

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

C.R.P.No.4762 OF 2016

%27.10.2016

# E.K.Eshwar

...Petitioner

VERSUS

\$ Smt K.Madhavi @Vijayalakshmi and others

...Respondents

< GIST:

> HEAD NOTE:

!Counsel for Petitioner: Sri Maheswara Rao Kuncham

^Counsel for Respondents: Sri A.Ravinder Reddy



? Cases referred

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD  
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA  
PRADESH

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Case No. C.R.P.No.4762 OF 2016

Between:

E.K. Eshwar

...Petitioner

And

Smt K.Madhavi @ Vijayalakshmi and others

...Respondent (s)

DATE OF JUDGMENT PRONOUNCED: 27.10.2016

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

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- 1 Whether Reporters of Local newspapers may be allowed to see the Judgments?
  - 2 Whether the copies of judgment may be marked to Law Reporters/ Journals Yes
  - 3 Whether Their Ladyship/ Lordship wish to see the fair copy of the Judgment? Yes

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

C.R.P.No.4762 OF 2016

ORDER:

The revision petitioner is the plaintiff in O.S.No.128 of 2006 on the file of VII Senior Civil Judge, City Civil Court, Hyderabad for specific performance of contract for sale dated 05.03.1986 against defendants 1 to 12, of whom the defendants 11 and 12 are the minors representing by guardian the 9<sup>th</sup> defendant.

2. Pending the suit for specific performance in trial, as the suit document which is contract for sale in original sale agreement to be exhibited as Ex.B.1 in O.S.No.107 of 1994 by the defendant therein, no other than present defendants/respondents' ancestor-cum-vendor of the sale agreement by name Sri S.Veerayya and that he obtained certified copy and when wanted to exhibit, the defendants herein raised objection. It is therefrom, I.A.No.520 of 2016 filed by him in the lower Court to send for the original sale agreement from that record. If it is true, said document is practically in the custody of the defendants herein as it is the say of their ancestor i.e. the 1<sup>st</sup> defendant, Veeraiah, no other than the father of defendants 1, 5 and 9, that exhibited. As per the present version of plaintiff, the document which is original sale agreement given by him to said vendor i.e. father of defendants 1, 5 and 9 of the suit and it was exhibited by him as Ex.B1 as DW.1 in that suit O.S.No.107 of 1994.

3. No doubt that the petition before the lower Court did not disclose the same muchless the order of the lower Court, but for the arguments now submitted to that extent and there is whisper in the affidavit of revision petitioner in CRP M.P.No.6195 of 2016, dated 26.09.2016.

4. No doubt, once the document is also exhibited in the Court in O.S.No.107 of 1994 and a certified copy can be obtained as it is a public document within the meaning of Section 74 of the Indian Evidence Act to exhibit the same under Section 77 of the Indian Evidence Act and without that effort directly documents cannot be called for/sent for from public office as per Rule 128 of the A.P. Civil Rules of Practice and Circular Orders, 1980.

5. The plaintiff in fact herein made such an attempt to exhibit the certified copy and the defendants herein raised objection for its marking as can be seen from the order of the lower Court.

6. The lower Court even sought for by the plaintiff to sent for document dismissed the same since impugned herein.

7. In fact, once the Rule 128 of the C.R.P has no application in the factual scenario even to reject the sent for document sought and once such is the case, the plaintiff herein cannot take back by applying written application in O.S.No.107 of 1994 for not exhibited in his evidence muchless as a witness and the only recourse available for the plaintiff from the objection raised for adducing secondary evidence, by the defendants is only to sent for and once such is sought, the lower Court should have been consider the same instead of rejecting.

8. No doubt, it is the submission in the course of hearing the revision by the learned counsel for the defendants/respondents that the very document from its showing was not duly stamped and once not stamped or insufficiently stamped the original alone is to be impounded and not a copy even it is a certified copy, within the meaning of 'instrument' under Section 2(14) of the Indian Stamp act, it is premature for this Court to decide, as stage of objection is left open while marking for the same, it is not come in the way to send for the original document. As

the suit is of the year 2016 after send for and on deciding admissibility from any requirement of stamp duty on original sale agreement the trial Court shall proceed for expeditious disposal.

9. With the above direction, the civil revision petition is disposed of. There shall be order as to costs.

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

Dr. B. SVA SANKARA RAO, J

Date: 27.10.2016

Note: L.R. copy to be marked.

B/ o

Kvrm/ pab

