

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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CIVIL REVISION PETITION No.3700 OF 2011

ORDER:

The Civil Revision petition is filed by the petitioner challenging the order dated 08.07.2011 passed by the Senior Civil Judge, East Godavari in O.P.No.4 of 2009.

It is the case of the petitioner that she being the wife and having a right to claim certain amounts belonging to her deceased husband Kompella Satyanarayana Murty, filed the above said O.P before the Court below seeking issuance of a succession certificate.

On receipt of notice, the brother of the deceased Kompella Satyanarayana Murty sought permission of the Court below to produce certain entries in the General Diary alleged to have been maintained by the deceased Kompella Satyanarayana Murty and certain hand-made statements in respect of the deposits and Photostat copies of some documents. The petitioner objected for receiving the same as well as for marking the same as evidence on the ground that the conditions required to be satisfied under Section 65 of the Evidence Act, 1872 (for short, "the Act") with regard to production of secondary evidence are not satisfied. Overruling the objections raised by the petitioner, the Court below permitted to receive the documents as well as marking of the same by making a reference to a case reported in **Sattamma and others vs. Ch. Bhikshpati Goud @ Ch. Bhupal Goud and others**^[1].

Heard the learned counsel for the petitioner and the learned counsel for the respondents.

The impugned order to the extent of allowing the documents to be marked is unsustainable for the reason that the Court below had failed to consider and record a satisfaction that the condition precedent for the purpose of marking the said documents as relevant

piece of secondary evidence under Section 65 of the Act are not satisfied. Though a reference is made to Section 65 (c) of the Act, there is no discussion with regard to the same. That apart though a document was sought to be brought on record, either along with the petition or at the earlier stage with the leave of Court below so far as taking the same into evidence is concerned, the admissibility and relevancy of the document is necessarily required to be considered by the Court below before putting a mark, treating it as an exhibit in a given case, as otherwise a document which is not admitted and found irrelevant is required to be eschewed from the record.

In the case on hand, the Court below failed to adhere to the procedure prescribed and allowed the documents to be marked. In that view of the matter, the impugned order so far as allowing the Xerox copies to be marked is unsustainable and accordingly, the same is set aside. However, liberty is given to the parties to raise the aspect of relevancy and admissibility and the same is required to be considered at the time of evidence.

With the above observations, the Civil Revision Petition is allowed setting aside the impugned order dated 08.07.2011, passed by the Senior Civil Judge, East Godavari, in O.P.No.4 of 2009. No order as to costs.

Miscellaneous Petitions pending, if any, in this writ petition shall stand closed.

CHALLA KODANDA RAM,J

Date:28.01.2016.
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THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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