THE HON'BLE SRI JUSTICE T. VINOD KUMAR

CIVIL REVISION PETITION No. 491, 528, 530 of 2024

COMMON ORDER:

1. As a common issue arises for consideration in these revisions, they are being disposed of by this common order.

2. The underlying interlocutory applications are filed in G.W.O.P. No.43 of 2020 before the Principal District and Sessions Judge-cum-Family Court, Medchal-Malkajgiri, at Kushaiguda.

3. The Respondent No.1 herein had filed the underlying OP under Section 10 & 25 of the Guardians and Wards Act, 1890 (for short 'Act, 1890') seeking custody of his Minor daughter. The petitioners herein are the respondents in the said OP and are the maternal uncles of the minor child.

4. C.R.P. No.491 of 2024 is filed aggrieved by the common order dated 20.01.2024 passed in I.A. No.5 of 2024 filed by the petitioners herein under Section 65 of the Indian Evidence Act, 1872 (for short 'Act, 1872') read with Section 151 of the Code of Civil Procedure, 1908 (for short 'the Code') seeking to mark the

photostat copy of the settlement deed dated 08.05.2019 titled as 'Oppanda Patram-I' as secondary evidence.

5. C.R.P. No.528 of 2024 is filed aggrieved by the order dated 20.01.2024 passed in I.A. No.3 of 2023 filed by the petitioners herein under Section 151 of the Code for reopening the evidence of RW-1.

6. C.R.P. No.530 of 2024 is filed aggrieved by the order dated 20.01.2024 passed in I.A. No.4 of 2023 filed by the petitioners herein under Order 18 Rule 17 read with Section 151 of the Code to recall RW-1 to mark the documents.

7. Heard Sri. Shyam S. Agarwal, learned Counsel for the petitioners, Sri. D. Madhava Rao, learned Counsel for the respondent No.1, and perused the record.

8. Learned Counsel for the petitioners herein contends that the Court below erred in dismissing the applications on the ground that these petitioners had failed to establish a foundation in their pleadings to lead secondary evidence, since the rules of evidence are not strictly applicable to the Family Courts. In support of his contentions reliance is placed on ***P. Devasenapathy Vs. P.***

Anusha*[1]*, and ***Karan Puri Vs. Sonika Chaudhary*[2]*.*** It is further contended that the Court below having observed that a copy of the Oppanda Patram-I dated 08.05.2019 was marked in I.A. No.145 of 2021 as Ex. R-2 ought not to have dismissed the applications. It is finally contended that even otherwise as the respondent No.1 herein had admitted to have entered into certain settlements with the petitioners herein after the death of the respondent No.1's wife, the same would amply establish the existence of the said document.

9. *Per contra,* learned Counsel for the respondent No.1 herein contends the petitioners herein have failed to plead about the existence of the proposed document in their counter affidavit filed in the main OP. It is further contended that the petitioners herein have failed to specify the location of the original document; and that even the photostat copy does not reflect the signature of the respondent No.1 herein. Thus, the learned Counsel for the respondent No.1 submits that the Court below had rightly dismissed the underlying applications.

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[1] C.R.P.(PD) (MD) No. 2320 of 2018 & C.R.P.(MD).No. 10371 of 2018 dated 05.03.2019

[2] 2023:PHHC:165262-DB

10. I have taken note of the contentions urged.

11. The primary issue that falls for consideration in these revisions is as to whether a photo copy of the alleged *'Oppanda Patram-I dated 08.05.2019'* can be allowed to be marked in evidence in the absence of any pleading in the counter filed by the petitioners in the main OP as Secondary Evidence.

12. In order to decide this issue, it would be beneficial to refer to Section 10 of the Family Courts Act, 1984 (for short 'the Act, 1984') which deals with the procedure to be followed by the Family Court. The said provision reads as under:

> "10. Procedure generally.—(1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings [other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)] before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court.
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> (2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) or the rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Family Court.
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> (3) **Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive** at a settlement in respect of the subject-matter of the suit or proceedings or **at the truth of the facts alleged by the one party and denied by the other.**"

13. On a bare reading of the above provision, though the provisions of the Code apply to the Family Court, the same does not prevent a Family Court from laying down its own procedure in order to arrive at the truth of the facts alleged by one party and denied by other party.

