

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.6296 of 2012

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful respondents/ plaintiffs is directed against the orders dated 30.11.2012 of the learned VI Junior Civil Judge, City Civil Court, Hyderabad, passed in I.A.No.790 of 2012 in O.S.No.1837 of 2008 filed by the defendants 1 and 2 (petitioners therein) under Section 65 of the Indian Evidence Act, 1872, (herein after 'the I E Act' for brevity) read with Section 151 of the Code of Civil Procedure, 1908, requesting to permit the defendants 1 and 2 to mark the certified copy of the layout already filed in the above case as secondary evidence.

2. I have heard *Sri E.Madan Mohan Rao*, learned senior counsel appearing for *Sri R.A.Atchutanand*, learned counsel for the revision petitioners/ plaintiffs ('plaintiffs', hereinafter) and *Sri N.Ashok Kumar*, learned Standing Counsel for the respondents 1 and 2/ defendants 1 and 2 ('defendants 1 and 2', hereinafter). The other respondents are stated to be not necessary parties. I have perused the material record.

3. At the outset, it is to be noted that the plaintiffs brought the suit against the defendants 1 and 2 [Greater Hyderabad Municipal Corporation (GHMC) and its Assistant City Planner] and others for declaration that the rejection of the sanction of their plan by the GHMC in respect of the plaintiff schedule house property is illegal, null, void, arbitrary and not binding on the plaintiffs and to consequently direct the GHMC to accord permission for construction in terms of the application submitted by the plaintiffs on 31.10.2005 and for costs. The defendants 1 and 2 are resisting the suit by filing a written statement. The case of the plaintiffs is that they are the absolute owners of the property having purchased the same under registered

sale deed; whereas one of the contentions of the defendants 1 and 2 is that as per the revised layout, approved vide permit No.75/68 dated 31.03.1977, the subject property is earmarked as park. During the course of trial, the defendants 1 and 2 filed the subject interlocutory application to accord permission in the interests of justice to adduce secondary evidence and permit them to mark the certified copy of the said layout as an exhibit on their side to substantiate their defence. That application was resisted by the plaintiffs. On merits and by the orders impugned in this revision, the trial Court allowed the petition of the defendants 1 and 2 and permitted them to mark the certified copy of the said layout by giving them permission to adduce secondary evidence. Aggrieved thereby, the plaintiffs filed this revision petition.

4. Before proceeding further, it is necessary to refer to the pleadings of the parties.

4.1 The case of the defendants 1 and 2 in support of their said request, in brief, is this:

The plaintiffs brought the suit for a declaration that the rejection of sanction of their plan by the GHMC in respect of the plaint schedule house property is illegal, null, void, arbitrary and not binding on the plaintiffs and for a consequential relief directing the GHMC to accord permission for construction as per their plan submitted on 31.10.2005. In the written statement of the GHMC, a reference was made to the revised layout approved in favour of M/s. Shankerlal and Shankerlal under permit No.75/68 dated 31.03.1977 (herein after 'layout'). Earlier, the vendor/s of the plaintiffs filed O.S.No.5267 of 2000 (hereinafter, 'former suit') on the file of the Court of the learned III Junior Civil Judge, City Civil Court, Hyderabad, for perpetual injunction against the defendants 1 and 2 herein and the said suit was dismissed on 08.09.2003. In the said suit, the defendants 1 and 2 herein filed a true copy of the above said layout. After the dismissal of the above suit, the defendants 1 and 2 obtained

