HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION Nos.2909 AND 2936 OF 2017

COMMON ORDER:

Since the parties are common and the subject matter of these revisions is one and the same, both these revisions are disposed of by this common order.

2. The revision petitioners are defendants in the suit. Aggrieved over the separate orders dated 30.03.2017, in I.A. No.40 of 2015 and 41 of 2016 in O.S. No.98 of 2011, passed by the learned Principal Junior Civil Judge, Nirmal, both these Civil Revision Petitions are preferred.

3. I.A. No.40 of 2015 was filed under Section 65 of the Indian Evidence Act, to lead secondary evidence in respect of a lost patta certificate of Plot No.436 by filing a certified copy. I.A. No.41 of 2016 was filed under Order - VIII Rule 1(a)(iii) of the Code of Civil Procedure, 1908, to receive the documents filed along with the petition affidavit. Both these petitions were dismissed by the learned Junior Civil Judge, arriving at that there were no merits in the petitions.

4. In the grounds of revision, the petitioners would agitate that the scope and ambit of section 65 of the Evidence Act was not properly comprehended by the Court below and went wrong in overlooking the fact that filing certified copy of the document is

admissible in the absence of its original even without filing a petition and the circumstance that the originals that are sought to be marked are not within reach of the petitioners and they were in possession of the mother of petitioner Nos.1 and 2 at the time of filing the petition.

5. In the latter revision, the petitioners would submit that the learned Junior Civil Judge, somehow, did not properly construe the scope and ambit of Order - VIII Rule - 1 (a) (iii) of CPC and thereby arrived at a wrong conclusion and even overlooked the fact that the documents sought to be filed were lost and not in possession of the petitioners, and, therefore, sought to set aside the orders under challenge in both these revisions.

6. When perused the order in I.A. No.40 of 2015, the learned Junior Civil Judge mainly on the ground that the petitioners, in their written statement and counter affidavits filed in I.A. No.168 of 2011, though, got averred that they would file original at the time of trial, did not even whisper as to where and when they lost the original patta certificate, dismissed the said petition. The order in I.A. No.41 of 2016 would show that since the petitioners have not assigned any reason for filing the documents at a belated stage and their inability to file them along with the written statement, dismissed the petition.

7. Referring to the order passed in I.A. No.40 of 2015, it appears from the order that the first document is a certified copy of patta certificate, which was said to be lost, and sought to be

substituted with the certified copy by filing it under Section 65 of the Evidence Act.

8. Heard Sri M. Mehdi Hussain, learned counsel for the revision petitioners, and Sri C. Narsi Reddy, learned counsel for the respondent, and perused the material on record.

9. Elaborate arguments were tendered by both sides in support of their stand. The learned counsel for the respondent supported the order passed by the trial Court contending that when a positive assertion is made by way of averment in the counter affidavit that original *patta* certificate will be filed at a subsequent stage, and, thus, it would indicate that the original *patta* certificate has been with them and having made such assertion, now coming with the present applications seeking to receive certified copy on the ground that the original was lost, cannot be a convincing reason to receive certified copy of the lost *patta* certificate.

10. Now, the question is whether the certified copy can be received in the place of original *patta* certificate that was lost?

11. A patta certificate that would be in the custody of the petitioners is, no doubt, can be construed as original patta certificate, but the issuing authority being revenue department, certainly, the register, which contains relevant entries, for issue of patta certificate can be summoned and examined at the relevant stage by the Court itself, at the instance of the petitioners. No doubt, it is true, the

affidavit may be bereft of relevant particulars, but that cannot be a ground to reject receiving the certified copy by way of secondary evidence, if the conditions required for receiving secondary evidence are satisfied.

12. In case, the applications are dismissed, it cannot compel the petitioners to get the original certificate which they claimed to have lost now, and, it amounts to shutting the door to lead defence, and, therefore, the order under challenge in the former petition is liable to be set aside and the same is accordingly set aside.

13. Turning to the order in IA No.41 of 2016, it is needless to mention that when once the order in IA No.41 of 2015 is set aside, invariably, the present order under challenge is also liable to be set aside and accordingly set aside directing the trial court to receive the document(s); so far as relevancy and admissibility of the document(s) is concerned, it is left open to the respondent - plaintiff to raise the same at an appropriate stage.

14. With the above directions, both the Civil Revision Petitions are allowed, at the admission stage itself. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending in these revisions stand closed.

A. SHANKAR NARAYANA, J

September 15, 2017.
PV