

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No. 969 OF 2018

ORDER:

This civil revision petition, under Section 115 of the Code of Civil Procedure (for short, 'C.P.C.'), is filed questioning the order dated 12-12-2017 in E.A.No. 272 of 2017 in E.A.No. 94 of 2016 in E.P.No. 4 of 2016 in O.S.No. 2204 of 2012 on the file of the Court of VII Senior Civil Judge, City Civil Court, Hyderabad (for short, 'the Court below').

2. The petitioner filed E.A.No. 272 of 2017 under Sections 63 and 65 of the Indian Evidence Act, 1872, read with Section 151 of C.P.C. seeking leave of the Court to lead secondary evidence by producing proceedings in File No. 61/J2/SNTC/Hyd/98 dated 15-05-2000 issued by the Andhra Pradesh Wakf Board and the order of the Apex Court dated 16-02-2002 in S.L.P.Nos. 2351 and 2352 of 2002 (Photocopies) on the ground that the proceedings of the Wakf Board could not be obtained due to bifurcation of the Board and the order of the Apex Court also could not be obtained as the S.L.P. is of the year 2002 and it will take time to obtain certified copies and therefore sought permission of the Court to lead secondary evidence. By the impugned order, the Court below dismissed the petition. Aggrieved thereby, the present revision is filed.

3. At the hearing, learned counsel for the petitioner has contended that when there is no possibility of obtaining certified copies within reasonable time, the Court can permit the petitioner to lead secondary evidence and in support of his contention, he placed reliance on ***Rakesh Mohindra Vs. Anita Beri and others*¹**; ***State of U.P. and Gulrej Ahmad and another*²**; and ***Narinder Aneja***

¹ (2016) 16 SCC 483

² 2013 (3) ADJ 478

Vs. Harbans Lal and others³. On the strength of the above judgments, he requested this Court to grant permission to lead secondary evidence.

4. It is the case of the petitioner that he filed E.A.No. 94 of 2016 in E.P.No. 4 of 2016 filed by the respondent No. 1-decree holder on the basis of the decree obtained by him in O.S.No. 2204 of 2012 on the file of the Court below filed for specific performance of agreement of sale allegedly executed by the respondent No. 2-judgment debtor in his favour. Thus, the undisputed fact is that respondent No. 1 obtained decree for specific performance against respondent No. 2 and filed E.P.No. 4 of 2016 under Order XXI Rule 32 of C.P.C.

5. Learned counsel for the petitioner has contended that the petitioner is the trustee and the property belongs to Wakf Board and therefore it filed E.A.No. 94 of 2018 under Order XXI Rule 58 of C.P.C. with a specific prayer to adjudicate the matter by conducting enquiry since the suit schedule property is notified as Wakf Property belonging to it and respondent No. 1, having suppressed the material facts and basing on false and fabricated documents, got the suit decreed in collusion with respondent No. 2.

6. The main basis for seeking leave to adduce secondary evidence is that the Wakf Board is divided into two i.e. Andhra Pradesh Wakf Board and Telangana Wakf Board, thereby certified copies could not be produced, however produced photocopies of the same. Admittedly, the proceedings of the Wakf Board is a public document and certified copy of the same can easily be obtained from the Wakf Board. In case certified copy is not issued by the Wakf Board, there is a procedure under Civil Rules of Practice and it may obtain a certificate through the Court under Rule 130 of Civil Rules of Practice. On such issue of certificate by the Court, the authorities concerned are bound to issue

³ (2015) 177 PLR 268

certified copy. Even otherwise, if, for any reason, the petitioner is unable to obtain certified copy following the necessary procedure prescribed under Rule 130 of Civil Rules of Practice, still the petitioner is entitled to summon the proceedings from Wakf Board by invoking Order XVI Rule 1 of C.P.C. If summons are issued for production of any document, the authorities concerned are bound to produce such document *i.e.* public document. Instead of resorting to such procedure, the petitioner conveniently filed E.A.No. 272 of 2017 seeking permission of the Court to lead secondary evidence. Therefore, in view of the availability of other procedure, the petitioner cannot be permitted to adduce secondary evidence by producing photocopy of the proceedings of the Wakf Board.

7. The second document is judgment of the Apex Court in S.L.P.Nos. 2351 and 2352 of 2002 dated 16-02-2002. E.A.No. 94 was filed in the year 2016 and nothing prevented the petitioner from obtaining certified copy of the judgment which is the basis for its claim but suddenly, without laying any factual foundation about non-availability of those documents with him and even without disclosing where those documents are available as required under Order VII Rule 14 of C.P.C., filed E.A.No. 272 of 2017 to lead secondary evidence. It is the specific contention of the petitioner that it applied for certified copy of the judgment in S.L.P.Nos. 2351 and 2352 of 2002, however did not disclose any copy application number or date of copy application. In the absence of any details, when the document is a public document, the petitioner cannot be permitted to lead secondary evidence by producing photocopy of the judgment of the Apex Court. The Court below rightly observed that when the document, sought to be produced, is public document, the petitioner cannot be permitted to lead

secondary evidence without producing certified copy. Hence, the order of the Court below is free from any illegality.

8. Learned counsel for the petitioner has placed reliance on three judgments referred *supra*. The principle laid down in the above judgments is identical. The pre-conditions for leading secondary evidence are that such original documents could not be produced by the party relied upon such documents in spite of best efforts, unable to produce the same which is beyond their control. The party, sought to produce secondary evidence, must satisfy the Court with the reasons for the non-production of primary evidence. Unless, it is established that the original documents are lost or destroyed or are being deliberately withheld by the party in respect of that document sought to be used, secondary evidence in respect of that document cannot be accepted (*vide Rakesh Mohindra*). Even if this principle is applied to the present facts of the case, it is for the petitioner to establish the reason for non production of primary evidence or destruction or loss of documents or being deliberately withheld by the party in respect of that document sought to be used but none of these grounds are basis for filing the present application seeking leave of the Court to lead secondary evidence. In fact, it is not the case of the petitioner that the documents are destroyed or lost in the concerned office *i.e.* Wakf Board and Supreme Court and it is the specific case of the petitioner that it applied for certified copy of the judgment but no copy is received yet by the petitioner. In such case, the petitioner cannot be permitted to lead secondary evidence but certified copies of those documents can be received in evidence by the Court below.

9. Yet, another fallacy in this case is filing of petition under Order 21 Rule 58 of C.P.C. Order 21 Rule 58 of C.P.C. deals with adjudication of claims or objections to attachment of property. Here in this case, there was no attachment

and hence, question of raising objection or claim to such attachment does not arise since the decree sought to be executed is only a decree for specific performance of agreement of sale. However, I am not going to express any opinion with regard to maintainability of E.A.No. 94 of 2016 under Order 21 Rule 58 of C.P.C. and the same is left open to the Court below.

10. In view of my foregoing discussion, I find no ground to interfere with the order under challenge and the revision petition is liable to be dismissed.

11. The civil revision petition is accordingly dismissed. Pending miscellaneous petitions, if any, in this civil revision petition shall stand dismissed in consequence.

Date: 16-02-2018.
JSK

M.SATYANARAYANA MURTHY, J.