certified copies of the decree and judgment passed in the above said former suit and also the certified copy of the layout marked as exhibit B2 in the said suit. The said certified copy of the said layout was also marked as exhibit R2 at the time of hearing of the interlocutory application in I.A.No.203 of 2008 in the present suit. The 2nd defendant, the Assistant City Planner concerned of the GHMC had already filed his affidavit in lieu of examination-in-chief. On 05.11.2012, when the said witness (Dw1) tendered the above said true copy of the lay out for marking it as an exhibit, an objection was raised on behalf of the plaintiffs that without seeking permission to adduce secondary evidence, a certified copy of a layout cannot be marked. Thereafter, the staff concerned of the defendants 1 and 2 searched for the original layout, which is of more than 30 years old. Since several cases were filed in respect of the subject matter of the layout during the past 30 years and were disposed of, and on account of change of officers concerned during the last 30 years period, the staff of the defendants 1 and 2 could not trace out the original layout; and they could not find out as to whether they have filed the said original layout in any of the cases or whether it was misplaced somewhere in the office. Since the original layout is not readily available and as its whereabouts are not known and as the original document was thus lost and could not be traced inspite of best efforts, the defendants 1 and 2 have no other option but to seek permission to adduce secondary evidence and mark the certified copy of the layout. Hence, the present petition is filed.

4.2 *Per contra*, the case of the plaintiffs, in brief, is this:

The defendants 1 and 2 filed true copy of the alleged layout is not a correct allegation. There cannot be a true copy of the alleged layout. In case, a layout is sanctioned, the original layout will be retained in the office of the GHMC and a copy of the same will be given to the authority concerned. It is not known as to how a true copy of the alleged layout was filed in the former suit. If it is secondary evidence, while seeking permission for adducing

secondary evidence, foundation has to be laid in the pleadings. A reading of the written statement of defendants 1 and 2 does not disclose that the original layout was filed in the former suit. It is alleged by the defendants 1 and 2 in the affidavit that a true copy of the layout plan was filed in the former suit. True copies are inadmissible in evidence. The GHMC is obligated to produce the original layout, if any, sanctioned. It is not stated in the written statement that the original layout is not available with the GHMC. Therefore, in the pleadings in the written statement, a foundation is not laid that the original is not available. As seen from the certified copy of the judgment in the former suit, the document now being sought to be filed is only a certified copy of an alleged layout. The present document, which the defendants 1 and 2 intend to exhibit, is certified copy, granted by a Court, of a photostat copy of a layout filed in the former suit proceedings. The photostat copy, which was earlier marked in the former suit, is inadmissible in evidence. That document does not come within the parameters of primary evidence or secondary evidence. As such, the said document is inadmissible in evidence. Only a photostat copy was produced and exhibited in the former suit and a certified copy of the same was obtained and is being sought to be filed as secondary evidence in the instant suit. In the absence of relevant pleadings, the secondary evidence cannot be permitted to be adduced. The allegations that original layout is more than 30 years old document and that several cases were filed during the last 30 years and that there was change of officers of the GHMC during the last 30 years and that therefore, the officers of the GHMC are unable to trace out the original; and, that they could not trace out as to whether the original was filed in any case or whether was it misplaced somewhere in the office of the GHMC and that the original could not be traced in spite of their best efforts and that its whereabouts are not known are all false allegations. For the first time, the said allegations were made in the affidavit filed in support of the instant petition of the defendants 1 and 2. The allegations that the original lay

out has been lost etcetera are all false. There is a difference between the contentions that 'the document is lost' and that 'the document is misplaced'. Going by the averments in the affidavit filed in support of the petition itself, the petition is not maintainable. The petition is liable for dismissal.

5. At the hearing, the learned senior counsel appearing for the plaintiffs while reiterating the case of the plaintiffs vehemently contended as follows:

Only a Photostat copy of the alleged layout was marked in the former suit as Exhibit B2. The defendants 1 and 2 admittedly obtained certified copy of the said document from the record of the previous suit, which was disposed of. Therefore, the certified copy now being sought to be marked is a certified copy of the photostat copy of the layout. The photostat copy is itself inadmissible in evidence being neither primary nor secondary evidence. A copy of such copy is not admissible, much less as secondary evidence. No foundation is laid in the pleadings in the written statement that the original is either lost or misplaced. There is a distinction between the contention 'document misplaced' and 'a document lost'. The document being a layout, the original sanctioned layout, if really sanctioned, must always be with the GHMC. Only a copy will be given to the concerned. Since the GHMC is a public office and the officer concerned is a public officer and the original layout is a public document, only a certified copy of the original issued by the competent authority is alone admissible; but no other kind of secondary evidence is admissible as per law. The trial Court was in error in permitting to mark the certified copy of a layout, which was obtained from a photostat copy earlier marked in an earlier suit. Such document has no probative value. Such document cannot be received as secondary evidence. Hence, the revision may be allowed and the order impugned may be set aside directing the GHMC to produce either the certified copy of the original or the original layout; otherwise, the plaintiffs would be put to serious and irreparable loss as they are disputing the genuineness of the layout.

6. *Per contra*, the learned Standing Counsel for the GHMC/ defendants 1 and 2 while reiterating the case of the defendants 1 and 2 and while supporting the orders of the Court below contended as follows:

The original layout is a 30 years old document. Since 30 years, several cases were filed in respect of the same subject matter. The vendors of plaintiffs herein filed O.S.No.5267 of 2000 against the defendants 1 and 2 for perpetual injunction in respect of the very same property. The said suit was dismissed on 08.09.2013. In the said suit, the defendants 1 and 2 herein filed true photostat copy of the layout dated 31.03.1977. Thus, the document filed in the former suit is a true copy of the layout. It was marked as Exhibit B2 in the former suit. After the suit was dismissed, the GHMC obtained certified copies of the decree and judgment as well as of exhibit B2 layout. Now, the certified copy of Exhibit B2 layout is being tendered in evidence after seeking necessary permission to adduce secondary evidence. Having regard to the facts, the trial Court correctly permitted for adduction of the secondary evidence and rightly granted permission to mark the certified copy of the layout. A foundation is laid that the original layout could not be traced in the office and it is *inter alia* stated that in view of the long lapse of time and change of officers, the GHMC is unable to trace out as to whether it was either filed in any other case or was it lost in the office of the GHMC by misplacement. The fact of the matter is that it is not readily available and could not be produced inspite of best efforts. It is thus lost. Since the true photostat copy of the layout was marked in the former suit between the same parties and a certified copy of the same was later obtained and the same is being filed in the present suit, after laying necessary foundation for adducing secondary evidence, the contentions of the plaintiffs are untenable and misconceived. The law permits marking of the said document, which is a certified copy of the true copy of the layout marked as exhibit B2 in the earlier suit between the same parties. The order of the trial Court is justified in the

facts and circumstances of the case. The revision petition is devoid of merit and is liable to be dismissed.

7. At this stage, it is necessary to note that the learned senior counsel for the plaintiffs placed reliance on the following decisions: (i) Smt. J.Yashoda v. Smt. K.Shobha Rani¹; In this cited decision, the documents in question were admittedly photo copies; on facts of that case, it was found that the said photo copies were produced in such a situation where there was no possibility to compare the same with the originals, as the originals were with another person. Hence, it was held that the documents cannot be treated as secondary evidence. (ii) (Pathuri) Subrahmanya Sastry v.(Pathuri) Lakshminarasamma²; In this cited decision, a record printed in the High Court, which is not a copy made from the original or compared with the original, but, is only a copy of the copy was held inadmissible in evidence, more particularly in the absence of the evidence that the printed copy has been compared with the original. Hence, the said record printed in the High Court is not treated as secondary evidence. (iii) H.Siddiqui (dead) by L.Rs v. A.Ramalingam³; In this cited decision, the Supreme Court while dealing with the situations in which the secondary evidence can be permitted to be adduced held as follows: 'Provisions of Section 65 of the I.E. Act provide for permitting the parties to adduce secondary evidence. However, such a course is subject to a large number of limitations. In a case where original documents are not produced at any time, nor, any factual foundation has been laid for giving secondary evidence, it is not permissible for the Court to allow a party to adduce secondary evidence. Thus, secondary evidence relating to the contents of a document is inadmissible, until the non-production of the original is accounted for, so as to bring it within one or other of the cases provided for in the provision. The secondary evidence must be authenticated by foundational evidence that the

