

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.934 OF 2018

ORDER:

This civil revision petition is filed under Article 227 of Constitution of India challenging the order dated 28.11.2017 passed in I.A.No.899 of 2017 in O.S.No.715 of 2009 by the XXIV Additional Chief Judge, City Civil Courts, Hyderabad, whereby, the petition filed under Section 65 read with 66 of Indian Evidence Act (for short "the Act") and under Section 151 of Code of Civil Procedure (for short "C.P.C.") was dismissed.

The petition under Section 65 read with 66 of Indian Evidence Act and under Section 151 of C.P.C. with a request to receive the Photostat copy of Will dated 24.12.1990 executed by Smt.Adepu Manemma as secondary evidence by permitting the petitioner to mark the same alleging that the suit is filed for partition of schedule property by his sister claiming that the property is acquired by their parents and on their death, she became entitled to share therein. The petitioner set up a defence that during life time of their parents, with consent of all parties, A-schedule was given to the defendant No.1 in the suit, in view of service he rendered and also vested the same on him, subsequent to demise of his father in view of various amounts spent by him to protect the family. B-Schedule property was bequeathed to him by Will dated 24.12.1990 executed by his late mother, to the knowledge of all and accepted by all the family members, based on the said Will he invested huge amount for development of B-schedule property.

Petitioner further alleged that the original Will dated 24.12.1990 executed by his mother in his favour bequeathing B-schedule property, mentioned in his written statement, was not traced out despite several efforts and a Photostat copy of the same was filed along with the written statement.

Petitioner further alleged that a copy of the said Will which was photocopied sometime after his mother's demise was traced in the papers, the same is placed on record and in view of misplacing the Will, he requested to receive photo copy of the Will as secondary evidence.

One Rakesh Sanghi filed counter denying material allegations of the petition interalia contending that the respondent No.1/plaintiff served notice dated 01.02.2014 marked as Ex.A.5 to the respective counsels of the defendant Nos.1 and 2 in the suit under Order XI Rules 14 and 15 of C.P.C. and Section 66 of Indian Evidence Act requesting them to produce the original document, which is in their custody. Original General Power of Attorney deed dated 22.09.1989 registered as document No.767/1989 related to the land bearing Survey No.32/1 of Mir-Sagar village, Mir Alam Tank, Hyderabad, totally admeasuring Ac.4.10 Gts, executed by all the defendants and the plaintiff in favour of defendant No.1.

In the notice dated 01.02.2014, it was specifically asserted that all the documents are mentioned in the respective pleadings of all the parties and the defendant Nos.1 and 2 are dodging/avoiding to file the original documents into the Court for preventing the plaintiff from deposing regarding the said documents. In the said

statutory notice dated 01.02.2014, the defendant Nos.1 and 2 are called upon to produce and file the original documents within 10 days from the date of receipt of the statutory notice. Defendant No.2 herein did not adduce any evidence after closure of defendant No.1's evidence, but filed the present petition for seeking leave to lead secondary evidence on fictitious photocopy of the Will, thereby not entitled to any relief to adduce secondary evidence.

It is also contended in the counter by relying on "**Shalimar Chemical Works Ltd. v. Surendra Oil and Dal Mills (Refineries)**"¹ and "**H.Siddiqui v. A.Ramalingam**"² that disputed photocopy of the original document, which is never capable of being traced out or is never capable of being produced, can never be received as secondary evidence. It is also contended that the petitioner is not entitled to adduce any secondary evidence by producing photocopy of the Will in view of the law declared in "**Ravi Satish v. Edala Durga Prasad**"³ "**Voruganti Narayana Rao v. Bodla Rammurthy**"⁴ "**R.Saraswathi v. P.Rajamanikyam @ Veeran**"⁵ and prayed to dismiss the petition.

Upon hearing argument of both the counsel, the Court below dismissed the petition on the ground that the petitioner is not entitled to adduce secondary evidence.

Aggrieved by the order passed by the Court below, the present civil revision petition is filed by the petitioner/defendant No.2 mainly contending that when the petitioner explained the

¹ AIR 2010 SCW 5200

² AIR 2011 SC 1492

³ 2009 (3) ALT 236 (S.B.)

