

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.3653 of 2015

ORDER:

Heard Sri Alluri Raghu Rama Aurava, learned counsel for the petitioners and Sri G.Ramachandra Reddy, learned counsel for the respondent.

2. This Revision Petition is filed challenging the order dt.10-12-2014 in I.A.No.290 of 2014 in O.S.No.162 of 2008 of the III Additional Junior Civil Judge at Warangal.
3. The petitioners herein are defendants in the said suit. The respondent/plaintiff filed the said suit for perpetual injunction restraining the petitioners from interfering with the alleged peaceful possession and enjoyment of the suit schedule properties.
4. The respondent/plaintiff filed I.A.No.290 of 2014 stating that he had purchased the suit schedule property under registered sale deed dt.25-08-2006 and he had filed the certified copies thereof along with the plaint. Since the original of the sale deed was with a creditor by name Rajidi Ashok Reddy from whom he had obtained a loan, he therefore contended that he may be permitted to file a certified copy of the sale deed and mark the same in the injunction petition.
5. Counter affidavit was filed by the petitioners admitting that a registered sale deed exists in favour of the respondent but they contended that the said document was obtained by the respondent in collusion with certain other persons who did not have any right in the schedule property.

6. By order dt.10-12-2014, the Court below allowed the said application. It rejected the contention of the petitioners that the respondent did not take steps to summon the original document and that a certified copy cannot be received in evidence when the original exists. It observed that in each and every case, there is no necessity to summon the original of a document particularly when the certified copy of the document is obtained from public office. It also gave liberty to the petitioners to cross examine the witness about the original.
7. Challenging the same, this Revision Petition is filed.
8. Learned counsel for the petitioners contended that there is no compliance with Section 65 of the Indian Evidence Act, 1872 (for short 'the Act') since no notice has been issued to the custodian of the original of the sale deed dt.25-08-2006 to produce it, and that there is no explanation offered by the respondent for not producing the original. He also placed reliance on the judgment of this Court in **Syed Fahim Arif and another Vs. Rahmatunnisa Begum and another**.
9. Learned counsel for the respondent on the other pointed out that petitioners had, in their counter filed to the said I.A., admitted the existence of the said registered sale deed and therefore under clause (b) of Section 65 of the Act, the respondent is entitled to produce certified copy.
10. Section 65 (b) of the Act permits secondary evidence to be given for a document if the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved.

11. In the counter affidavit filed by the petitioners they have specifically stated that there is a registered sale deed in favour of the petitioner/respondent executed by persons who had no right in the property in respect of the suit schedule property.

12. Therefore, in my considered opinion, in view of clause (b) of Section 65 of the Act, the certified copy of the document in question is admissible and the written admission in para-3 of the counter of the petitioners in I.A.No.290 of 2014 is also admissible. The judgment cited by the learned counsel for the petitioner is not applicable to the present case since in that case, no valid explanation was furnished as to why secondary evidence was adduced. But in the present case such explanation has been given.

13. Therefore, I do not find any merit in the Civil Revision Petition and the same is accordingly dismissed. No costs.

14.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 21-09-2015

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