14. Further Section 14 of the Act, 1984 empowers a Family Court to receive evidence which would or would not be relevant or admissible under the Act, 1872.

> "14. Application of Indian Evidence Act, 1872.—**A Family Court may receive as evidence** any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, **whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872 (1 of 1872).**"

Therefore, by application of Section 14 of the Act, 1984, Family Courts are not strictly bound to follow the rules of the Act, 1872. However, the usage of the word *'may'* indicates that discretion is vested on the Family Court to receive such evidence, should it consider the same to be relevant to unearth the truth.

15. The Bombay High Court in ***Deepali Santosh Lokhande Vs. Santosh Vasantrao Lokhande***[3] held that a Family Court is required to approach an issue by adopting the rule of preponderance, since matrimonial issues are to be dealt sensitively. The Court further held that if the Family Court is of the opinion that a document is necessary to effectively resolve an issue, it is not precluded from receiving even an electronic record without strict compliance to Section 65 of the Act, 1872. The relevant observations are as under:

> "9. A cumulative reading of section 14 and section 20 of the Family Courts Act, takes within its ambit the restricted applications of the provisions of the Evidence Act qua the documentary evidence which includes electronic evidence, whether or not the same is relevant or admissible, if in the opinion of the Family Court such evidence would assist the Family Court to deal effectively with the matrimonial dispute. Considering the above object and the intention of the legislature, in providing for a departure, from the normal rules of evidence under the Evidence Act, in my opinion, there was no embargo for the learned Judge of the Family Court to accept and exhibit the documents as sought by the petitioner-wife. Ultimately, it is the absolute power and authority of the Family Court either to accept or disregard a particular evidence in finally adjudicating the matrimonial dispute. **However, to say that a party would be precluded from placing such documents on record and or such documents can be refused to be exhibited unless they are proved, in my opinion, goes contrary to the object of section 14 of the Family Courts Act.**
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> 10. **In matrimonial cases, the Family Court is expected to adopt standards as to how a prudent person would gauge the realities of life and a situation of commotion and turmoil between the parties and applying the principle of preponderance of probabilities, consider whether a particular fact is proved. Thus, the approach of the Family Court is required to be realistic and rational to the facts in hand rather than technical and narrow.** It

[3] 1. MANU/MH/3502/2017 : 2018(3)ALLMR766

> cannot be overlooked that matrimonial disputes involve human problems which are required to be dealt with utmost human sensitivity by using all intelligible skills to judge such issues. The Family Court has a special feature where in a given case there may not be legal representation of the parties. Section 13 of the Act makes such a provision. In such a situation, the parties who are not experts in law cannot be expected to know the technical rules of the evidence qua the relevancy, admissibility and proof of documents. Thus, the strict principles as referred in the impugned order on the decisions which are not under the Family Courts Act, would not be of any relevance in the proceedings before the family Court.
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> 11. **Thus, in my opinion, even if there is any electronic record for which certificate under Section 65B of the Evidence Act is necessary, it would not preclude the learned Judge of the Family Court to exhibit such documents and receive such documents in evidence, on forming an opinion as to whether the documents would assist the Court, to deal effectively with the dispute in hand. Such exercise has not been undertaken in passing the impugned order."**

16. The Delhi High Court in ***Deepti Kapur Vs. Kunal Julka***[4]**,** following the decision of the Bombay High Court in ***Deepali Santosh Lokhande's*** case (supra) has observed that the only rule for admissibility of evidence is the subjective satisfaction of the Family Court that such a document is relevant to decide the issue. The Court further held that the relaxation under Section 14 of the Act, 1984 merely permits a party to bring all available evidence on record and that the same does not in any manner impute credibility, value or weightage of the said document. The relevant observations are as under:

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[4] AIR2020Delhi156 : 2020/DHC/2188