¹ AIR 2007 SUPREME COURT 1721

² AIR 1958 ANDHRA PRADESH 22 (Vol.45, C.5) (1)

³ [2011(3) Civil LJ 114]

alleged copy is, in fact, a true copy of the original. Mere admission of a document in evidence does not amount to its proof. Therefore, the documentary evidence is required to be proved in accordance with law. The Court has an obligation to decide the question of admissibility of a document in secondary evidence before making endorsement thereon. [Vide: The Roman Catholic Mission and Anr. v. The State of Madras and Anr.: AIR 1966 SC 1457; State of Rajasthan and Ors. v. Khemraj and Ors. AIR 2000 SC 1759; Life Insurance Corporation of India and Anr. v. Ram Pal Singh Bisen: (2010) 4 SCC 491; and M. Chandra v. M. Thangamuthu and Anr.: (2010) 9 SCC 712.]’ (iv) *Badrunnisa Begum v. Mohamooda Begum*⁴; In this cited decision, it was held that copy of copy of document not compared with the original document is not admissible in evidence. (v) *K.Laxman Rao v. State of A.P.*⁵; In this cited decision, it was held that when the original is a public document, the certified copy of such public document is alone admissible in evidence and that no other form of secondary evidence is admissible as per Section 65(e) of the I. E Act. (vi) *Harihar Prasad Singh v. Deonarain Prasad*⁶; This cited decision was relied upon in support of the contention that presumption enacted in Section 90 of the I.E Act with regard to 30 year old document can be raised only with reference to original documents and not copies thereof. (vii) *Mohanlal San v. Samal Ram Potdar*⁷; In this cited decision, the facts disclose that the plaintiffs/ mortgagees have not proved that the original mortgage deed was lost and hence, it was held that they were disentitled to tender a certified copy of the same as secondary evidence and as a basis for their suit claim. (viii) *Beemaneni Mahalakshmi v. Gangumalla Apparao*⁸; In this cited decision, the Court found on facts that the documents that were filed before it with a petition were photostat copies of certified copies; but, not certified copies; for

⁴ AIR 2001 ANDHRA PRADESH 394(1)

⁵ 1999 (1) ALT 506

⁶ AIR 1956 SUPREME COURT 305

⁷ AIR 1961 PATNA 300 (Vol.48, C.83)

⁸ 2007 (6) ALT 401

the said reason and as the documents did not satisfy the requirement of Section 63 of the I E Act, it was held that the same are not admissible in evidence. On the other hand, learned Standing Counsel for the defendants 1 and 2 relied upon the following decisions: (i) Amangenti Prameela v. P.Venkat Reddy⁹; In this cited decision, this Court held that photostat copy of a partition deed can be received as secondary evidence as its authenticity is not doubtful and the party having possession of the original failed to produce it despite the fact that he was called upon to produce the original by a notice. (ii) Dokka Joganna v. Upadrasta Chayadevi¹⁰; This cited decision was relied upon in support of the contention that when once a document is marked, its admissibility cannot be questioned at a latter stage of the same proceeding. (iii) H.Siddiqui (dead) v. A.Ramalingam¹¹; In this cited decision, an executor admitted his signatures only on the photostat copy of power of attorney while denying the contents thereof. The issue that was considered is the probative value of the said document in the light of the said aspect of the matter. It was also held on facts peculiar to the case that secondary evidence relating to the contents of the document is inadmissible as the non-production of the original is not accounted for so as to bring the evidence sought to be adduced as secondary evidence within one or the other of the clauses provided for in Section 65 of the I E Act. (iv) In Life Insurance Corporation of India v. Ram Pal Singh Bisen¹², it was held that mere filing or exhibiting a document in Court does not amount to proof of its contents and that admission of a document in evidence given before a Court may amount to admission of its contents but not its truth. On facts, it was further held that the document filed cannot be relied upon since the document was not produced and not exhibited in accordance with the procedure required under the I E Act. I have gone through the cited decisions. I have noted the settled principles of law.

