

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.3109 of 2015

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful 1st defendant, is directed against the orders dated 23.07.2015 of the learned Senior Civil Judge, Pithapuram passed in I.A.No.669 of 2015 in O.S.No.100 of 2010 filed under Section 65 (a) of the Indian Evidence Act, 1872 ('IE Act', for brevity) read with Section 151 of the Code of Civil Procedure, 1908 ('the Code', for brevity) requesting to permit him to file the Photostat copy of the partition list dated 27.09.1982.

2. I have heard the submissions of the learned counsel for the revision petitioner/first defendant ('the defendant', for brevity) and the learned counsel for the first respondent/plaintiff ('the plaintiff', for brevity). I have perused the material record.

3. The facts that are necessary for consideration, in brief, are as follows:-

The plaintiff brought the suit for partition against the defendants placing reliance *inter alia* on a partition list dated 27.09.1982. The defendants, including the first defendant, are resisting the said suit. When the matter reached the stage of trial, the plaintiff wanted to tender in evidence, the Photostat copy of the said partition list dated 27.09.1982, which is filed as 1st document along with the plaint as per the list of documents mentioned at the foot of the plaint. In deed in a note appended to the document no.1 in the list of documents it is mentioned as under: "After the death of Sri R.V.S. Rao, the 1st defendant went to Mulapeta village and shifted all furniture etcetera, including the original documents". When the said document was sought to be tendered in evidence, an objection was raised that secondary evidence cannot be adduced without laying foundation in regard to the non-availability of the original, as contemplated under Section 65 of the IE Act.

3.1 In the said circumstances, the plaintiff had filed the instant interlocutory application before the trial Court for permitting him to file the said document, which is the Photostat copy of the original partition list dated 27.09.1982. In support of the said request it is *inter alia* contended that the original is in possession of the defendants; and that a notice under Section 66 of the IE Act was issued to produce the same; and that in reply to the said notice, the defendants have stated that there is no such document in existence and, therefore, the question of such document being in the possession of the defendants does not arise; and that in the circumstances stated the conditions laid down under Section 65 (a) of the IE Act for adducing the secondary are fulfilled and therefore, permission, as sought for, can be accorded.

3.2 The said petition was resisted by the first defendant by reiterating the stand in the reply notice given to the notice issued to produce the document by further contending that the plaintiff did not specifically plead in the plaint that the original partition list was taken by the first defendant; and that, therefore, the allegation in the affidavit filed in support of the petition that such an averment was made in the plaint and that the same was not denied in the written statement is false, and that only a vague statement in the list of documents column was made in the plaint to the effect that the original document was taken away; and that the first defendant has specifically pleaded in the written statement that the alleged partition list is a forged document; and that he is not having possession of any such document; and that having possession of the non-existing document does not arise; and that the denial of existence of a document by the 1st defendant does not give a right to the plaintiff to adduce secondary evidence without the necessity of proving the very existence of the original document.

3.3 The trial Court, having considered the pleadings and following the precedential guidance in ***Ramakrishna Constructions and another Vs.***

Singareni Collieries Company Limited, rep. by its General Manager^[1] allowed the petition and permitted the plaintiff to adduce secondary evidence.

4. At the hearing, the learned counsel for the first defendant would submit that the trial Court had failed to see that the alleged partition list is an out and out fabricated document; and that there was actually partition among the legal heirs of the Late R.V.S.Rao on 07.11.2008; and that by virtue of the said partition, the pattadar passbook and title deeds were also issued in favour of the 1st defendant; and that the trial Court had further failed to see that even an averment was not made in the plaint that the 1st defendant is having the custody of the original partition list; and that the trial had Court erroneously allowed the petition without a factual foundation having been laid in regard to the very existence of the original document or even a semblance of material to show that the said alleged document appears to be in the possession of the defendants; and that the trial Court had also failed to see that the said document is inadmissible in evidence for want of stamp duty and its non-registration. The learned counsel for the first defendant had also pointed out from the written statement that the first defendant had taken a specific plea that the original partition list is in the custody of the father of the plaintiff only and that the plaintiff had ultimately suppressed the said fact and fabricated the partition list now in question.

5. **Per contra**, the learned senior counsel appearing for the plaintiff, while supporting the order of the Court below, had stated that the plaintiff had categorically averred in the plaint that the original document is in the custody of the first defendant and that the plaintiff had also followed the procedure by issuing a notice under Section 66 of the IE Act and that the plaintiff had filed the present application to receive the Photostat copy of the partition list only after following the procedure and that under law, the secondary evidence of the contents of the documents can be admitted without production of the original when the inability to produce the

original is accounted for in the manner as contemplated under the law and that therefore, the trial Court was right in permitting the plaintiff to adduce secondary evidence.