"27. In this court's opinion, the Legislature being fully cognizant of the foregoing principle of admissibility of evidence, has enacted section 14 infact to expand that principle insofar as disputes relating to marriage and family affairs are concerned; and the Family Court is thereby freed of all rigours and restrictions of the law of evidence. The Legislature could not have enunciated it more clearly than to say that the Family Court "may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872". **Therefore the only criterion or test under section 14 for a Family Court to receive, that is to say admit, evidence is its subjective satisfaction that the evidence would assist it to deal effectually with the dispute.** It may also be relevant to note that under section 13 of the Family Courts Act, parties are to represent themselves without the assistance of lawyers; and therefore even more so, all technical aspects of admissibility of evidence are to be ignored before a Family Court, since parties appearing in-person cannot be expected to be well versed with the technicalities of the law of evidence. Reference in this regard may be made to the observations made by a Division Bench of the Bombay High Court in Shiv Anand Damodar Shanbhag vs. Sujata Shiv Anand Shanbhagh

29. **To be sure, in view of the expressed intention of the Legislature in section 14 of the Family Courts Act, all that is being said here is that evidence, whether collected legitimately or otherwise, may be received by the Family Court if it is of opinion that the evidence would assist it to effectively decide the dispute. It is not being suggested that the Family Court is bound to believe, accept or act upon such evidence for purposes of adjudication.**

30. As observed by the Bombay High Court in the aforementioned case, it is noteworthy that, what is permitted under section 14 is only for the Family Court to receive evidence without the rigours and shackles of the conventional rules of evidence, with the only threshold test being that in the opinion of the Family Court that piece of evidence will assist it to deal effectively with the dispute at hand. **Thereafter however, the Family Court is free to either accept or discard or give weightage or disregard a particular piece of evidence when finally adjudicating the dispute. As under the ordinary law of evidence, so also under section 14, there is absolutely no compulsion on the Family Court to accept a given piece of evidence as proof of a fact-in-issue or of a relevant fact, merely because such evidence has been taken on record by disregarding all rigours of the rules of evidence. Correspondingly, it is open to the contesting party to dispute, cross-examine and disprove the evidence so cited; and to thereby contest any claim being made on the basis of such evidence.** The limited relaxation as it were, in section 14 is that even if under the Evidence Act or under conventional rules of evidence, a certain piece of evidence (whether a report, statement, document, information or other matter) is ex-facie found to be not relevant and therefore not admissible, the Family Court may yet receive such evidence on record if in its opinion, the evidence would assist it to deal effectively with the dispute. **What credence, value or**

> **weightage is to be given to the evidence so received is discretionary upon the judge, when finally adjudicating the dispute.**"

17. A coordinate bench of the Delhi High Court in ***Sachin Arora Vs. Manju Arora***[5], while holding that proceedings before a Family Court stand on a slightly different footing than proceedings in a civil suit where rules of evidence are strictly applicable, followed the decision in ***Deepti Kapur's*** case (supra).

18. A similar view was expressed by the Madras High Court in ***P. Devasenapathy's*** case (supra).

19. A Division bench of the High Court of Punjab and Haryana in ***Karan Puri's*** case (supra) made a similar observation that so long as the discretion exercised by the Family Court does not violate the basic principles of our legal system, the Family Court is well within its power to admit any material which is essential for effective adjudication of the *lis* whether or not requirements under the Act, 1872 are fulfilled.

20. This Court is in respectful agreement with the views expressed above, that a Family Court has the discretion to both

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[5] : 2023/DHC/003197

receive and form opinion on a document which may *otherwise* be inadmissible under the provisions of the Act, 1872. However, it is clarified that the Family Court is at discretion to discard such evidence if it finds the same to be irrelevant to decide the dispute between the parties. Further, as held in ***Deepti Kapur's*** case (supra), even after receiving the document in evidence, the Family Court is not under a compulsion to accept the credibility of the document, since the relaxation under Section 14 of the Act, 1984 goes only to the extent of ensuring that a litigant has a fair opportunity to plead his case.

21. In the light of the aforesaid legal position, this Court is of the view that the Court below erred in dismissing the underlying applications in a mechanical manner solely on the ground that there was no foundation to lead secondary evidence, without examining whether or not the document sought to be introduced was required to resolve the dispute.

