

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.3404 OF 2012

ORDER:

The sole plaintiff is the revision petitioner. Questioning the finding and observation recorded or made, as the case may be, by the learned II Additional Senior Civil Judge, Kakinada, on 18.04.2012 in the deposition of witness No.1 for defendants i.e., DW.1 in his chief-examination filed in O.S. No.454 of 2009, the present Civil Revision Petition is preferred.

2. Heard Sri A.S.C. Bose, learned counsel for the revision petitioner - plaintiff, and Sri K. Sangan Naidu, learned counsel for the respondents - defendants.

3. When DW.1 having filed his affidavit in chief examination, at the stage when he intended to mark Exs.B-1 to B-9, while deciding the objection raised by the learned counsel for the plaintiff before the trial Court, the trial Court recorded thus:

“The witness intends to mark some photostat copies of documents relating to Bank transactions and the learned counsel for the plaintiff objected for their marking. However, the learned counsel for the defendant submits that after filing of the said Xerox copies they summoned the Bank Authorities for production of their originals and however they gave a reply stating that the originals are already destroyed and therefore the Xerox copies are admissible as secondary evidence. In

support of his contention the counsel for defendant relied upon a decision 2009 (3) ALD 553 held in the case of M. ARUNA Vs. TRILOK KUMAR SANGHI and the learned counsel for the plaintiff relied upon a decision reported in DLR 2008 A.P., 873 held in the case of MANDA LAKSHMIRAJAM Vs. KANAPARTHI LAKSHMIBAI @ LAKSHMI. Therefore the witness D.W.1 is asked when he obtained the said Xerox copies and he answers that they were given by the plaintiff himself.”

In fact, there is no definite finding recorded either overruling the objection of the learned counsel for the plaintiff or any other incidental objection being made. The learned trial Court has tendered finding, perhaps, after marking them as regards objection raised in regard to marking of Exs.B-1 to B-3 thus:

“At this stage the learned counsel for the plaintiff objected for marking of the said documents as it belongs to a 3rd party. But this suit is filed for partition of the joint family property and as it is the contention of the defendant that the said F.D.Rs., were obtained with joint family income, the said document appears relevant and since a person in custody can file documents, the said objection is overruled.”

Thus, overruled the objection raised by the learned counsel for the plaintiff.

4. Whereas, the learned counsel for the respondents would submit that since originals were not available as per the observation

made by the trial Court as they were destroyed according to the Bank authorities when they were summoned and photostat copies were submitted and they were marked and can be treated as secondary evidence.

5. The learned counsel for the revision petitioner would submit that inadmissible documents have been admitted as the documents Exs.B-1 to B-9 are photostat copies. It is no doubt true, the learned counsel for the revision petitioner would, thus, contend that the procedure to admit secondary evidence is not resorted to and, therefore, to exclude Exs.B-1 to B-3 and B-4 to B-9, which are all copies of documents. But, without making any observation, since the suit is pending, the issue is left open to the revision petitioner - plaintiff to agitate the admissibility of these documents as secondary evidence and also the proof and relevancy when tendering the arguments in the main suit itself. The learned II Additional Senior Civil Judge, Kakinada, is directed to afford an opportunity to the plaintiff and also the defendants to tender arguments on the objection now raised by the plaintiff and decide the objection while rendering the judgment in the suit. Consequently, the finding recorded by the learned trial Court overruling the objection raised, extracted hereinbefore is set aside.

Accordingly, the present Civil Revision Petition is allowed.

No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the present revision, stand closed.

A. SHANKAR NARAYANA, J

March 21, 2018.

Mgr