⁴ 2011 (6) ALT 299 (S.B.)

⁵ 2015 (5) ALT 527 (S.B.)

circumstances under which he could not trace the original Will is sufficient to lead secondary evidence, but the Court below did not appreciate this contention and also failed to appreciate the law declared by the Apex Court and this Court in various judgments. It is also contended that the trial Court misconstrued the provisions of Order XI Rules 14 and 15 of C.P.C. in dismissing the petition and that at any stage of the proceedings, the documents can be produced with the leave of the Court, but the Court failed to exercise its discretionary jurisdiction while passing the impugned order and committed an error.

During hearing, Sri V.Hari Haran, learned counsel for the petitioner reiterated the contentions raised in the petition by placing reliance on “**Rakesh Mohindra v. Anita Beri**”⁶ “**Aggarwal Vidya Pracharni Sabha v. Municipal Corporation Faridabad**”⁷ “**Trilokchand Jain v. Gurrapu Rajamouli**”⁸ and unreported judgment of High Court of Orissa at Cuttack rendered in “**Netrananda Dalai v. Ratnabati Nayak (dead) and another (W.P.(C).No.12357 of 2008)**” that when the original Will is misplaced and it is beyond recovery, secondary evidence is permitted to be adduced as the photocopy is taken on mechanical process showing accuracy of original and requested the Court to grant permission to lead secondary evidence.

Though notice is serviced and filed proof of service, none appeared for the respondents.

It is the case of the respondent/plaintiff that suit A and B schedule property is the property of deceased parents of plaintiff

⁶ (2016) 16 SCC 483

⁷ (2015) 177 PLR 758

⁸ 2004 (3) ALD 276

and defendants and the petitioner herein and claimed partition of schedule property as per their shares, but the defendant No.2 – petitioner herein set up a Will to claim right over the ‘B’ schedule property while contending that ‘A’ schedule property was given to him for the service he rendered.

In the written statement filed by the defendant No.2, in paragraph Nos.12 and 13, it is asserted as follows:

“12. In so far as Schedule – B property is concerned, which is the absolute property of the mother of the parties namely Smt.A.Manemma, prior to her death, she executed her last Will and Testament dated 24.12.1990, bequeathing her owned property namely the Schedule – B property in favour of this Defendant. This was known to one and all the family members have accepted the same. It is submitted that this arrangement was also as a result of will and wish of father and mother and therefore the same is binding on all the parties. This Defendant submits that Schedule-B property is owned by him, having derived the right, title, interest and possession to the same under the Last Will and Testament of his mother Smt.A.Manemma. The plaintiff much less any of the other Defendants have any right or entitlement or can claim any share on the same. As a matter of fact none of the parties ever claimed any share in the same, except for making this false suit.

13. It is further submitted that in as much as Schedule-B property has been derived on this Defendant by virtue of the last Will and Testament of Smt.A.Manemma, the suit for partition in respect of the said property is not maintainable and is liable to be rejected.”

Thus, the petitioner/defendant No.2 set up Will allegedly executed by his mother during her lifetime bequeathing ‘B’ schedule property in his favour, but he did not file original Will along with his written statement Under Order VIII Rule 1A of C.P.C. and if for any reason it was not available he would have mentioned about the loss of original Will in the written statement, but obviously for the reasons best known to him, defendant No.2 did not explain the availability of the Will bequeathing B-Schedule property with him and conveniently avoided to file the same with

the written statement as required under Order VIII Rule 1A of C.P.C. and also failed to explain in whose possession it is or about the loss of original Will.

As seen from the allegations made in the affidavit, a copy of the Will is filed along with the written statement and the original Will was photocopied after his mother's demise and it was traced in the papers. He is not certain about the loss of Will or the same is beyond recovery, but alleged that original Will appears to have been lost and not traced despite best efforts. Thus, it is clear that he is not sure of Original Will except making vague allegation that ***"it appears to have been lost."***

The petitioner/defendant No.2 filed written statement on 21.04.2010 and the written statement does not disclose about the loss of original Will by the date of filing written statement. As the petitioner did not trace the original Will allegedly he came forward with the petition under Section 65 and 66 of Evidence Act to lead secondary evidence explaining the reason.