⁹ 2004(3) ALT 218

¹⁰ 1997 (5) ALT 628

¹¹ AIR 2011 SUPREME COURT 1492

¹² (2010) 4 Supreme Court Cases 491

Suffice if it is observed at this stage that the decision in the case on hand shall be rendered keeping in view the facts peculiar to the case and the settled legal principles relevant and applicable.

8. The pleadings, necessary facts and the events that lead to the filing of this revision petition by the plaintiffs are already stated supra, in detail. From the pleadings of the parties, the following facts and aspects emerge: In the instant suit, the grievance of the plaintiffs is with regard to the non sanction of their plan for construction of a building over the plaint schedule property. The case of the defendants 1 and 2 is that the suit property is ear marked as a park as per the earlier sanctioned layout. It is an admitted fact that the plaintiffs' vendors earlier filed in respect of the same subject matter, a suit in O.S.No.5267 of 2000 on the file of the Court of the learned III Junior Civil Judge, City Civil Court, Hyderabad, for perpetual injunction. The said suit was dismissed, on merits, on 08.09.2013. In the said suit, the defendants 1 and 2 herein marked the photostat copy of the layout as exhibit B2, which was attested as true photostat copy. After dismissal of the said suit, the defendants 1 and 2 herein obtained certified copies of the decree and judgment in the said suit as well as the certified copy of the said copy of the said layout, which was filed and exhibited as Exhibit B2 in the said suit. The defendants 1 and 2 herein submit that they and their staff are now not in a position to produce the original sanctioned layout; and it is their case that it is irretrievably lost and is not traceable, in the aforesaid facts and circumstances stated by them. Hence, they sought permission of the trial Court to adduce secondary evidence by marking the certified copy of the said layout, i.e., the certified copy of the true Photostat copy of the layout marked as Exhibit B2 in the former suit. The trial Court granted permission as sought for by the defendants 1 and 2 after overruling the objections of the plaintiffs, which are adverted to supra, while dealing with the case and contentions of the plaintiffs. Aggrieved thereby, the plaintiffs preferred this revision and

raised various contentions, which are stated supra. The defendants 1 and 2 are supporting the orders of the Court below. This Court, shall now deal with the objections of the plaintiffs in seriatim to examine the issue as to whether the orders of the Court below permitting the defendants 1 and 2 to mark the certified copy of the true photostat copy of the layout exhibited in the former suit as Exhibit B2, is a sustainable order or not, under facts and in law.

8.1 The plaintiffs' first contention is that no foundation is laid in the pleadings of the defendants 1 and 2 for adducing secondary evidence. In the case on hand, according to the defendants 1 and 2, the original layout, which is a 30 year old document, is irretrievably lost and it is not readily available; and that due to change of officers and staff from time to time, the defendants 1 and 2 and their staff, inspite of their best efforts, are unable to trace out as to whether it was filed earlier in any other proceeding in respect of disputes related to the same subject matter or whether was it lost in their office by misplacement. For the said reasons stated, the defendants 1 and 2 are not in a position to produce and mark the original layout or a certified copy thereof prepared on the basis of the original. In the first place it is to be noted that the defence of the defendants 1 and 2 that the subject property is a park is based on the sanctioned layout. It is settled legal position that every pleading be it the plaint or the written statement shall contain and contain only a concise statement of material facts on which the party relies for his claim or defence but not the evidence by which they are to be proved. At the appropriate stage of trial, the defendants 1 and 2 pleaded the facts and circumstances which necessitated the adduction of secondary evidence. Hence, the contention of the plaintiffs that no foundation is laid by the defendants 1 and 2 for adducing secondary evidence needs no countenance.

