

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CIVIL REVISION PETITION Nos.4131 & 4151 of 2017

COMMON ORDER:

A common order, dated 31.07.2017, in I.A.Nos.266 & 267 of 2017 in O.S.No.2935 of 2004 passed by the learned Additional Judge-cum-Vi Senior Civil Judge, City Small Causes Court, Hyderabad, is questioned in these two revision petitions by respondent Nos.1 and 2, the Collector, Hyderabad District, and the Mandal Revenue Officer, Nampally, respectively, in the said I.As.

I.A.No.266 of 2017 was filed under Section 151 C.P.C by the petitioner – plaintiff, who is respondent No.1 herein, requesting to reopen the evidence of the plaintiff, whereas I.A.No.267 of 2017 was filed under Order VII Rule 14 (3) read with Section 151 CPC, requesting to receive the documents filed along with the petition. The document sought to be received is a certified copy of the letter of appointment dated 14.05.2004, appointing Fr.Mettu Arogyam as the Parish Priest of 'Our Lady of Lourdes Church, Bandlines', and asking him to take charge as the Parish Priest on or before June 02, 2004. Yet another letter of appointment dated 03.05.2016 was filed appointing one Rev. Fr.T.M.Mathew as the Parish Priest of the said Church. It is not clear whether both the letters of appointment were sought to be received. Neither the copy of the petition filed in the material papers nor the order is so specific.

The said request was resisted to by respondent No.2 in both the I.As raising objection that the document filed is a certified copy of the appointment letter, but not the original appointment letter dated 14.05.2004, which is to be in possession of Fr.Mettu Arogyam, and no explanation at all was offered for not filing the original and for filing the certified copy, which is inadmissible as per Section 63 of the Evidence Act, and no basis is made for production of secondary evidence, thereby, claimed that the said letter is a fabricated document and sought to dismiss the petition and consequently the other I.A.No.266 of 2017.

Heard learned Government Pleader for Arbitration for the State of Telangana and Ms. Manjari, learned counsel, representing Sri Sunil B.Ganu, learned counsel for respondent No.1. A memo is filed stating that respondent Nos.2 and 3 are not necessary parties.

Learned Government Pleader for Arbitration would submit that, in fact, the Court below ought not to have received a certified copy of the document filed by the petitioner-plaintiff, as the mandatory requirements under Section 63 of the Evidence Act are to be established before the document is received, which is sought to be construed as secondary evidence, and no reasons are assigned as to whether the original thereof is available or not in existence and, if so, on account of what reason, the non existence of the original if claimed.

Learned counsel for respondent No.1 herein would submit that the Court emphatically observed in the concluding portion of paragraph '9' of the order under challenge that the documents were received subject to

proof, relevancy and admissibility and, therefore, there should not have been any grievance to the petitioners herein and any objection as to the relevancy and admissibility could be agitated at the time when the document is sought to be admitted. Learned counsel also would submit that, in fact, the original document is filed and, therefore, the present petition becomes infructuous.

Learned Government Pleader per contra would submit that the present revision petitions cannot be construed as infructuous for the reason the common order passed by the Court below cannot be allowed to remain on record, though, the original document is filed, more particularly, when the consistent stand is that the document is a fabricated document. Learned Government Pleader also would submit that when a request is made way back in the year 2004 itself, a specific plea was taken as to maintainability of the suit on the said ground. He has drawn attention to the averments made in paragraph '4' of the written statement filed, which reads thus:

“The contents of the para no. 1 that the defendant does not have the knowledge of the averments made in para No.1 of the plaint, as such the same are denied for want of knowledge and the plaintiff is put to the strict proof of the same. The representative of the plaintiff has no authority to file on behalf of the plaintiff in the instant suit and in the absence of the documentary evidence to support the contention of the authority as averred in para no.1, the suit is liable to be dismissed.”

Therefore, the learned Government Pleader requests to set aside the common order under challenge.

As could be seen from the arguments advanced by both sides and the order under challenge, it appears that when the case came up for arguments, an issue settled there for was heard, then only the plaintiff has come up with I.A.Nos.266 & 267 of 2017. Irrespective of the fact of filing the original document or the certified copy, which is sought to be received along with these applications by the Court below, the question that requires adjudication is whether such a document, which is received, and the original, which is now filed, was in existence on the date when the plaint was presented in the original suit. It has also come up in the arguments from both sides that the relevant petitions have been filed for recalling P.W.1 and P.W.2 for marking the original document.

The suit relates to the year 2004 and, in fact, the entire trial appears to have been completed and later only, the plaintiff has come up with the present petitions. It is true, the Court below has observed in paragraph '9' of the order under challenge that the petition for receiving the document was allowed only for the purpose of receiving the document and the same is subject to proof, relevancy and admissibility, but nevertheless the mandatory requirements of Section 63 of the Evidence Act cannot be deviated. Already an issue is settled for trial and the same is extracted in the counter affidavit filed by respondent No.2 – defendant No.2, which is projected thus:

“Whether the two signed and verified the plaint has no authority?”

The said issue requires adjudication as to whether the person who signed and verified the plaint has no authority to file the suit. Therefore, the resistance now put forth by the revision petitioners - respondent Nos.1 and 2 in I.As, can be adjudicated at the time of hearing the suit and at the time of hearing the applications filed for recalling and receiving the original documents. However, it is observed that in case the relevant issue, as the one projected, is not properly articulated, the trial Court is directed to re-cast the issue and, if the mistake in the issue, as projected by the respondents extracted in the above, was on account of typographical error, then there is no need for the trial Court to re-cast the issue. Thus, it is left open to the trial Court to act accordingly.

Keeping in view the subsequent developments, as could be gathered from the arguments advanced by the learned counsel for respondent No.1- plaintiff, i.e., similar applications have been filed for receiving original appointment letter and recalling the witness, it is left open to the revision petitioners to challenge the same by filing counters, in case they are not allowed yet.

It has been stated that certified copy of the appointment letter, which was received by the Court below, has been marked as an exhibit. Irrespective of the fact, whether any objection is taken for its admissibility or not, it is open to the revision petitioners to agitate the defence as regards non-compliance of mandatory requirements under Section 63 of the Evidence Act during the main hearing of the suit itself. This is subject to again the orders to be passed in interlocutory

applications filed for recalling PW.1 and marking the original documents of which the certified copies are already admitted. As mentioned in the above, it is open to the revision petitioners – defendants to agitate the defence in the counters once again.

With the above observations, these civil revision petitions are disposed of.

As a sequel, miscellaneous applications, if any, pending in these revisions, stand closed.

12th September, 2017
v v/p v

A. SHANKAR NARAYANA, J