Normally, a fact has to be proved by producing primary evidence. Primary evidence means the document itself produced for the inspection of the Court, where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it. When the petitioner claiming that 'B' schedule property bequeathed under Will dated 24.12.1990, it is for him to produce original Will as primary evidence as defined under Section 62 of the Indian Evidence Act.

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.

The present document i.e. photocopy of the Will would fall within the clause (2) of Section 63 of the Act i.e. copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies.

Here, the document produced before the Court is photocopy and whether it insures the accuracy of the original is a question to be decided during trial, but at this stage it is difficult to decide whether it is accurate copy of the original and in fact it is difficult to come to such conclusion since the original is not available. When an application is moved for permission to lead secondary evidence based on the ground of loss of document, the presence of the original must be proved from the facts pleaded and in the absence of factual foundation in the pleadings, grant of leave to secondary evidence is illegal.

Section 65 of the Act enumerated the circumstances under which the secondary evidence may be permitted, they are as follows:

“(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 original 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.”

Section 66 of the Act deals with Rules as to notice to produce documents, which are as follows:

“Secondary evidence of the contents of the documents referred to in Section 65, clause (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his attorney or pleader, such notice to produce it as is prescribed by law, and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case :

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it :-

(1) when the document to be proved is itself a notice;

(2) when, from the nature of the case, the adverse party must know that he will be required to produce it;

(3) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force;

(4) when the adverse party or his agent has the original in Court;

(5) when the adverse party or his agent has admitted the loss of the document;

(6) when the person in possession of the document is out of reach of, or not subject to, the process of the Court.”

In the present facts of the case, original Will allegedly executed by the mother of the petitioner/defendant No.2 appears to have been lost as per the allegations made in the affidavit. Thus, the petitioner is not sure about the loss of original Will even today after lapse of many years.

The respondent No.1 herein is the plaintiff in the main suit got issued a notice to the counsels of defendant Nos.1 and 2 under Order XI Rules 14 and 15 of C.P.C. to cause production of the Will, which is marked as Ex.A.5, but for the reasons best known to the petitioner, he did not produce the Original Will, at least he did not disclose whether it is available or it is lost etc. The respondent No.1/plaintiff issued notice to produce the document, which can be treated as notice under Section 66 of the Evidence Act for production of the document. Therefore, the issuance of notice by the respondent No.1/plaintiff was of no consequence. It is in such

cases, that the circumstance provided for in Clause (b) gets attracted. The person intending to adduce secondary evidence has to prove to the satisfaction of the Court, the existence, condition, or contents of the original. For this purpose mere assertion is not sufficient. Independent evidence has to be adduced to show that the document in its original form existed, as to its contents, and obviously, the availability of it with a particular individual. It is only then, that the secondary evidence of such a document can be received. Inasmuch as the first respondent did not undertake such an exercise, there did not exist valid basis for the Trial Court to receive xerox copy, as secondary evidence vide: “**J. Sathya Narayana v. J. Lakshmiddevamma**⁹”

Secondary evidence, as a general rule is admissible only in the absence of primary evidence. If the original itself is found to be inadmissible through failure of the party, who files it to prove it to be valid, the same party is not entitled to introduce secondary evidence of its contents. Essentially, secondary evidence is an evidence which may be given in the absence of that better evidence which law requires to be given first, when a proper explanation of its absence is given. The definition in Section 63 is exhaustive as the Section declares that secondary evidence "means and includes" and then follow the five kinds of secondary evidence.

