

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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CIVIL REVISION PETITION No. 4095 OF 2015

ORDER:

This revision is filed against the order dated 10-09-2015 passed in I.A.No. 248 of 2014 in O.S.No. 116 of 2012 on the file of the Court of Junior Civil Judge, Bodhan (for short, 'the trial Court'), whereunder the trial Court rejected permission to adduce secondary evidence.

2. The petitioner filed the petition under Section 63 of the Indian Evidence Act, 1872 ('the Act of 1872' for brevity), seeking permission to adduce secondary evidence by producing attested Xerox copy of assignment (patta certificate) alleging that originally, her husband Mahboob Sab was allotted house site by issuing patta. In turn, Mahboob Sab transferred the patta towards Mehar in her name mutating her name in Grampanchayat records. Since then, the petitioner has been in possession and enjoyment of the property covered by patta. The petitioner further contended that her hut was collapsed and all original documents were damaged completely. As such, the petitioner applied for certified copy of patta. On her petition dated 26-08-2014, Mandal Revenue Officer submitted a report stating that original assignment file is not available in his office and he is the proper custodian of the record who is supposed to maintain the same as per rules. However, no copy was furnished to the petitioner. Therefore, she sought permission to adduce secondary evidence.

3. The respondents opposed the petition on the ground that the evidence of both parties was closed long back; at the stage of argument, the present petition is filed to drag the matter on one pretext or other and Xerox copy is inadmissible in evidence in the absence of proof of loss of original document and prayed for dismissal of the petition.

4. The trial Court, after hearing the matter, dismissed the petition holding

that the petitioner is not entitled to adduce secondary evidence.

5. Aggrieved by the order, the petitioner filed the present revision under Article 227 of the Constitution of India challenging the same on various grounds mainly contending that the trial Court did not consider the facts of the present case; the circumstances under which the petitioner sought permission to adduce secondary evidence; thereby, committed an error in passing the order and prayed to set aside the same.

6. The powers of Court under Article 227 of the Constitution of India are limited and the Court can exercise supervisory jurisdiction over sub-ordinate Courts and Tribunals within the State. When the sub-ordinate Courts or Tribunals exceed their discretion, which conferred on them, or failed to exercise discretion, then only this Court, while exercising power under Article 227 of the Constitution of India, can interfere. The Apex Court in **Jai Singh and others Vs. Municipal Corporation of Delhi and another**^[1] relied on **The Estralla Rubber Vs. Dass Estate (P) Limited**^[2] to hold that

"The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to."

Thus, in view of the law declared by the Apex Court, the powers of this Court under Article 227 of the Constitution of India are limited and the Court can interfere with the order in certain circumstances pointed in the above

judgment.

7. No doubt the parties are entitled to adduce secondary evidence subject to laying foundation in pleadings about loss of original or original is beyond recovery or beyond reach of the Court and unable to produce the same. According to rules of evidence, a party is required to prove a fact by producing primary evidence. If primary evidence is not available, party may fall back on secondary evidence subject to laying foundation in pleadings. In the present case, no foundation was laid in pleadings about loss of original or it is beyond the reach of the Court.

8. In ***Tukaram S. Dighole Vs. Manikrao Shivaji Kokate***^[3], the Supreme Court observed that

"Chapter V of the Evidence Act deals with documentary evidence. Section 61 thereof lays down that contents of documents may be proved either by primary or by secondary evidence. As per Section 62 of the Act of 1872, primary evidence means the document itself produced for the inspection of the Court. Section 63 categorizes five kinds of secondary evidence. Section 64 lays down that documents must be proved by primary evidence except in the cases mentioned in the following Sections. To put the matter briefly, the general rule is that secondary evidence is not admissible until the non-production of primary evidence is satisfactorily proved. However, Clause (e) of Section 65, which enumerates the cases in which secondary evidence relating to documents may be given, carves out an exception to the extent that when the original document is a public document, secondary evidence is admissible even though the original document is still in existence and available. Section 74 of the Evidence Act defines what are known as public documents. As per Section 75 of the Evidence Act, all documents other than those stated in Section 74 are private documents."

