

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.01.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.2912 of 2012
and
M.P.No.1 of 2012**

T.D.Siddharthan

.. Petitioner

Vs.

1.Jothi Bai

2.Sara Selva Kumari

3.Flora Rathna Kumari

4.Clara Santha Kumari

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the petition order passed in I.A.No.921 of 2011 in O.S.No.188 of 2010 dated 27.01.2012, on the file of the District Munsif Court at Tambaram.

For Petitioner : Mr.S.Sivashanmugam

For Respondents : Mr.A.R.Palanisamy

ORDER

The petitioner has filed this Civil Revision Petition to set aside the order dated 27.01.2012 made in I.A.No.921 of 2011 in O.S.No.188 of 2010 on the file of the District Munsif Court, Tambaram, Kanchepuram District.

2.The case of the revision petitioner is that he is the plaintiff in the suit. The said suit is for declaration and permanent injunction, declaring the unilateral cancellation of a Settlement deed executed by his mother, the 1st defendant as null and void and thereby prayed for injunction in respect of the suit schedule property as against his sisters. The suit scheduled property out of love and affection and being the only son was settled vide Doc.No.5374/2004 dated 05.08.2004 in favour of the revision petitioner by the 1st defendant mother. However, subsequently due to ill advice of the defendant's sisters the settlement deed was unilaterally cancelled on 02.11.2009 vide Doc.No.6855/2009 by the 1st defendant, which is impermissible under law. Hence the revision petitioner came up with the above suit.

3.Further case of revision petitioner/plaintiff is that he has developed the suit property by constructing a house by availing loan

from L.I.C. Housing Finance Ltd to the tune of Rs 9,75,000/-. For which the original title deed, patta, building permit, enjoyment certificate and C.M.D.A. certificate was submitted to the L.I.C. Housing Finance Limited. Therefore the petitioner filed only the Xerox copies of the above documents at the time of filing the suit as the supporting documents of Plaint. However, the trial Court declined to mark those documents during trial, despite the case of the petitioner that all the documents are vested with the public authority. Therefore, the revision petitioner has filed I.A.No.921 of 2011 before the trial Court under Sections 63 and 65 of Indian Evidence Act, 1872 r/w Section 30 and 151 of Civil Procedure Code to permit the revision petitioner to mark the notarized photocopies of the above documents. The said petition however erroneously came to be dismissed by the trial Court holding that "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. From the above the petitioner has to take steps for send for documents from L.I.C. Housing Finance Limited and after getting the certified copies of the original he can only permit to substitute exhibits. Hence the notarized photocopies does not amount to its proof". Aggrieved over the same, the present Civil Revision

Petition is being filed.

4.I have heard Mr.S.Sivashanmugam, learned counsel appearing for the petitioner and Mr.A.R.Palanisamy, learned counsel appearing for the respondents and carefully perused the available materials on record.

5.The sole reason stated by the revision petitioner for his failure to produce the Original documents before the Trial court is the above said Original documents are handed over and is in the custody of L.I.C. Housing Finance Limited. Hence the petitioner is not in a position to produce the same. Further it was contended by the learned counsel for the petitioner that under Sections 63 and 65 of Indian Evidence Act, 1872 the notarized photocopies of the above documents are liable to be marked, since it falls within the purview of secondary evidence. For better appreciation, Sections 63 and 65 of Indian Evidence Act extracted hereunder:-

"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 ensure 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."

"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.”

6.Per contra, the learned counsel for the respondents herein contended that the trial Court rightly having found that the documentary evidence is required to be proved in accordance with law and the petitioner has to take steps for sending the documents from L.I.C. Housing Finance Limited and thus has rightly dismissed the petition filed in I.A.No.921 of 2011.

7.From the perusal of the impugned order, it is noticeable that the trial Court has dismissed the application on having reliance upon the reported Judgment of the Hon’ble Apex Court in a case of ***H.Siddiqui (Dead) By LRS. v. A.Ramalingam*** reported in **2011 (4) SCC 240**, wherein it was held that in a case where original

documents were not produced at any time, nor has any factual foundation been laid for giving secondary evidence, it is not permissible for the court to allow a party to adduce secondary evidence.

8.It is settled law that in so far as the secondary evidence is concerned, the contents of a document are inadmissible, until the non-production of the original is accounted for, so as to bring within one or other of the cases provided under Sections 63 and 65 of Indian Evidence Act, 1872. In the case on hand, it is averred that the documents are under the custody of a public authority. The petitioner has also not filed certified copies or True copies certified by the issuing authorities, whereas only produced Xerox copies. The secondary evidence is not being authenticated by foundational evidence. It is needless to say that always secondary evidence is required to be proved in accordance with law.

9.In the result:

(a) this civil revision petition is dismissed with liberty to the petitioner to file appropriate petition to call for the Original documents already pledged with L.I.C.;

(b) the learned trial Court is hereby directed to entertain such application, if any filed within one month from the date of receipt of a copy of this order and shall pass appropriate orders;

(b) the learned trial Court is directed to dispose the suit within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

30.01.2017

Note: Issue order copy on 20.06.2017
Internet: Yes/No.
Index: Yes/No.

vs

To

The District Munsif Court,
Tambaram.

M.V.MURALIDARAN, J.

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