

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.1953 OF 2019

ORDER:

This revision, under Article 227 of the Constitution of India, is filed by the petitioner/defendant aggrieved by the order dated 03.06.2019 passed in I.A.No.192 of 2018 in O.S.No.505 of 2007 by the Senior Civil Judge at Ibrahimpatnam, Ranga Reddy District, wherein the impugned application filed by the petitioner to receive and admit xerox copy of sale deed dated 08.08.1973 as secondary evidence, was dismissed.

2. Heard the learned counsel for the revision petitioner and perused the record.

3. Learned counsel for the revision petitioner would contend that the original sale deed dated 08.08.1973 was filed in O.S.No.35 of 1988 before the District Munsif at Ibrahimpatnam. The said document was impounded and admitted in evidence in the said suit. After completion of proceedings, the said document was not returned. As per Section 65 of the Indian Evidence Act, since the original is lost, the petitioner is entitled to mark the xerox copy of the said document. The Court below, without there being any justification, erroneously dismissed the impugned application. Learned counsel relied upon the decisions of Hon'ble Apex Court reported in *Bibi Aisha and others vs. Bihar Subai Sunni Majlis Avaqaf*¹ and *Rasiklal Manikchand*

¹ 1969 AIR 253

*Dhariwal and another vs. M.S.S. Food Products*², and ultimately prayed to set aside the impugned order and to allow the revision petition as prayed for.

4. The original suit pending before the Court below was filed for perpetual injunction in respect of the suit schedule property. The revision petitioner intended to mark a xerox copy of the sale deed dated 08.08.1973. The revision petitioner contends that the original sale deed dated 08.08.1973 was filed in O.S.No.35 of 1988 on the file of the District Munsif at Ibrahimpatnam, which was impounded. After termination of the proceedings in O.S.No.35 of 1988, the said document was not returned to him. There is no material placed on record to show that the proposed document was filed in O.S.No.35 of 1988. Further, there is no material to substantiate that the said document was impounded and admitted in evidence. Only on proof of loss of original or the document being out of reach and under certain other circumstances, secondary evidence is permissible. A Simple statement that the original of proposed document was filed in O.S.No.35 of 1988, which was impounded and not returned, cannot be taken as proof. As no material is filed to substantiate the same, secondary evidence is not permissible. The decisions relied upon by the learned counsel for the revision petitioner, are not applicable to the facts of the present case. The Court below had elaborately dealt with the proposed marking of xerox copy of the sale deed dated 08.08.1973 and rightly dismissed the impugned application by assigning valid reasons. There is no

² (2012) 2 SCC 196

illegality or infirmity in the order under challenge. The Court below rightly exercised the jurisdiction vested therein. The Civil Revision Petition is devoid of merits and is liable to be dismissed.

5. In the result, the Civil Revision Petition is dismissed at the admission stage. No order as to costs.

The Miscellaneous Petitions, if any, pending shall stand closed.

Date: 16.09.2019
ssp

Dr. SHAMEEM AKTHER, J