The rule which is the most universal, namely that the best evidence the nature of the case will admit shall be produced, decides this objection that rule only means that, so long as the higher or superior evidence is within the possession of the

⁹ 2002 (1) An.WR 630 (A.P)

petitioner or may be reached by the petitioner, petitioner shall give no inferior proof in relation to it. Section 65 deals with the proof of the contents of the documents tendered in evidence. In order to enable a party to produce secondary evidence it is necessary for the party to prove existence and execution of the original document. Under Section 64, documents are to be provided by primary evidence. Section 65, however permits secondary evidence to be given of the existence, condition or contents of documents under the circumstances mentioned. The conditions laid down in the said Section must be fulfilled before secondary evidence can be admitted. Secondary evidence of the contents of a document cannot be admitted without non-production of the original being first accounted for in such a manner as to bring it within one or other of the cases provided for in the Section.

In "**Ashok Dulichand v. Madahavlal Dube and Anr.**"¹⁰ it was inter alia held as follows:

“After hearing the learned Counsel for the parties, we are of the opinion that the order of the High Court in this respect calls for no interference. According to clause (a) of Section 65 of Indian Evidence Act, Secondary evidence may be given of the existence, condition or contents of a document when the original is shown or appears to be in 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 of any person legally bound to produce it, and when, after the notice mentioned in Section 66 such person does not produce it. Clauses (b) to (g) of Section 65 specify some other contingencies wherein secondary evidence relating to a document may be given, but we are not concerned with those clauses as it is the common case of the parties that the present case is not covered by those clauses. In order to bring his case within the purview of clause (a) of Section 65, the appellant filed applications on July 4, 1973, before respondent No. 1 was examined as a witness, praying that the said respondent be ordered to produce the original manuscript of which,

¹⁰ [1976]1SCR246

according to the appellant, he had filed Photostat copy. Prayer was also made by the appellant that in case respondent No. 1 denied that the said manuscript had been written by him, the photostat copy might be got examined from a handwriting expert. The appellant also filed affidavit in support of his applications. It was however, nowhere stated in the affidavit that the original document of which the Photostat copy had been filed by the appellant was in the possession of Respondent No. 1. There was also no other material on the record to indicate the original document was in the possession of respondent No. 1. The appellant further failed to explain as to what were the circumstances under which the Photostat copy was prepared and who was in possession of the original document at the time its photograph was taken. Respondent No. 1 in his affidavit denied being in possession appeared to the High Court to be not above suspicion. In view of all the circumstances, the High Court to be not above suspicion. In view of all the circumstances, the High Court came to the conclusion that no foundation had been laid by the appellant for leading secondary evidence in the shape of the Photostat copy. We find no infirmity in the above order of the High Court as might justify interference by this Court.”

(Emphasis supplied)

Section 65, however permits secondary evidence to be given of the existence, condition or contents of documents under the circumstances mentioned. The conditions laid down in the said Section must be fulfilled before secondary evidence can be admitted. Secondary evidence of the contents of a document cannot be admitted without non-production of the original being first accounted for in such a manner as to bring it within one or other of the cases provided for in the Section (See: **Smt. J. Yashoda v. Smt. K. Shobha Rani**¹¹)

In “**M.Chandra v. M. Thangamuthu and Ors.**”¹², it has been held that it is true that a party who wishes to rely upon the contents of a document must adduce primary evidence of the contents, and only in the exceptional cases will secondary evidence

¹¹ AIR2007SC1721

¹² (2010) 9 SCC 712

be admissible. However, if secondary evidence is admissible, it may be adduced in any form in which it may be available, whether by production of a copy, duplicate copy of a copy, by oral evidence of the contents or in another form. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. It should be emphasised that the exceptions to the rule requiring primary evidence are designed to provide relief in a case where a party is genuinely unable to produce the original through no fault of that party.

In “***H. Siddiqui (Dead) by L.Rs. v. A. Ramalingam***” (referred above) while dealing with Section 65 of the Evidence Act, the Apex Court opined though the said provision permits the parties to adduce secondary evidence, yet such a course is subject to a large number of limitations. In a case where the original documents are 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. 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 section. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. It has been further held that mere admission of a document in evidence does not amount to its proof. Therefore, it is the obligation of the Court to decide the question of admissibility of a document in secondary evidence before making endorsement thereon.