From bare reading of the principle laid down in the above judgment, if the document, sought to be received as secondary evidence, is a public document, in view of the explanation contained in Section 65 (e) of the Indian Evidence Act, 1872 (for short, 'the Act of 1872'), a public document can be received though original is available but, in the present case, the petitioner sought permission of this Court to produce certified Photostat copy of the patta granted by Tahsildar as secondary evidence.

9. According to Order VII Rule 14 (2) of the Code of Civil Procedure (for

short, 'C.P.C.'), when particular document is sued upon, such document is to produced along with plaint or plaintiff must state where the document is available. If the document is in the possession of adversary, party can be permitted to adduce secondary evidence. In the present case, except making a bald allegation in the plaint that hut of the plaintiff was collapsed in the recent past, no other allegation is made about lost of the document and failed to prove that the original patta granted in favour of husband of the petitioner was lost or beyond recovery. In the absence of proof of the requirements, the same cannot be received as secondary evidence. The Apex Court in **U.Sree Vs. U.Srinivas**^[4] relied on **H.Siddiqui (Dead) by L.Rs. Vs. A.Ramalingam**^[5], **J.Yashoda Vs. K.Shobha Rani**^[6] and **Ashok Dulichand Vs. Madahavlal Dube**^[7] to hold that

"Though Section 65 of the Act of 1872 permits the parties to adduce secondary evidence, yet such a course is subject to a large number of limitations. In a case where the original documents are not produced at any time, nor has any factual foundation been laid 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 the alleged copy is in fact a true copy of the original. It has been further held that mere admission of a document in evidence does not amount to its proof. Therefore, it is the obligation of the Court to decide the question of admissibility of a document in secondary evidence before making endorsement thereon."

10. On analyzing the principle laid down in the above judgments, it is clear that it is for the plaintiff to lay foundation in the pleadings that the original was lost and that it was beyond reach of the petitioner or it is available with the adversary as required under Order VII Rule 14 (2) of C.P.C. but here, except making a bald allegation that her hut was collapsed in the recent past, no other allegation is made to lay foundation in the pleadings. Therefore, in the absence of any foundation in the pleadings, the petitioner cannot be permitted to adduce secondary evidence.

11. Learned counsel for the petitioner contended that for the mistake of

counsel, party shall not be put to hardship. No doubt for the acts of counsel, party shall not suffer but the plaint was prepared only on the instructions of the petitioner herself and, therefore, it is the duty of the petitioner to mention about lost of document in the plaint itself when the plaint was drafted on the instructions given by the petitioner herself. Hence, failure to lay foundation in the pleadings is not the mistake of the counsel and it is totally the mistake of the petitioner herself. In any view of the matter, the document sought to be received is certified Photostat copy of the patta and the allegation made in the affidavit disclosed that the original assignment file was not available with Tahsildar and the original was not available even in the house of the petitioner but it is un-understandable how the Tahsildar certified Photostat copy as true copy in the absence of any authenticated document.

12. From a careful perusal of the order under challenge passed by the trial Court, the order is passed on the principle laid down by the Apex Court in **Ashok Dulichand Vs. Madahavlal Dube** (7th *supra*); thereby, the conclusion arrived by the trial Court is free from any illegality or irregularity and, therefore, does not call for interference of this Court while exercising power under Article 227 of the Constitution of India. Hence, I find that the trial Court had neither exceeded the jurisdiction conferred on it nor failed to exercise the discretion conferred on it. In the absence of any irregularity in the order passed by the trial Court, the order under challenge cannot be set aside exercising power under Article 227 of the Constitution of India. I, therefore, find no ground to set aside the order under challenge. Consequently, the order of the trial Court is confirmed at the stage of admission itself. The trial Court is directed to dispose of the suit in accordance with law uninfluenced by the observations made hereinabove.

13. In the result, the civil revision petition is dismissed. Pending miscellaneous petitions in this revision, if any, shall stand dismissed in

consequence. No order as to costs.

M.SATYANARAYANA

MURTHY, J.

Date: 27-10-2015.

JSK

[\[1\]](#) (2010) 9 SCC 385

[\[2\]](#) (2001) 8 SCC 97

[\[3\]](#) AIR 2010 SC 965

[\[4\]](#) AIR 2013 SC 415

[\[5\]](#) (2011) 4 SCC 240

[\[6\]](#) (2007) 5 SCC 730

[\[7\]](#) (1975) 4 SCC 664