

THE HON'BLE SRI JUSTICE S.V.BHATT

C.R.P.Nos.300 & 2045 of 2018

COMMON ORDER:

Heard Mr.M.Rajamalla Reddy for revision petitioner and Sri V.V.Ramana Rao for 1st respondent.

The defendant in O.S.No.5 of 2010 in the Court of Junior Civil judge, Vemulawada is the revision petitioner. The revision petitioner filed I.A.Nos.512 and 513 of 2017 for granting leave under Order 8 Rule 1-A(3) of Civil Procedure Code (CPC) and under Section 65 of the Indian Evidence Act, 1872 (for short 'the Act') to permit the revision petitioner to lead secondary evidence. These two applications are rejected by the trial Court vide order dated 05.01.2018. Hence, the Civil Revision Petitions.

The petitioner through these applications intends to place on record the alleged proceedings initiated by the Land Acquisition Officer in File No.1953/07, B/2371/07 etc. The revision petitioner at the first instance filed I.A.No.485 of 2016 for reopening the evidence to enable the revision petitioner to lead further evidence. The said application was dismissed, the revision petitioner filed CRP.No.733 of 2017.

On 04.12.2017, the CRP was ordered and the operative portion reads thus:

"Having regard to the above, the revision is allowed in part by setting aside the impugned dismissal order by permitting the defendant's evidence to complete within one month from the date of receipt of this order, which is subject to costs of Rs.3,000/- payable by the defendant to the plaintiff before the trial Court. The defendants are at liberty by virtue of this order to take back the documents filed earlier by them since the document petition was dismissed as document is not in compliance with the

requirement of Section 76, as public document under Section 74 of the Act and resubmit after the certification contemplated with fresh petition to receive and this will not give life to the litigation much less extend the period, but for it all choose to comply eagerly”.

The revision petitioner thereafter states that he has taken back the documents which were permitted by this Court to be taken back and presented these documents before the authority/Officer from whose office it was originated. The Officer/Authority attested the copies produced before him and now the revision petitioner has filed these two applications. One under Order 8 Rule 1-A (3) of CPC and another under Section 65 of the Act. The respondent opposed both the applications and one of the objections is that the documents now produced in evidence cannot and could not be treated as public documents inasmuch as these documents are not issued as certified copies of original of record maintained by Officer, who has issued these documents. It is further contended that the documents now proposed to be introduced are not genuine in other words they are fabricated. The conclusion recorded in I.A.No.513 of 2017 reads thus:

“The petitioner has mentioned that in the revision petition no.733/2017, the Hon’ble High Court has permitted him to lead the evidence and resubmit the documents after due certification. As this case was coming for arguments but due to the orders of the Hon’ble High Court this case is re-opened for the defendant’s evidence. Defendant is permitted to adduce the evidence on this behalf. The Hon’ble Court has directed the petitioner to resubmit the documents but the Hon’ble Court itself has clarified that the documents should be duly certified. As per section 76 of Indian Evidence Act the officer who is issued the certified copies of a public document should have custody of those public documents and should issue the same on demand of a copy on payment of

legal fees together with the certified written at the foot of the said copy that it is the true copy of the said document. But here there is no availability of original documents. Therefore how would issuing officer can certify those documents as true copy of the original. Therefore, there are no merits in the case of the petitioner to allow the petition.”

Hence, the Civil Revision Petitions.

Mr.Rajamalla Reddy contends that the trial Court erred in law by not appreciating the scope of applications filed by the revision petitioner. According to him, the revision petitioner since has not filed the documents along with the written statement, seeks the leave of the Court under Order 8 Rule 1-A (3) of CPC. The revision petitioner, since is also aware of the endorsement given by the Officer, submits that it is because of this reason, the revision petitioner is seeking leave of the Court to adduce secondary evidence. The reasoning given by the Court for refusing both the prayers is far away from the power vested in the Court in considering and disposing of the application of this nature. He further contends that there is so much difference between the record not available and that the record is not there. Either way at this stage, the proof or relevancy of these documents ought not to have been considered by the trial Court. He relies on the meaning assigned to the words ‘attested copy’ and ‘certified copy’ in Ramanatha Aiyar’s Advanced Law Lexicon-5th Edition. He finally contends that the applications are dismissed for statistical purposes to expedite the hearing of O.S.No.5 of 2010.

