

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3183 OF 2016

JUDGMENT:

This revision petition, under Article 227 of the Constitution of India, is filed challenging the order dated 01.03.2016 in I.A. No.1276 of 2015 in O.S. No.144 of 2010 passed by the Principal Junior Civil Judge, Sangareddy, whereby the trial court dismissed the petition filed under Section 65 of Indian Evidence Act, 1872 to let in secondary evidence.

The petitioner filed petition in I.A. No.1276 of 2015 under Section 65 of Indian Evidence Act, requesting the trial court to receive true copy of Will dated 17.11.2004, as secondary evidence, which is appended to the petition on the ground that the original Will dated 17.11.2004 submitted before the Tahasildar for effecting mutation and the same is sent to Revenue Divisional Office in appeal, and the petitioner approached Revenue Divisional Officer for return of the original Will, but it was reported that the original Will is not in the office of Revenue Divisional Office. Therefore, the petitioner sought permission from the trial court to let in secondary evidence.

The respondent filed counter contending that the alleged document cannot be considered as secondary evidence as it is not a true copy and he further contended that as per Memo dated 26.09.2013 it is evident that on verification, only photo stat copy of the will is available, whereas Tahasildar, Sanga Reddy, issued memo dated 30.11.2013 stating that the original will is enclosed to the appeal. Therefore, in the absence of any foundation in the pleading about the requirement under Section 65 of Indian

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Evidence Act, the petitioner cannot be permitted to let in secondary evidence and prayed for dismissal of the petition.

It is a petition filed under Section 65 of Indian Evidence Act, which deals with secondary evidence. It is a substantive law. It is an elementary principle that the petition cannot be filed under substantive law and there is a procedural law to seek such relief. However, the trial court considered the same.

The main contention of the petitioner is that the Will dated 17.11.2004 was misplaced in the office of Tahasildar in mutation proceeding, there is a reference about the Will and basis for claim is Will in written statement and thus, it is a document sued upon, and when a document is referred in the plaint, either the document sued upon or relied on, shall file along with a plaint in compliance of Rule 14 of Order VII of CPC and if such document is not in the custody of plaintiff, he has to disclose in whose possession such document is, in compliance of Rule 14(2) of Order VII of CPC. In fact, loss of the Will or filing of original will in mutation proceedings is not disclosed anywhere in the plaint, but for the first time, it is brought to the notice of this Court by filing a petition under substantive law of evidence, as it was required to be produced before the trial court during evidence. Thus, the plaintiff did not lay down any factual foundation in the pleadings, to grant permission, to adduce secondary evidence. A similar question came up before the Apex Court in **RAKESH MOHINDRA v. ANITA BERI AND OTHERS**¹ placing reliance on **RAI BALJNATH (DEAD) BY KEDARNATH GOENKA v. MAHARAJA SIR PAVANESHWAR**

¹ 2015(12) scale 412

PRASAD SINGH² it was held that it is well settled that if a party wishes to lead secondary evidence, the Court is obliged to examine the probative value of the document produced in the Court or their contents and decide the question of admissibility of a document in secondary evidence. At the same time, the party has to lay down the factual foundation to establish the right to give secondary evidence where the original document cannot be produced. It is equally well settled that neither mere admission of a document in evidence amounts to its proof nor mere making of an exhibit of a document dispense with its proof, which is otherwise required to be done in accordance with law. In **M.CHANDRA v. M.THANGAMUTHU**³ the Apex court reiterated the same principle.

In view of the law declared by the Apex Court in all the three judgments referred to supra, the petitioner did not lay any factual foundation in the pleadings i.e., plaint strictly adhering to Rule 14(2) of Order VII of CPC, but for the first time, he invented theory of loss of original Will in the office of Revenue Divisional Office in mutation proceedings. In the absence of factual foundation in the pleadings, permission cannot be granted to let in secondary evidence and that apart the document produced is, neither a certified copy duly authenticated by any officer nor it is a certified copy obtained from any Office. Therefore, the document does not satisfy the requirements under Section 65 of Indian Evidence Act to receive the same as secondary evidence.

The trial court rightly declined leave to let in secondary evidence and the order of the trial court does not suffer from any

² AIR 1922 PC 54

³ (2010) 9 SCC 712

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illegality and call for interference of this Court exercising power under Article 227 of the constitution of India, which is supervisory in nature. Therefore, the revision is devoid of merits and it deserves to be dismissed.

In the result, the civil revision petition is dismissed. No costs.

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

M. SATYANARAYANA MURTHY, J

Date: 29.09.2016
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