

*** HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY**

+ CIVIL REVISION PETITION No.1021 OF 2015

% 14-02-2019

Smt.Kodali Jhansi Rani W/o.K.Subrahmanyam, age.55 years,
occ: House wife R/o.H.No.7-1-368/1/A, Balkampeta,
Sanjeevareddynagar, Hyderabad.

..PETITIONER

VS.

\$ Valasala Venkata Ramana @ Ramana (died) and others

..RESPONDENTS.

! Counsel For The Petitioner: Sri Kowturu Vinaya Kumar

^ Counsel For Respondents: Sri M.Rajamalla Reddy

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> Head Note :

? CITATIONS :

1. (2013) 2 Supreme Court Cases 114
2. (2013) 10 Supreme Court Cases 758
3. 2016(1) ALD 19 (SC)
4. 2015(1) ALD 427
5. 2010 (5) ALD 775
6. AIR 2010 Andhra Pradesh 166

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY
CIVIL REVISION PETITION No.1021 of 2015

ORDER:

This CRP is filed against the order dated 04-02-2015 in I.A.No.13 of 2015 in O.S.No.26 of 2009, wherein and whereby the application filed by the respondent/plaintiff under Section 65 (c) of Indian Evidence Act (for short "the Act") seeking permission for leading secondary evidence in respect of possessory agreement of sale dated 23-05-2005 is allowed.

Sri Kowturu Pavan Kumar, learned counsel representing Sri Kowturu Vinaya Kumar, learned counsel for the petitioner submits that the trial Court came to erroneous conclusion that the respondents/plaintiffs satisfied the conditions laid down in Section 65 (c) of the Act and allowed the application for leading the secondary evidence in respect of possessory agreement of sale dated 23-05-2005. He also submits that the petitioner herein filed O.S.No.11 of 2017 for grant of injunction and the 1st plaintiff in the present suit filed counter and there also original of document in question is not filed and said possessory agreement of sale has never seen the light of the day and it has not been produced before any authority and the respondents/plaintiffs have not laid any actual foundation that said document is lost and they have also not proved that the same is executed by the petitioner and the petitioner has denied the execution of the said document in the written statement. As such, the trial Court erroneously allowed

the application. In support of his contentions, learned counsel relied on the judgment of Supreme Court in **U.Sree v. U.Srinivas**¹.

On the other hand, Sri M.Raja Malla Reddy, learned counsel for the respondents/plaintiffs submits that the PW.3 is the scribe of the possessory agreement dated 23-05-2005 and PW.2 is the attester of the document, who categorically stated that the document was scribed and executed in their presence and PW.6 is the person, who has attested the Xerox copy of the agreement after seeing the original, as such, the execution of the document is proved. Coupled with that a complaint was made to the police and certificate was obtained that it is not traceable, which goes to show that the conditions laid down under Section 65 (c) of the Act are complied and the trial Court has rightly allowed the application. He also submits that after the application is allowed, documents received and even prior to that document is marked. As such, no interference is called for. He relied on the judgments of **Kaliya v. State of Madhya Pradesh**², **Rakesh Mohindra v. Anita Beri**³, **Ramakrishna Constructions, Karimnagar District v. Singareni Collieries Co., Ltd, Warangal**⁴, **E.Satyanarayana Reddy v. Ch.Muralidhar Reddy**⁵ and the judgment of **Smt.Sattamma v. Ch.Bhikshapati Goud alias Ch.Bhupal Goud**⁶.

