

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.5190 of 2015

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the unsuccessful plaintiff is directed against the orders (intermediary orders) dated 24.11.2015 of the learned XVII Senior Civil Judge, City Civil Court, Hyderabad.

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

3. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows:

The sole plaintiff brought the suit against the defendant for a perpetual injunction restraining the defendant and his men etcetera from causing illegal interference with the plaintiff's peaceful possession over a plot bearing no.120/2 admeasuring 700 square yards, more fully described in the schedule annexed to the plaint. The defendant having filed a written statement is resisting the suit. During the course of trial, when PW1/the plaintiff is being examined before the trial Court, he had tendered for marking a letter dated 08.10.2015 addressed to the plaintiff by the Assistant City Planner, Circle No.IV, GHMC, Hyderabad and certified copies of certain photographs said to be relating to the suit schedule property. According to the plaintiff, he had given an application dated 28.09.2015 to the said Officer of the GHMC for furnishing certified copies of three photographs in File no.1/Open/2/16/2009 and permit No.25/39 dated 02.05.2009 in respect of property situated at Akberbagh, Malakpet. It appears that the plaintiff had also submitted along with his request/application dated 28.09.2015, a Demand Draft for Rs.500/- dated 22.09.2015 and that in reply to the said application of the plaintiff, the said Officer had supplied, along with a covering

letter dated 08.10.2015, the photostat copies of three photographs duly certifying them as true copies under his signature and office seal. Having thus obtained the photostat copies of three photographs of the plaint schedule property which were certified as true copies by the Assistant City Planner concerned of the GHMC, the petitioner tendered in his evidence for being marked the said photographs and also the letter dated 08.10.2015 of the said Officer along with which the said certified copies of photographs were supplied to the plaintiff. The defendant had raised an objection for marking the said photographs stating that the said documents are only the photostat copies of photographs and not positive photographs. Upholding the objection of the defendant, the trial Court observed that for purpose of marking, the original photographs have to be filed and that in the absence of filing of original photographs, the photostat copies of photographs cannot be marked and that therefore, it is not inclined to permit the plaintiff to exhibit the same. The above said order in fact was made by the trial Court in the deposition of PW1 itself. Aggrieved of the said orders, the plaintiff had filed this revision petition.

4. The learned counsel for the plaintiff would submit as follows:

‘The plaintiff had earlier submitted the positive photographs to the Municipal Corporation. As the marking of the said photographs in the suit is necessary, the plaintiff had obtained the photostat copies of the three photographs. The same are duly certified as true copies by a competent public officer, since the documents are photostat copies of photographs and are duly certified by a public officer as true copies and were issued as per the provisions of Sections 74 and 76 of the Indian Evidence Act, the defendant cannot raise any objection for marking the same. Such certified copies can be produced by the plaintiff in proof of the contents of the public documents or part of the public documents of which they purport to be copies. The trial Court had failed to see that the Assistant City Planner, who had issued the copies of the photographs duly certifying the same as true copies is a competent public officer duly empowered to issue certified copies. Therefore, the said documents though photostat copies are admissible in evidence as

the same were compared with the originals available in the public record of a public office and were duly certified as true copies by a public officer.'

5. *Per contra*, the learned counsel for the defendant while supporting the orders of the Court below would contend as follows:

'The plaintiff ought to have summoned and exhibited the positive photographs with negatives or the CD relating to the photographs, if they were taken by a Digital Camera. Without producing the positive photographs accordingly, the plaintiff is not entitled to obtain photostat certified copies of photographs and make a request to the Court to mark the same. The said documents are inadmissible in evidence and cannot be marked. It is settled law that positive photographs cannot be marked without producing the negatives or a CD/softcopy.'

6. I have bestowed my attention to the facts. I have noted the submissions. The plaintiff had earlier submitted to the GHMC three positive photographs of the suit schedule property and they are available in the relevant records/file of the GHMC. Since the original photographs are submitted by the plaintiff to the GHMC, the plaintiff who had intended to mark the said photographs, instead of summoning the photographs from the record/file of the GHMC had submitted an application dated 28.09.2015 to the GHMC for supply of certified copies of the said photographs. The Assistant City Planner of the GHMC along with reply letter dated 08.10.2015 had supplied to the plaintiff the photostat copies of the photographs after duly certifying the same under his signature and seal as true copies. Now, the plaintiff intends to mark the photostat copies of the said photographs, which are certified as true copies of the original photographs. Under Section 74(2) of the Indian Evidence Act, public records kept of private documents are also public documents. In the well-considered view of this Court, the positive photographs submitted by the plaintiff along with his application to GHMC at an earlier point of time do not come within any of the categories of public documents under Section 74 of the Indian Evidence Act. Therefore, the photostat copies of the photographs, which are certified as true copies,

cannot be equated to certified copies of public documents covered under Section 76 of the Indian Evidence Act. Documents other than public documents have to be proved by production of originals, except Wills, which can be proved by a probate. Therefore, the contention of the plaintiff that the photostat copies of photographs, which are certified as true copies by the Assistant City Planner of the GHMC, are certified copies of public documents cannot be countenanced. For the aforesaid reasons, this Court finds that the Court below is justified in not permitting the plaintiff to mark the said photostat copies of the photographs though granted by the Assistant City Planner after certifying them as true copies.

7. Viewed thus, this Court finds that there is no merit in the civil revision petition and that the revision petition is liable to be dismissed.

8. In the result, the Civil Revision Petition is dismissed. However, it is made clear that the dismissal of this revision petition shall not preclude the plaintiff from taking appropriate steps for summoning the officer concerned of the GHMC to cause production of the original or positive photographs for being marked. Nevertheless, it is also made clear that on the production of the original/positive photographs, the trial Court shall be at liberty to consider the admissibility or otherwise of the said photographs as and when the said photographs are tendered for being marked.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SEETHARAMA MURTI, J

11th April, 2016
RAR