From the law declared by the Apex Court, it is evident that the Court can receive secondary evidence of any kind defined under Section 63 of the Act subject to laying foundation in the pleadings. It is not known whether the foundation was required to be laid in the original pleadings or in the affidavit filed along with the petition seeking leave of the Court to lead secondary evidence.

Identical question came up before this Court in “**Gonepalli Rajamalliah v. Ragipalli Rajaram @ Pedda Rajaram @ Rajamreddy**¹³”, wherein it was held that no foundation is laid in the pleadings, i.e., the plaint, and that it is not even stated in the affidavit filed in lieu of the examination-in-chief that the original sale deed was lost and that for the first time, the plaintiff has stated in the affidavit filed in support of the subject petition that the original sale deed is lost and that therefore, the plaintiff cannot be permitted to lead secondary evidence, what is to be noted is that the plaintiff made a reference to the registered sale deed in the plaint and filed CC of the registered sale deed along with the plaint and also referred to the pleaded material averments in the affidavit filed in lieu of examination-in-chief though the plaintiff has not pleaded in the plaint that the original sale deed was irretrievably lost. In the affidavit filed in support of the subject petition, the foundation for adducing secondary evidence is laid. 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 and before exhibiting the document, the plaintiff

¹³ 2017 (3) ALT 245

pleaded the facts and circumstances which necessitated the adduction of secondary evidence. Hence, laying foundation in the petition is suffice to grant permission to lead secondary evidence subject to satisfaction of the Court.

The Full Bench of the Apex Court in “**State of Rajasthan v. Khemraj**¹⁴” held that if a foundation is laid to lead secondary evidence under Section 65 of the Act, the Court can permit the party to lead secondary evidence.

In unreported judgment of Punjab and Haryana High Court rendered in “**Harjinder Singh v. Ranjit Kaur (CR.No.7562 of 2011)**” after considering the judgments of Apex Court in “**Ashok Dulichand v. Madahavlal Dube and Anr**” “**Smt. J. Yashoda v. Smt. K. Shobha Rani**” (referred supra) observed that the Photostat copies of documents can be prepared by manipulation and presented as original. Therefore, it would normally be unsafe on the mere asking to allow production of Photostat copies as secondary evidence. These are admittedly not certified copies of the original and it is not clear as to whether these are copies of the original” Thus it can be held that before being admitted as secondary evidence being copies prepared by mechanical process, the authenticity of document has to be established where Photostat copy of a document is produced and there is no proof of its accuracy or of its having been compared with or its being true reproduction of the original, it cannot be considered as secondary evidence. In other words, Photostat copy of a document is not admissible as secondary evidence unless proved to be genuine or is admitted by opposite party.

¹⁴ (2000) 9 SCC 241

Clause (2) of section 63 has two requirements first - the copies should be prepared from a mechanical process and second - the process should be such which in itself ensures accuracy of copy. While every Photostat copy is prepared by mechanical process however, it may or may not be accurate, therefore its admissibility as secondary evidence in view of clause (2) of Section 63 of the Act is subject to proof of the fact that it was a correct copy of original document.

Similar observations were made by the Punjab-Haryana High Court in “Prem Lata v. Dwarka Prasad CR No.4913 decided on 23.08.2013 and Rajasthan Golden Transport Company v. LRs of Amrit Lal, 1998 (3) RCR (Civil) 95” and summed up the principles as follows:

- a) Photostat copy of a document can be allowed to be produced only in absence of original document.
- b) When a party seeks to produce Photostat copy it has to lay the foundational facts by proving that original document existed and is lost or is in possession of opposite party who failed to produce it. Mere assertion of the party is not sufficient to prove these foundational facts.
- c) The objections as to non existence of such circumstances or non existence of foundational facts must be taken at earliest by the opposite party after the photostat copy is tendered in evidence.
- d) When the opposite party raises objection as to authenticity of the Photostat copy its authenticity has to be determined as every copy made from a mechanical process may not be accurate. Both the requirements of clause (2) of section 63 are to be satisfied.
- e) Allowing production of Photostat copy in evidence does not amount to its proof. Its probative value has to be proved and assessed independently. It has to be shown that it was made from original at particular place and time.
- f) In cases where the Photostat copy is itself suspicious it should not be relied upon. Unless the court is satisfied that the Photostat copy is genuine and accurate it should not be read in evidence.

g) The accuracy of photostat copy shall be established on oath to the satisfaction of court by the person who prepared such copy or who can speak of its accuracy. The abovesaid principles must be followed by the courts while admitting a photostat copy as secondary evidence and assessing its probative value.