6. Be it noted that the learned counsel for the 1st defendant, having drawn the attention of this Court to the facts in the decision relied upon by the Court below, had urged that the ratio in the said decision is not applicable to the facts of the instant case. He had also placed reliance on the following decisions.

1. **State of Rajasthan and others Vs. Khemraj and others**^[2]
2. **The Roman Catholic Mission Vs. The State of Madras**^[3]
3. **Badrunnisa Begum Vs. Mohamooda Begum**^[4]

I have gone through the precedents cited. In the decision first cited while considering the admissibility of a document and the import or significance of sections 63 and 65 of the IE Act, it was held that the copy of the document not compared with the original is inadmissible in evidence. In the decision second cited on facts of the case it was found that no foundation was laid for establishing the right to give secondary evidence. In the decision third cited when it was noticed that an application seeking permission to produce an attested copy of a map was supported by an affidavit containing vague averments, in the interests of justice, the Supreme Court had permitted the applicants to file a fresh application supported by a proper affidavit. Thus the decisions in the reported cases turned on the facts peculiar to those cases.

7. I have given earnest consideration to the facts and the submissions.

8. From the facts of the instant case narrated supra, the following aspects emerge for consideration: 'In a suit for partition filed by the plaintiff, the plaintiff had placed reliance *inter alia* on a partition list dated 27.09.1982; the plaintiff had filed a Photostat copy of the same with the plaint; the plaintiff had made a note below the description of the 1st document in the list of documents appended to the plaint to the effect that

‘after the death of Sri R.V.S. Rao, the 1st defendant went to Mulapeta village and shifted all furniture etcetera, including the original documents’; At trial, since an objection was raised by the defendants for tendering in evidence the Photostat copy of the said document, the plaintiff had issued a notice under Section 66 of the IE Act to produce the original document; on failure of the defendants to produce the same and in view of the denial in their reply notice as to the existence of such a document and their stand that the question of the defendants having possession of the same does not arise, the plaintiff had filed the subject interlocutory application before the trial Court to permit the plaintiff to give secondary evidence of the existence and contents of the partition list by tendering in evidence the Photostat copy of the said partition list, which is filed along with the plaint.

8.1 Since the contentions of both the sides are stated *supra*, in detail, there is no need to further dilate the same.

8.2 Under section 65 (a) of the IE Act, secondary evidence may be given of the existence, condition or contents of a document 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 and when after the notice mentioned in Section 66, such person does not produce it. Whether a document is a forged or a genuine one is a question which shall be gone into not at this stage, but, at a later stage, that is, after full-fledged trial, when the trial court would be required to appreciate and evaluate the evidence brought on record. Where the case falls under Section 65 (a) of the IE Act, secondary evidence is admissible. What is to be noted is that the questions- whether the original of such a document is in existence or not and whether or not the copy of it is a fabricated one, are questions, which will have to be determined by the trial Court after the necessary evidence is adduced entirety. Therefore, in the well-considered view of this Court, there is sufficient pleading in the plaint and the procedure as required under facts and as contemplated under law is

also followed by the plaintiff before making the request before the trial Court to permit the plaintiff to adduce the secondary evidence. In the well-considered view of this Court, there is no substance in the contention that the foundation, as required under Section 65 (a) of the IE Act was not laid by the plaintiff before seeking permission to adduce secondary evidence. In view of the facts peculiar to this case and this Court's agreement with the trial court's view that necessary foundation has been laid as contemplated under law for adduction of secondary evidence, this Court finds that the impugned order of the Court below need not be faulted and hence, the said order brooks no interference. Viewed thus, this Court finds that there is no merit in this Civil Revision Petition.

9. Accordingly, the Civil Revision Petition is dismissed. However, as rightly contended by the learned counsel for the 1st defendant, the document is conceivably received on file by the trial Court subject to proof, admissibility and relevancy. Hence, it is made clear that, as and when the said document now comes to be tendered in evidence, it is open to the defendants to raise any valid objection/s on the ground that it is a Photostat copy and also on the ground that it is liable for stamp duty and registration and hence inadmissible. It is needless to mention that in case any such objection/s is/are raised, the trial Court shall first decide the said objection/s on merits and in strict accordance with the procedure established by law before admitting the document in evidence as an exhibit.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand closed.

M.Seetharama Murti, J

19th February, 2016
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- [\[1\]](#) 2015 (3) ALT 494 (S.B.)
- [\[2\]](#) (2000) 9 Supreme Court Cases 241
- [\[3\]](#) AIR 1966 Supreme Court 1457
- [\[4\]](#) AIR 2001 Andhra Pradesh 394