

**HON'BLE SRI JUSTICE S. RAVI KUMAR**

**C.R.P.No.1846 of 2012**

**ORDER:**

This revision is preferred questioning order dated 18.01.2012 in I.A.No.1010 of 2011 in O.S.No.161 of 2005 on the file of Principal Senior Civil Judge, Mahabubnagar.

2. Revision petitioner herein is D1 in O.S.No.161 of 2005 filed by respondents No.9 and 10 for partition of plaint schedule properties. In the said suit, defendants No.4 to 10 filed I.A.No.1010 of 2011 contending that suit schedule lands are not the Hindu undivided joint family properties and that there was a partition in between father of D5 and D1 on 28.05.1979 which was signed in the presence of elders, but plaintiffs in collusion with D1 has filed the suit for partition with false claim and that the original document dated 28.05.1979 is in custody of D1 and Xerox copies were given to father of D5 and the said document is crucial for proper adjudication and therefore a direction be given to D1 to produce the said document dated 28.05.1979.

3. D1 filed his counter disputing the affidavit averments of petitioner and he specifically contended that there is no partition of their ancestral properties on 28.05.1979 as contended by defendants No.4 to 10. He further stated that there is no collusion between himself and plaintiffs and there is no such original partition deed as contended by D4 to D7. It is also contended as no such partition took place, such document was never executed and that D1 never signed on such document, petitioners i.e., D4 to D10 failed to mention the date, place and time on which the original document alleged to have been given to him and the same

is only invented. He stated that petition has to be dismissed as no such document is in existence.

4. On considering these contentions, trial Court held that no prejudice would be caused to D1, if he is directed to produce the document, and on that ground petition was ordered thereby D1 was directed to produce the document, dated 28.05.1979.

4. Advocate for revision petitioner submitted that Court below went wrong in directing the revision petitioner herein to produce a document, which is not in existence. He further submitted that trial Court completely went wrong in holding that D1 has to produce the alleged document dated 28.05.1979, which is called as original partition deed, within 7 days from the date of the order. He submitted that order is passed under Section 66 of the Indian Evidence Act, 1872 (for short "the Act") which is no way applicable to the facts averred in the affidavit filed in support of that petition. He further submitted that trial Court committed error in passing such order and the same has to be set aside.

5. Advocate for respondents supported order of the learned trial judge. He contended as it is an old suit, sometime may be fixed to the lower Court to dispose of the main suit.

6. Now the point that would arise for my consideration is :

***Whether the trial Court was right in directing revision petitioner herein to produce document dated 28.05.1979?***

**POINT :**

7. Admittedly, revision petitioner herein is supporting the claim of plaintiffs, whereas, defendants No.4 to 10 are disputing the claim of plaintiffs for partition. The above referred I.A.No.1010

of 2011 is filed invoking **Section 66** of the Act which deals with rules as to notice to produce. Section 66 and Section 65 of the Act have to be read together. Section 65 deals with the cases in which secondary evidence relating to documents may be given.

**Section 65** contemplates where secondary evidence may be given as to the existence, condition, or contents of a document in certain circumstances.

**Section 66** deals with when secondary evidence of the contents of documents referred to in Section 65, clause (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his attorney or pleader, such notice to produce it as is prescribed by law, and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case.

8. According to this section, a person holding secondary evidence has to give notice to the party in whose possession such document is in existence. So, before invoking this provision, the party who wants to rely on this section should first establish as to the existence of such a document then only issue of notice, as required under section 66 would arise. Here, when D1 specifically pleaded that there is no such document in existence and that he is not in possession of any such document, without producing any material as to existence and possession of such document, defendants No.4 to 10 i.e., respondents No.1 to 7 have invoked Section 66 and the trial Court without looking into the provisions, passed order on the ground that no prejudice would be caused to the opposite party. ON scrutiny of record, I am of the view that approach of lower court is not correct. The court below is

expected to first satisfy as to the existence of the document to invoke section 66 of the Act.

9. As rightly pointed out by learned advocate for revision petitioner, order of the trial Court is contrary to the provisions of Section 65 and 66 of the Act therefore the same is liable to be set aside.

10. For these reasons, this Civil Revision Petition is allowed and impugned order dated 18.01.2012 in I.A.No.1010 of 2011 in O.S.No.161 of 2005 on the file of Principal Senior Civil Judge, Mahabubnagar is set aside and the trial Court is directed to proceed with suit and as it is an old suit it should dispose of, as expeditiously as possible, preferably, within three (03) months from the date of receipt of a copy of this order. No costs.

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

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**S. RAVI KUMAR, J**

Date: 01-02-2016.

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