22. In the facts at hand, the petitioners herein have placed before this Court three (3) settlement deeds titled 'Oppanda Patram' *i.e.*, (i) Oppanda Patram-I & II (running into two pages) bearing Stamp

Paper Nos. 9879-9880; (ii) Oppanda Patram bearing Stamp Paper Nos. 10672-10673; (iii) Oppanda Patram bearing Stamp Paper Nos. 10674-10675 alleged to have been executed by the respondent No.1. While it is the petitioners case that all three (3) settlements deeds were executed by the respondent No.1 on 08.05.2019, the respondent No.1 herein denies of having executed three (3) settlement deeds. *Contrarily*, it is his case that after the death of his wife, he was forcefully made to sign on two (2) settlements deeds *i.e.*, 'Oppanda Patram' bearing Stamp Paper Nos. 10672-10673 & 10674-10675 both dated 08.05.2019 under duress at the police station. However, this Court being a revisional Court cannot delve into the truth behind the transaction. Therefore, the dispute circles down to the settlement deed titled as 'Oppanda Patram – I & II' dated 08.05.2019, a copy of which the petitioners herein intend to mark as secondary evidence by reopening the evidence of RW-1.

23. A perusal of the said document *i.e.*, 'Oppanda Patram – I & II' reveals that it does not contain the signature of the respondent No.1 herein. It is not out of place to note that the stamp papers on which the other two (2) settlement deeds both titled 'Oppanda

Patram' were executed, reflects that the same were purchased by the Petitioner No.1 herein, for the use of the respondent No.1's father. Whereas, the stamp papers on which the settlement deed titled 'Oppanda Patram – I & II' was executed reflects that the same was purchased by the Petitioner No.2 herein for personal *i.e.*, '*self*' use. If the said document *i.e.*, 'Oppanda Patram – I & II' was intended to be used by '*self*', a reasonable presumption arise that the petitioners would have preserved the original in their custody. However, the petitioners herein neither in their affidavit filed before the Court below nor before this Court were forthcoming with a cogent reason for not being able to produce the original document. Curiously, in the affidavit filed along with the underlying interlocutory applications, the petitioners herein have stated as follows: '*the original OPPANDA PATRAM – I dated 08.05.2019 is not with me nor the respondent herein...'*. The said statement in their affidavit is surprising as the petitioner herein seem to be very sure that even the respondent No.1 is not in possession of the original document. In such circumstances, it would be too creative for this Court to draw a presumption as to

why the petitioners herein were unable to retain the original of the 'Oppanda Patram – I & II', when admittedly original copies of the other two (2) settlement deeds, which were purchased for use by the respondent No.1's father, were in the petitioners custody. Therefore, this Court is refraining from doing so.

24. Further, it is to be seen that the petitioners while contending that the original was filed and marked in I.A. No.145 of 2021, on the other hand they had inconsistently pleaded before this Court that even in I.A. No.145 of 2021 when a 'copy' of the said document was marked, the respondent No.1 herein did not raise any objection. That apart, even the impugned order does not clarify the said question as to whether the document marked in I.A. No.145 of 2021 was the original or is only a photo copy, as sought to be contended by the petitioners herein. Thus, this Court is of the view that the issue needs verification of records and clarification.

25. That apart, the petitioners herein were also unable to answer the query raised by this Court, as to why only two (2) documents bore the signature of the respondent No.1 when all three (3) were

allegedly executed on the same day relating to occurrence of a single incident.

26. Since, the circumstances surrounding the creation, application and existence/destruction of the document are opaque, this Court is of the view that it would be appropriate to relegate the matter to the Court below to decide the question whether the 'Oppanda Patram-I' dated 08.05.2019 is to be received in evidence for arriving at the truth of the matter.

27. Accordingly, these Civil Revision Petitions are allowed. The common order dated 20.01.2024 passed in I.A. Nos.3, 4, and 5 of 2024 in G.W.O.P. No.43 of 2020 by the Principal District and Sessions Judge-cum-Family Court, Medchal-Malkajgiri, at Kushaiguda is set-aside; and the matter is remitted back to the Trial Court for reconsideration in the light of the observations as made herein above.

28. Consequently, miscellaneous petitions pending if any shall stand closed. No orders as to costs.

T. VINOD KUMAR, J

Date: 04.03.2024

VSV/MRKR