8.2 The next contention of the plaintiffs is that only a certified copy of the original lay out as granted in accordance with Section 75 of the I E Act is only

admissible and not any other form of secondary evidence and that the document marked in the former suit is a Photostat copy attested as a true copy and, therefore, certified copy of such Photostat copy of the layout is inadmissible in evidence even as secondary evidence. It is also their contention that as the original is a public document, only a certified copy thereof is admissible in evidence as secondary evidence. In the light of this contention, it is profitable to first refer to Sections 64 and 65 of the Act, which read as under:

Section 64:

Proof of documents by primary evidence: Documents must be proved by primary evidence except in the cases hereinafter mentioned.

Section 65:

65. Cases in which secondary evidence relating to documents may be given.—Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:-

(a) When the original is shown or appears to be in the possession or power-

Of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or

Of any person legally bound to produce it,

And when, after the notice mentioned in Section 66, such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of Section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in [India] to be given in evidence;

(g) when the originals consists of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

The aforesaid provision contains seven clauses under which secondary evidence can be permitted. The fact that the original layout is a public document within the meaning of Section 74 of the I E Act is not in dispute. Section 76 of the I.E Act lays down that every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such copy so certified is a certified copy. Under Clause (e) of the said Section 65, when the original is a public document within the meaning of Section 74, a certified copy of the document is admissible as secondary evidence. Under Clause (f) of the said section, when the original is a document of which a certified copy is permitted by this Act or by any other law in force to be given in evidence, then, secondary evidence is admissible. Therefore, the present fact situation fits into all the clauses (b), (c), (e) and (f) of Section 65 of the I E Act, in the

considered view of this Court. Under clauses (e) and (f), a certified copy of the document, but no other kind of secondary evidence is admissible. However, clause (b) of the said section also lays down that secondary evidence can be given when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest. In the case on hand, the layout was filed and marked in the former suit and was proved against the vendors of the plaintiffs herein. From the certified copies of the decree and judgment in the former suit, which are also filed in this suit, the said fact is evident. Nonetheless, the first part of clause (c) of the said provision, which is distinct from the later part, postulates that secondary evidence may be given when the original has been destroyed or lost. In the well-considered view of this Court, one clause in the said Section does not operate in exclusion of the other clauses. For the sole reason that the original layout is a public document, it cannot be said that only either clause (e) or clause (f) is applicable to the exclusion of the other clauses in the section. For the purpose of adducing secondary evidence, in the case on hand, clause (c) is also applicable, in the considered view of this Court. To demonstrate, let the two cases stated *infra* be envisioned: (i) 'The original document, which is a public document, is destroyed on account of a fire accident in a public office having custody of the same. In a suit filed against that Public Body or Institution, it becomes necessary to place reliance on the destroyed public document. Then either the said body or institution or any other party can be permitted to give secondary evidence by showing that the original is destroyed in fire, without insisting upon the production of a certified copy of the original.' And, (ii) A villager, who is farmer, has land which his father purchased under a regular registered sale deed. Both his said original sale deed and a registration extract or a certified copy of it, which was obtained earlier were destroyed when his house was inundated in flood waters. The relevant Book in the sub-registrar's office was also lost in the floods. But,

a photostat copy of the certified copy of the sale deed was available in the Mandal Office, the same having been submitted at the time of obtaining ryot pass book and title deed book. In a suit where his title is disputed he seeks permission to produce such a copy as secondary evidence. Simply because the original book maintained in the sub-registrar's office is a public document and the sub-registrar is empowered to give a certified copy thereof, his request to give secondary evidence cannot be denied as his case is also covered by clause (c) of section 65 of the I E Act.' Such illustrations, which can be visualized, may be many. Thus, in the well considered view of this Court, law permits a party to adduce secondary evidence when the case falls under any one or more clauses of section 65 of the I E Act and the clauses in the said section are in the alternative to each other but not to the exclusion of each other. Therefore, the contention of the plaintiffs that only a certified copy of the original alone shall be produced as secondary evidence cannot be countenanced.