Mr.P.V.Ramana Rao contends that the order of this Court is very clear and the order permitted to take back the copies is to resubmit only certified copies. As the document admittedly is not certified copy, the question of receiving the document granting leave etc., does not arise. He further contends that a bare look at various details in the document clearly go to show that the Officer, who is empowered to issue these documents since was not satisfied with the contents, has attested the document instead of certifying. The revision petitioner has not laid proper foundation for accepting the request for leading the secondary evidence. According to him, even if the documents are allowed to be received under Order 8 Rule 1-A (3) of CPC or leave to adduce secondary evidence is granted, still the revision petitioner has to satisfy the requirements of proof, relevancy, authenticity etc.

I have perused the record and noted the submissions of learned counsel appearing for the parties.

The trial Court, as already noted, refused to receive the documents on the ground that it is attested, but not a certified copy issued to revision petitioner, after receiving the fee payable in this behalf. At this stage, this Court prefers to excerpt the meaning for the words 'attested', 'attested copy', 'certified' and 'certified copy'.

Certify: To give certain knowledge or information of; make evident; vouch for the truth of; attest; to make statement as to matter of fact; to testify in writing; give a certificate of seal; to

make attestation either in writing or orally as to the truth or excellence of something.”

Certified Copy: A copy of a document signed and certified as a true copy by the officer to whose custody the original is entrusted. A certified copy of a deed imports that it is an office copy taken from the record of deeds and certified by the proper officer.

Attest: To bear witness to; to certify; to affirm to be true or genuine; to make a solemn declaration in words or writing to support a fact; to certify to the verity of a copy of a public document.

Attested: The word ‘attested’ when used with reference to judicial writings, or copies thereof, as copies of records or judicial process, means an authentication by the clerk of the court so as to make them receivable in evidence.

Section 65 (c) of Act reads as follows:

“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.”

In such cases, the party is allowed to lead secondary evidence of the existence, condition or contents of such document. It is well settled proposition of law either the grant of leave under Order 8 Rule 1-A(3) of CPC or granting leave under Section 65 of the Act, the party is not relieved from proving the documents, its relevancy, etc. The consideration by the trial Court on merits at this stage and refusing to either grant leave or permit the revision petitioner to adduce secondary evidence is

illegal and for the reasons stated supra, the orders under revision are untenable. Hence, the impugned orders are set aside.

It is made clear that this Court has considered the request of revision petitioner under Order 8 Rule 1-A(3) of CPC and under Section 65 of the Act. The objections available in law to contesting respondent are left open.

The Civil Revision Petitions are ordered as indicated above.
No order as to costs.

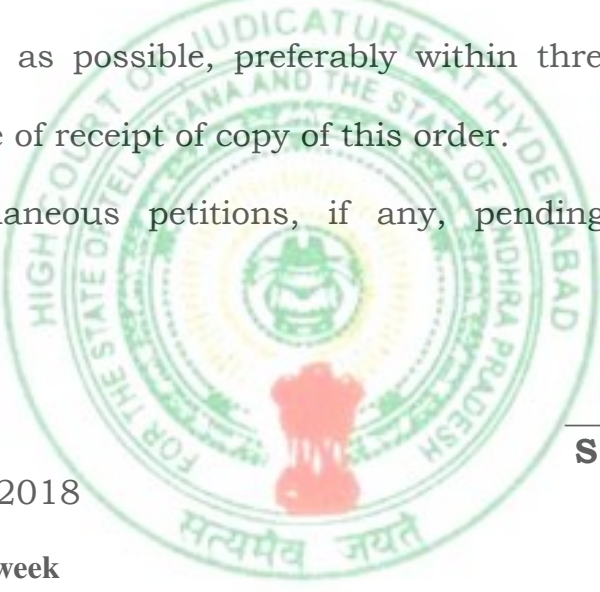
The trial Court is directed to dispose of the suit as expeditiously as possible, preferably within three (03) months from the date of receipt of copy of this order.

Miscellaneous petitions, if any, pending, shall stand closed.

Date: 03.10.2018

Note:

**CC within one week
(B/o) dv**



S. V. BHATT, J