Others, . In this case, it is observed that the assessment of quality vis-a-vis quantity of evidence and the manner in which correctness of the statement of witness, might be impeached in a fair and valid manner, as contemplated under Section 138 of Evidence Act, 1872, have been explained. In paragraph No. 30, while speaking on behalf of the Division Bench of the Apex Court, His Lordship The Honourable Mr. Justice Dr. B.S. Chauhan, has observed that:

"38. In the matter of appreciation of evidence of witnesses, it is not the number of witnesses but quality of their evidence which is important, as there is no requirement in law of evidence that any particular number of witnesses is to be examined to prove/disprove a fact. It is a time-honoured principle that evidence must be weighed and not counted. The test is whether the evidence has a right of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value provided by each witness, rather than the multiplicity or plurality of witnesses. It is quality and not quantity, which determines the adequacy of evidence as has been provided by Section 134 of the Evidence Act....."

12. On coming to the instant case on hand, it is apparent that P.W. 3 has filed his proof affidavit and he is yet to be cross-examined. Even, according to the revision petitioner/first respondent, it is presumed that the fact, which are set-forth in the proof affidavit of P.W. 3, have not been set-forth in the election original petition by the first respondent/petitioner. The revision petitioner/first respondent is entitled to test the veracity of the proof affidavit filed by P.W. 3 during the course of his cross-examination and that right is not taken away from him. Further, he is entitled to confront with P.W. 3, with any other document or facts, which he is proposed to put before him during his cross-examination. But,

without adopting the settled legal principles, it may not be fair on the part of the Court to scrap the proof affidavit, which is not yet subjected to cross-examination. If it is done so, it would be against the public policy and would amount to travesty of justice.

13. Keeping in view of the above facts and circumstances of the case, this Court does not find any discrepancy or irregularity in the impugned Order passed by the Court below and therefore this memorandum of civil revision petition deserves to be dismissed. Accordingly, this memorandum of civil revision petition is dismissed and the impugned order dated 17.04.2013 and made in I.A. No. 2027 of 2012 in El. O.P. No. 104 of 2011, on the file of the learned Principal District Judge, Dindigul, is confirmed. The learned Principal District Judge, Dindigul, is directed to dispose El. O.P. No. 104 of 2011, as early as possible, preferably by the end of June, 2014. Consequently, connected miscellaneous petition is closed. No costs.