

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 3810 OF 2016

ORDER:

- 1) Heard learned counsel for the petitioner. In spite of service of notice, there is no representation on behalf of the respondents.
- 2) The present Civil Revision Petition is filed by the petitioner/D-2 under Article 227 of the Constitution of India, questioning the order dated 10.09.2015 passed in I.A.No.907 of 2015 in O.S.No.92 of 2007 on the file of the Additional Senior Civil Judge, Madanapalle, wherein an application filed by the plaintiff under Section 65 of the Indian Evidence Act and Section 151 of the Code of Civil Procedure (for short "the C.P.C."), was allowed.
- 3) The brief facts, which lead to filing of the present Revision are as under : The plaintiff filed O.S.No.92 of 2007 to declare her right and title over the plaint schedule property and also to grant permanent injunction restraining the defendants and their men from interfering with the plaintiff's possession and enjoyment over the plaint schedule property. Pending the said suit, the plaintiff's firm was dissolved and accordingly an application was moved to summon an officer from Madanapalli Municipality to produce the documents submitted to them. Pursuant to which, they replied stating that the said documents were washed away and they are not available with

them. Hence, she filed the present I.A.No.907 of 2015 before the trial Court to receive the Xerox copies of the dissolution deed, which was acknowledged by the Madanapalle Municipality, as secondary evidence. It is urged that if the said documents are not accepted as secondary evidence, the petitioner would be put to great hardship. It is further said that no prejudice would be caused to the defendants if the plaintiff is allowed to lead secondary evidence relating to the Xerox copy of the dissolution deed along with the copy of the letters dated 03.03.1993 and 30.11.1994. Both the respondents filed their counter opposing the same. After considering the rival arguments, the Court allowed the I.A., holding that mere marking of the document does not mean that the petitioner has proved the contents of the documents and that an opportunity shall be given to the plaintiff to mark the same as secondary evidence as the original was lost in the floods. The request of the petitioner for summoning the document available in the A.C.T.O. office was also allowed. Challenging the same, the defendant No.2 preferred the present Revision.

4) Learned counsel for the petitioner mainly submits that the original itself was lost and when the copy of the said document is produced, summoning the document and marking the same is impermissible under law. Apart from that he further submits that when the original deed of dissolution itself is not registered, the

question of marking the Xerox copy of the same as secondary evidence would not arise.

5) A perusal of the material placed before this Court would show that earlier the petitioner moved an identical application seeking the very same relief. After considering the arguments advanced, the Court while rejecting the said request, observed as under :-

"On considering the above facts and circumstances of the case, it goes to show that the main suit is filed for permanent injunction. It is contended on the respondents side that the signatures of G.Sivaramayya and the respondents herein were forged. If that is the case, no purpose will be served even though the Xerox copies of the said documents are received. The petitioner/plaintiff has not choose to take any steps to summon the Municipal authorities to produce the said documents which were said to have been submitted to the Municipal Office, Madanapalle on the ground that they came to know that the said documents were washed away during the floods. The oral submission of the petitioner/plaintiff is not sufficient to come to a conclusion and the authenticated information has to be received in writing from the concerned authorities, then only the next steps can be taken. It goes that the petitioner/plaintiff has not taken such step to summon the concerned authority to produce the said document on the ground that they were not available is not correct moreover, when it is the contention on the respondents side that the signatures on the said document are forged. So unless the original document is produced before the court, the said dispute cannot be decided. So the documents which are received as Xerox copies will not serve any purpose. Hence there are no bonafides to allow this petition."

6) Though the said order came to be passed in the month of July 2011, no steps were taken to challenge the same. In the year 2015, an identical application came to be filed, which is allowed. Since the earlier order has become final, the learned Senior Civil Judge ought not to have allowed second application for marking of the Xerox copy.

7) Insofar as the marking of the document as secondary evidence and more particularly the unregistered/unstamped document is concerned, a learned Single Judge of this Court in **Obelisetty Ramanadham v. Obelisetty Bhaskar Rao**¹ held that "a Xerox copy made from the original by mechanical process, which in itself ensure the accuracy of the copy, and copies compared with such copies, the same is held inadmissible in view of Section 63 of the Act. There cannot be any dispute to the said provision of law. If the original, which is sought to be marked as an exhibit, is properly stamped, is admissible in evidence and it is not prohibited under Section 35 of the Stamp Act, the same can be accepted. But, where the original itself is inadmissible for want of proper stamp duty, the question of accepting a Xerox copy of the same under Section 65 of the Act, would not arise." The Court also took into consideration the judgments of **Jupudi Kesavarao v. Pulavarthi Venkata Subba Rao and others**², and **E.Venkat v. E.Yadgir**³, in support of the same.

8) In **Hariom Agrawal v. Prakash Chand Malvia**⁴, the Apex Court held as under :

"It is clear from the decisions of this Court and a plain reading of Sections 33, 35 and 2(14) of the Act that an instrument which is not duly stamped can be impounded and when the required fee and penalty has been paid for such instrument it can be taken in evidence under Section 35 of the Stamp Act. Sections 33 or 35

¹ (2008(2) ALT 24

² AIR 1971 SC 1070

³ AIR 1973 A.P. 398(D.B)

⁴ 2007(6) ALD (SC) 105

are not concerned with any copy of the instrument and party can only be allowed to rely on the document which is an instrument within the meaning of Section 2(14). There is no scope for the inclusion of the copy of the document for the purposes of the Indian Stamp Act. Law is now no doubt well settled that copy of the instrument cannot be validated by impounding and this cannot be admitted as secondary evidence under the Indian Stamp Act, 1899."

9) Even in the instant case the original, which has been submitted before the Authorities is not available. The said original which was said to have been submitted was an un-registered document. That being the position, the question of accepting a Xerox copy of an inadmissible document is impermissible under law. Having regard to the circumstances stated above and since the request of the petitioner for an identical relief was said to have been rejected in the year 2011 itself, the order under challenge is set-aside.

10) Accordingly, the Civil Revision Petition is allowed by setting aside the order dated 10.09.2015 passed in I.A.No.907 of 2015 in O.S.No.92 of 2007 on the file of the Additional Senior Civil Judge, Madanapalle. No costs. As a sequel to it, miscellaneous petitions pending if any in this C.R.P. shall stand closed.

C. PRAVEEN KUMAR, J

Date: 08.11.2016

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