

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 5290 of 2016

ORDER:

- 1) Aggrieved by the order dated 01.10.2016 passed in I.A.No.422 of 2016 in O.S.No.74 of 2007 on the file of the IV Additional District Judge, Tirupati, wherein an application made by defendant No.4 under Order VIII Rule 1 (A) and Section 151 of C.P.C. praying to receive the documents for marking them as exhibits, was dismissed, the present Civil Revision Petition is filed.
- 2) For the sake of convenience, the parties hereinafter will be referred to as arrayed in I.A.No.422 of 2016.
- 3) The facts in issue are as under:
- 4) Respondent Nos.1 and 2 herein filed O.S.No.74 of 2007 against the petitioner and other respondents seeking specific performance of contract. Pending suit, the petitioner, who is defendant No.4 in the above suit, filed an application under Order VIII Rule 1 (A) and Section 151 of C.P.C. to receive the notarized copy of SSC certificate of defendant No.5, two photographs along with C.D. and notarized copies of Aadhar cards of defendant Nos.4 and 5.
- 5) Respondent Nos.1 and 2 herein reported no counter where as respondent Nos.3 to 5 strongly opposed the application, by filing counter. It is urged that already plaintiffs filed I.A.No.320

of 2016 for receipt of the C.D. and photographs of the self same persons which was dismissed. It is contended that the documents sought to be marked are notarized copies which cannot be received as they are secondary evidence.

6) After considering the arguments advanced, the trial Court dismissed the petition. Aggrieved by the same, the present revision petition is filed.

7) Learned counsel for the petitioner would submit that the admissibility or otherwise of the documents has to be considered at the time of admission of the documents and not at the time of receiving of the documents. He further submits that the petitioner and respondent No.4 are sisters and both of them married defendant No.1. In view of denial of the relationship of defendant Nos.4 and 5 with defendant No.1, marking of the documents in question are very much essential to prove their relationship.

8) Learned counsel for the respondent Nos.3 to 5 herein strenuously contended that there is collusion between the petitioner/ defendant No.4 and plaintiffs which fact is clear from the filing of the application by the plaintiffs for marking the photographs and CDs, in the earlier round of litigation.

9) It is to be noted that earlier the plaintiffs filed I.A.No.320 of 2016 for marking of photographs and C.D., which was rejected. The said order has become final. Hence, this Court is of the view

that the said photographs and C.D. cannot now be brought on record in view of the earlier order.

10) Insofar as other documents such as notarized copy of SSC certificate of K.Omkar (defendant No.5), notarized copies of Aadhar Cards of defendant Nos.4 and 5, are concerned, the said documents are notarized documents, which cannot be accepted in evidence without the originals. Unless an explanation is given for not producing the originals, the notarized documents cannot be accepted in evidence. The affidavit filed by the petitioner is silent as to the custody of the originals and also as to why the notarized documents are sought to be marked. It is to be noted that no leave was obtained from the Court under Section 65 of the Evidence Act, since the documents which are sought to be marked are notarized documents of originals.

11) "Section 65: Cases in which secondary evidence relating to documents may be given :--Secondary evidence may be given of the existence, condition or contents of a document in the following cases--

(a) when the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in Section 66, such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of Section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in India, to be given in evidence;

(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible, In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents."

12) In *Kaliya Vs. State of Madhya Pradesh*¹, the Apex Court held as under:

"Section 65(c) of the Act 1872 provides that secondary evidence can be adduced relating to a document when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason, not arising from his own default, or neglect, produce it in reasonable time. The court is obliged to

¹ 2013) 10 SCC 758

examine the probative value of documents produced in court or their contents and decide the question of admissibility of a document in secondary evidence. However, the secondary evidence of an ordinary document is admissible only when the party desirous of admitting it has proved before the court that it was not in his possession or control of it and further, that he has done what could be done to procure the production of it. Thus, the party has to account for the non-production in one of the ways indicated in the section. The party further has to lay down the factual foundation to establish the right to give secondary evidence where the original document cannot be produced.”

13. It is to be noted that the person intending to adduce secondary evidence has to prove to the satisfaction of the Court, the existence, condition, or contents of the original. For this purpose mere assertion is not sufficient. Independent evidence has to be adduced to show that the document in its original form existed, as to its contents, and obviously, the availability of it is with a particular individual. It is only then the secondary evidence of such a document can be received. In the absence of any such explanation, the present Civil Revision Petition sans merit and the same is accordingly dismissed. No order as to costs. As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

16.11.2016
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