

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.3359 of 2015

ORDER :

The present civil revision petition is filed by the petitioner/defendant under Article 227 of the Constitution of India seeking to set aside the order dated 30.06.2015 passed in I.A.No.135 of 2015 in O.S. No.883 of 2007 on the file of Principal Junior Civil Judge, Kadapa.

2) The plaintiffs in O.S. No.883 of 2007 filed a petition under Order XVIII Rule 17 C.P.C seeking to recall of P.W-1 for exhibiting certain documents and to give evidence in that regard and the same was allowed and aggrieved by the same, the defendant filed the present revision. In fact the background is that in I.A. No.769 of 2012 the plaintiffs want to mark some document regarding the revenue record, so called possession certificate etc., and under Right to Information Act when the plaintiffs sought for the documents, it is as per the petitioners/plaintiffs vide I.A. No.769 of 2012 averments, the original stated not traced and thereby they want to adduce Photostat copies of the documents which are available with them as secondary evidence. The learned Junior Civil Judge permitted the same and the defendant impugned the same before this Court in C.R.P. No.94 of 2013, same was ended in dismissal by order dated 30.01.2015 particularly at para No.6 with observation

referring to the expression of this Court in ***Sama Venkata Subba Rao V. Pillariseti Venkata Venugopala Jagannadha Rao***^[1] that when the original is stated lost even the secondary evidence can be adduced subject to any objection regarding proof, relevancy and admissibility. What the trial Court allowed the application is to receive the Photostat copies of the documents to exhibit as secondary evidence which is subject to the right of the defendant to object to decide as receiving is something different to exhibiting the document and its proof and evidentiary value subject to relevancy and thereby there is nothing to interfere with the impugned order in allowing the petition to receive the documents to exhibit subject to objection. That order is made final thereafter is not in dispute.

3) It is to exhibit those documents in fact the impugned petition is filed by the plaintiffs for P.W-1's recall that is opposed by the defendant. It is one of the arguments that it can be seen from para 7 of the impugned order of the learned Junior Civil Judge, that is raised by the revision petitioner/defendant as if there is a misrepresentation before the Court of original exhibited. In fact original is not before the Court. The order of this Court in the revision supra, particularly at para No.6 discussed above is crystal clear of original stated lost in the office of the Tahsildar, thereby when secondary

evidence wanted to be adduced, the documents are received and therefrom committed any mistake and nothing of any argument advanced or uphold of original exhibited. Needless to say once original exhibited, the question of exhibiting a copy does not arise and such argument is unsustainable therefrom even.

4) In fact the recall of P.W-1 when necessary to exhibit the documents and while exhibiting the documents, the defendant is given liberty to raise objection regarding proof, relevancy and admissibility and also if necessary with regard to any stamp duty and registration, in fact for a public document that does not require but for any stamp of receiving a certified copy of a document like Rs.1/- in each document under the Rules. As laid down by the Apex Court in ***Bipin Santilal Panchal V. State of Gujarat***^[2], any objection other than stamp duty and registration need not be decided instantaneously but for to mark subject to any objection regarding proof, relevancy etc., that to be decided only at the fag end of the trial during arguments and disposal of allowing the P.W-1's recall for further examination to exhibit the documents subject to objection to decide finally.

5) Having regard to the above, when that concession is available to the petitioners, there is nothing for this Court to sit against the impugned order.

6) Accordingly, the revision petition is dismissed at the admission stage. There shall be no order as to costs.

7) Miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

24.08.2015

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[\[1\]](#) 1995(2) ALT 651

[\[2\]](#) AIR 2001 SC 1158