

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P. No.463 of 2019

O R D E R:

This Revision is filed challenging the order dt.04.12.2018 in I.A.No.1985 of 2018 in O.S.No.104 of 2013 of the Senior Civil Judge, Sanga Reddy.

2. Petitioners are the plaintiffs in the suit.

3. They filed the said suit for declaration of title of two plots of land and for a perpetual injunction restraining the respondents from interfering with their possession and enjoyment there of, alleging that there is a layout in which the said plots are located, that the original of the said layout is with the 1st respondent and he has not produced it inspite of service of notice on him under Section 66 of Indian Evidence Act, and therefore, he may permitted to produce photo copy of the said layout as secondary evidence.

4. The 1st respondent filed counter affidavit opposing the said application stating that he did not obtain any layout plan nor he is in possession of the said layout plan. He contended that the petitioner fabricated the photo copy of the alleged layout plan and filed it and the same is inadmissible in evidence.

5. Similar plea is taken by the 2nd respondent.

6. By order dt.04.12.2018, the Court below dismissed the said application.

7. It held that for getting document marked as a secondary evidence, the conditions stipulated under Section 65 of the Indian Evidence Act, 1872 has to be satisfied in which the primary condition that has to be satisfied is that the original has to be shown or appears to be in possession of power of the 1st respondent who has an obligation to produce it and did not produce it, even inspite of notice; and since the 1st respondent had denied the very existence of the document, no case for adducing the secondary evidence is made out.

8. It also observed that when the existence of the original document is disputed and its existence is not established by the petitioner, the xerox copy of the layout sought to be filed by the petitioner cannot be received as secondary evidence.

9. Assailing the same, this Revision is filed.

10. Counsel for the petitioner contends that the 1st respondent has sold several plots to several persons on the basis of layout prepared by him and its copy was also given to the petitioner and now he is falsely denying the same. He contended that without such a layout being there, separate plots could not have been sold by the 1st respondent.

11. Counsel for the respondents refuted the said contentions and supported the order passed by the Court below.

12. In **J.Yashoda versus K.Shobha Rani**¹, the Supreme Court held that 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. Therefore, it is necessary that there should be a foundation laid for leading secondary evidence. Petitioner must first establish the existence and execution of the original layout as well as its custody with the 1st respondent before he can request the Court below to mark the photo copy of the layout as a secondary evidence.

13. Similar view has been taken in **U.Sree versus U.Srinivas**².

14. In view of the settled legal position, I do not find any error of jurisdiction in the order passed by the Court below, warranting interference of this Court in exercise of its jurisdiction, under Article 227 of Constitution of India.

15. The Civil Revision Petition fails and is accordingly dismissed. No order as to costs.

¹ (2007) 5 SCC 730

² (2013) 2 SCC 114

16. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

26.04.2019

dv

