

HON'BLE SRI JUSTICE R. SUBHASH REDDY

CIVIL REVISION PETITION Nos.4426 of 2014 & 2105 of 2015

COMMON ORDER:

These Civil Revision Petitions are filed by the defendant in O.S.No.1920 of 2013 on the file of the II Junior Civil Judge, City Civil Court, Hyderabad, aggrieved by order dated 13.11.2014 passed in I.A.No.345 of 2014 and order dated 29.10.2014 passed in I.A.No.324 of 2014 respectively, in O.S.No.1920 of 2013, as such, they are heard together and disposed of by this common order.

The aforesaid suit is filed in the year 2013 by the respondent-plaintiff for eviction of the petitioner from the suit schedule property. It is the case of the respondent-plaintiff that the suit schedule property is a notified wakf property under the Wakf Act.

In the suit, petitioner-defendant filed I.A.No.324 of 2014 under Order VIII Rule 1-A read with Section 151 CPC to grant leave to receive the documents as per the list in the chief evidence and to mark the same as Ex.B.1 to B.6 and also filed I.A.No.345 of 2014 to grant leave to mark Ex.B.1, i.e. certified copy of sale deed vide document No.3812/1980 dated 28.04.1980 as secondary evidence under the Indian Evidence Act, 1882. The civil court, while allowing I.A.No.324 of 2014 in part, by rejecting the claim with regard to document No.1, dismissed I.A.No.345 of 2014.

Heard learned counsel for the petitioner and learned counsel for the respondent.

It is submitted by learned counsel for the petitioner that the property in question is not a wakf property and the father of the

petitioner has purchased the same vide document No.3812/80 dated 27.04.1980, but as original document was kept with the financier, the same is not readily available so as to produce the same; as such, relief is sought in I.A.No.345 of 2014 seeking leave to file certified copy of the same as secondary evidence. It is further submitted that there is no reason at all for not receiving and marking such document as secondary evidence.

On the other hand, it is submitted by the learned counsel for the respondent that the document intended to be filed by the petitioner does not relate to the suit schedule property at all; the suit schedule property is notified as wakf property and, further, in the absence of showing any reason that the original document is kept with the financier, petitioner is not entitled to seek leave to lead secondary evidence by producing certified copy of document No.3812/80 dated 28.04.1980. Learned counsel for the respondent, in support of his submissions, has relied on the decision of the Hon'ble Supreme Court in *H. Siddiqui (dead) by LRs. V. A. Ramalingam*^[1].

Copy of the written statement filed by the petitioner-defendant in the suit is placed on record. In the written statement, petitioner-defendant has nowhere pleaded that the original document is in the custody of the financier. When the document, which is sought to be relied on by the petitioner-defendant itself, is disputed on the ground that same does not relate to the suit schedule property, unless valid reasons are shown for non-availability of the original document, certified copy of the purported document cannot be permitted to be marked as secondary evidence. Further, in the decision of the Hon'ble Supreme Court (1 supra), relied on by the learned counsel for the respondent-plaintiff, at para-10, the Hon'ble Supreme Court has

held as under:

“Provisions of Section 65 of the Act 1872 provide for permitting the parties to adduce secondary evidence. However, such a course is subject to a large number of limitations. In a case where original documents are not produced at any time, nor, any factual foundation has been led for giving secondary evidence, it is not permissible for the court to allow a party to adduce secondary evidence. Thus, secondary evidence relating to the contents of a document is inadmissible, until the non-production of the original is accounted for, so as to bring it within one or other of the cases provided for in the section. The secondary evidence must be authenticated by foundational evidence that copy of the original. Mere admission of a document in evidence does not amount to its proof. Therefore, the documentary evidence is required to be proved in accordance with law. The court has an obligation to decide the question of admissibility of a document in secondary evidence before making endorsement thereon.”

The aforesaid decision renders support to the case of the respondent. Further, in the absence of any evidence to the effect that the original document is not available with the petitioner-defendant and the same is with the financier; on mere assumption, petitioner-defendant is not entitled to seek leave to mark certified copy of the purported document as secondary evidence.

For the aforesaid reasons, there is no merit in the Civil Revision Petitions to interfere with the impugned orders.

Civil Revision Petitions are accordingly dismissed. No order as to costs.

As a sequel, miscellaneous petitions if any pending stand closed.

R. SUBHASH REDDY, J

July 6, 2015
MRR

[\[1\]](#) ***AIR 2011 SC 1492***