8.3 Dealing with the next contention that copy of the layout marked in the earlier suit is a Photostat copy, it is to be noted that from the pleadings, submissions and the material on record it appears that the document filed in the former suit is a Photostat copy of the layout and that it was attested as a true copy. In that view of the matter, it is necessary to refer to Sections 63, 73, 74, 75 and 76 of the Indian Evidence Act, which read as under:

63. Secondary evidence. - Secondary evidence means and includes---

(1) certified copies given under the provisions hereinafter contained,

(2) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;

(3) copies made from or compared with the original,

(4) counterparts of documents as against the parties who did not execute them;

(5) oral accounts of the contents of a document given by some person who has himself seen it.”

Section 73:

Comparison of signature, writing or seal with others admitted or proved.—In order to ascertain whether a signature, writing, or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

[This section applies also, with any necessary modifications, to finger impressions.]

Section 74:

Public documents:-- The following documents are public documents:-

(1) Documents forming the acts or records of the acts:-

- (i) of the sovereign authority,
- (ii) of official bodies and Tribunals, and
- (iii) of public officers, legislative, judicial and executive, of [any part of India or of the Common-wealth], or of a foreign country;

(2) Public records kept [in any State] of private documents.

Section 75:

Private documents.- All other documents are private

Section 76: Certified copies of public documents.—Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such

certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies certified shall be called certified copies.

*Explanation,----*Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

The above provision of Section 63 lays down that secondary evidence means and includes (1) certified copies given as per the provisions of I E Act; and (2) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies. This clause (2) refers to two types of copies: viz., (i) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy; and, (ii) copies compared with such copies. A Photostat copy is a copy made from the original by mechanical process and such process insures accuracy of the copy is not in dispute. In the case on hand, the Photostat copy marked in the former suit is certified or attested as a true copy. The said Court by which the former suit was decided granted certified copy of the same to the defendants 1 and 2 herein. So, the present certified copy of the layout being sought to be tendered in evidence by the defendants 1 and 2 is a copy certified as a true copy after its comparison with such photostat copy which was made from the original by mechanical process and which was certified/ attested as a true copy. Therefore, the certified copy being sought to be produced is an accurate true copy of exhibit B2, which in turn, is prepared from the original by mechanical process. Even assuming for a moment that the photostat copy is one not certified or attested as a true copy, even then, it being a photostat copy made from the original by mechanical process, which in itself insures the accuracy of the copy, the same is admissible as such photostat copy is included within the meaning of secondary evidence. Further, under Section 63(2), copies made from the original by mechanical processes which in themselves

insure the accuracy of the copy, and copies compared with such copies are included within the meaning of secondary evidence. And, as per Section 63 (3) of the I E Act, copies made from or compared with the original are also included within the meaning of secondary evidence. Hence, in the facts and circumstances, the certified copy of the layout granted by a competent Court as per the provisions of Sections 74 and 75 of I E Act can be treated as secondary evidence.

8.4 In the light of the above discussion, this Court finds that there are no impediments to give in evidence the certified copy of the layout, which was obtained from the former suit proceedings as secondary evidence.

8.5 Dealing further with the aforesaid contentions of the plaintiffs that a certified copy of photostat copy cannot be admitted in evidence and also the further contention that the layout itself is of doubtful veracity and is not a genuine document, it is profitable to refer to the following decisions.