In the present facts of the case, the petitioner through set up the defense of execution of Will bequeathing B-schedule property in favour of the petitioner by his mother during her lifetime, no explanation was given as to whether the original Will is preserved or whether it was lost or beyond recovery, but filed Photostat copy of the Will. If a Photostat copy is filed, the petition must disclose that the Photostat copy is accurate copy of the original, which is lost or beyond recovery or in possession of adversary.

But a vague allegation is made in the present petition that the original appears to have been lost, but that itself is not sufficient as the petitioner is not certain about loss of document.

Learned counsel for the petitioner while contending that permission can be granted to lead secondary evidence laying foundation in the petition is suffice and placed reliance on “**Rakesh Mohindra v. Anita Beri**” (referred supra). In the facts of the above judgment, a suit for specific performance of agreement was filed and the agreement was not placed on record, but sought for permission to lead secondary evidence. The Apex Court while referring to “**Rai Baijnath (dead) by Kedarnath Goenka v. Maharaja Sir Pavaneshwar Prasad Singh**¹⁵” held that it is well settled that if a party wishes to lead secondary evidence, the Court is obliged to examine the probative value of the document produced in the Court or their contents and decide the question of

¹⁵ AIR 1922 Privy Council 54

admissibility of a document in secondary evidence. At the same time, the party has to lay down the factual foundation to establish the right to give secondary evidence where the original document cannot be produced. It is equally well settled that neither mere admission of a document in evidence amounts to its proof nor mere marking of an exhibit of a document dispense with its proof, which is otherwise required to be done in accordance with law.

But this judgment is of no avail to the petitioner and moreover, it is clear that unless there is a foundation in the petition that the document is beyond recovery, it is difficult to accept such contention to grant permission to lead secondary evidence.

In any view of the matter, the petitioner did not state anything as to what had happened to the original in the written statement and original was not filed in compliance of Order VIII Rule 1A of C.P.C, but conveniently filed a Photostat copy without giving any explanation as to non filing of original. Taking advantage of his own fault, the petitioner now sought for permission to lead secondary evidence expressing doubt about the loss of original Will and without satisfying the Court regarding authenticity of the document proposed to be marked by secondary evidence and its accuracy.

One of the contentions raised by the respondents before the Court below is that after the death of their mother part of the property was sold by all the legal heirs of the deceased by executing a registered document on 22.09.1989 vide document No.767/1989, but that is not sufficient to conclude that there was no Will since it was allegedly executed on 24.12.1990. On that

ground the authenticity and genuineness, the Will cannot be doubted.

Therefore, the law is clear that there must be foundation to seek leave of the Court to lead secondary evidence and also prove that the original was available by the date, the Photostat copy was taken and when it was taken etc.

The present petition is totally silent as to the requirement regarding authenticity and who has taken copies except making allegation that it was traced in the papers; if such contention is accepted the Court is bound to accept whatever document the petitioner produced. Without satisfying authenticity of the document and explanation as to the loss of original and it is beyond recovery, when the original was lost, the petitioner cannot be permitted to lead secondary evidence on the bare allegation that original appears to have been lost.

Hence, I find that the petitioner failed to satisfying the Court as to the requirement to grant leave to lead secondary evidence in view of long line of perspective pronouncements referred supra. Therefore, I find no ground to grant leave to lead secondary evidence in view of the peculiar circumstances of the present case. Consequently, the revision petition is liable to be dismissed.

In the result, the civil revision petition is dismissed. No costs.

Consequently, miscellaneous applications pending if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

16.03.2018
Ksp