In M/s. Hindustan Construction Co. Ltd. v. The Union of India¹³, the Supreme Court while observing that the word 'copy' as such is not defined in the Indian Evidence Act had held as follows:

“But we get an idea of what a copy is from the provisions of S.63 of the Evidence Act. That Section *inter alia* defines what secondary evidence means and includes, namely –(i) certified copies as provided in S.76 of Evidence Act, (ii) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies and (iii) copies made from or compared with the original. Obviously, therefore, a copy means a document prepared from the original which is an accurate or true copy of the original. In Webster's New World Dictionary, the word “copy” means “a thing made just like another, full reproduction or transcription”. What the word “copy” in S.14 (2), therefore, requires is that it must be a full reproduction of the original and that it should be accurate or true. When a document is an accurate or true and full reproduction of the original it would be a copy.”

¹³ AIR 1967 SUPREME COURT 526

In *Nawab Singh v. Inderjit Kaur*¹⁴ the facts and ratio are as follows:

In a suit for perpetual injunction, the appellant therein moved an application seeking production of a rent note from the custody of the respondent. However, the said application was rejected by the trial Court. Later, he moved an application seeking leave of the Court for production of secondary evidence of the rent note. That application was also rejected by the trial Court and the appellant's further appeal was dismissed by the High court. The Supreme Court noted that the prayer of the appellant has been rejected mainly on the ground that the copy of the rent note sought to be produced by the appellant was of a doubtful veracity. In this factual background of the cited case, the Supreme Court had held as follows: "The trial Court was not justified in forming that opinion without affording the appellant an opportunity of adducing secondary evidence. The appellant has alleged the original rent note to be in possession of the respondent. The case was covered by clause (a) of Section 65 of the Indian Evidence Act, 1872. In our opinion, the ends of justice would be satisfied if the appellant is allowed an opportunity of adducing secondary evidence but subject to terms".

Further, in the decision in *Murtaza Moosavi v. Hemenra v. Shah and another*¹⁵, the question was about the tenant's entitlement to file, as secondary evidence, the photostat copy of a register containing entries of collection of rents from the tenants. The tenant's application to lead secondary evidence was opposed on two grounds, viz., photostat copies cannot be received in evidence and that the same are fabricated. When the Rent Controller dismissed the said application of the tenant on the ground that the ingredients of Section 65 of the I. E Act are not satisfied, this Court having referred to the precedential guidance in the decision of the Supreme Court in *Nawab Singh* (14th supra) allowed the revision of the tenant and granted leave to adduce secondary evidence by producing the photostat copy of the rent

¹⁴ (1999) 4 Supreme Court Cases 413

¹⁵ 2006 (3) ALD 697

register by observing that the validity, legality and probative value of such evidence will have to be gone into separately by the learned Rent Controller at the time of hearing of the case.

Thus, a photostat copy of a document made from the original by mechanical process which in itself insures the accuracy of the copy can be received as secondary evidence. Further, when a copy is made from such copy and the copy made is compared with such copy, it can also be received as secondary evidence. In the case on hand, the Exhibit B2 is a photostat copy of the layout which is certified as true copy. The competent Court granted certified copy of the said Exhibit B2. Therefore, the certified copy of Exhibit B2 which is duly certified as a copy and given by a competent Court can be received as secondary evidence, is beyond pale of controversy. Having regard to the facts of the case and the legal position stated supra, the document which is being sought to be introduced as secondary evidence being admissible in evidence as secondary evidence, permission cannot be declined either on the ground that it is inadmissible as secondary evidence or on the ground that it is of doubtful veracity.

8.6. On the above analysis of the facts and the legal position obtaining and for the aforesaid reasons, this Court finds that in the facts and circumstances of the case, the trial Court is justified in granting permission to the defendants 1 and 2 to lead secondary evidence by producing the certified copy of the true Photostat copy of the layout. In that view of the matter, this Court finds that the revision is devoid of merit and that the order impugned can be confirmed by making it clear that the aspect with regard to the probative value or veracity of the secondary evidence, which is permitted to be given, shall be considered by the trial Court at an appropriate later stage, i.e., the stage of evaluation and appreciation of evidence and deciding the suit on issues settled.

9. Accordingly, the Civil Revision Petition is dismissed. No costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

29th December 2016
RAR