It is relevant to extract Section 65 of the Act for better appreciation, which reads as under:

Cases in which secondary evidence relating to documents may be given.—Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:—

¹ (2013) 2 Supreme Court Cases 114

² (2013) 10 Supreme Court Cases 758

³ 2016 (1) ALD 19 (SC)

⁴ 2015(1) ALD 427

⁵ 2010 (5) ALD 775

⁶ AIR 2010 Andhra Pradesh 166

(a)

(b)

(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;

In the present case, I.A.No.13 of 2015 is filed contending that the first plaintiff is the absolute owner of land admeasuring Ac.7-15 guntas covered by Sy.No.51/A of Lokavaram Village, which is the plaint schedule property. The first defendant announced that she would sell the plaint schedule property on 19-01-2005, deceased first plaintiff approached the first defendant, agreed to purchase the schedule property and price was fixed at Rs.1,30,000/-. The first defendant received an amount of Rs.25,000/- from deceased first plaintiff and executed a non-possessory agreement of sale on the same day i.e. 19-01-2005 in favour of deceased first plaintiff. The said agreement of sale was scribed by Mikkilineni Tulasi Naga Siromani. According to the terms of the agreement of sale deceased plaintiff should pay the balance sale consideration of Rs.1,05,000/- on or before the end of May, 2005 and get the sale deed executed by the first defendant in favour of deceased first plaintiff at his cost. As per the terms of above said agreement of sale, deceased first plaintiff paid Rs.1,05,000/- to the first defendant and obtained a possessory agreement of sale on 23-05-2005 from her. This possessory agreement of sale dated 23-05-2005 was scribed by one Banka Prabhakar Rao in the presence of Nanenkala Venkateswara Rao and Illuri Venkateswara Rao and the first defendant signed on the agreement of sale in their presence. The scribe and witnesses also signed on the agreement. That deceased first plaintiff made an application 18-10-2008 to R.D.O. Khammam to get the possessory

agreement of sale dated 23-05-2005 impounded and penalized to make it for validating. On 03-02-2009 deceased first plaintiff started from his Village Kalluru along with a cover containing documents, including original possessory agreement of sale dated 23-05-2005 to go to R.D.O. office, Khammam to pursue said application. While deceased first plaintiff was waiting for the bus to go to Khammam, he lost the said cover. Then, he lodged a complaint before the Station House Officer (SHO), Kalluru intimating about loss of above said cover. Thereafter, the SHO gave a certificate that the above said cover containing the documents including possessory agreement of sale dated 23-05-2005 was not traced. The certificate issued by SHO Kalluru dated 05-02-2009 and attested copy of possessory agreement of sale dated 23-05-2005 filed along with the suit.

Counter affidavit is filed by the petitioner herein in the said I.A. disputing the execution of the sale deed.

The respondents/plaintiffs in order to lay factual foundation regarding the execution of the said document and also to show that the same is lost, examined PW.1 who is plaintiff No.4, who stated about execution of said document and how it was lost and giving of police complaint etc., PW.2, who is the attester of possessory agreement of sale, dated 23-05-2005, who categorically deposed that Ex.A.7 possessory agreement of sale dated 23-05-2005 is executed in his presence and PW.3, who is the document writer deposed that Ex.A.7 was executed in his presence and witnesses signed. PW.6 who is said to have attested the Xerox copy of the original possessory agreement of sale also deposed that he attested the same after seeing the original, which goes to show

that the respondents/plaintiffs laid the foundation to show that the document was executed. In view of pleadings and evidence led, this Court is of the opinion that the respondents/plaintiffs have fulfilled the conditions laid down under Section 65 (c) of the Act for leading secondary evidence.

[Section 65\(c\)](#) of the Act 1872 provides that secondary evidence can be adduced relating to a document 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. The court is obliged to examine the probative value of documents produced in court or their contents and decide the question of admissibility of a document in secondary evidence. However, the secondary evidence of an ordinary document is admissible only and only when the party desirous of admitting it has proved before the court that it was not in his possession or control of it and further, that he has done what could be done to procure the production of it. Thus, the party has to account for the non-production in one of the ways indicated in the section. The party further has to lay down the factual foundation to establish the right to give secondary evidence where the original document cannot be produced. When the party gives in evidence a certified copy/secondary evidence without proving the circumstances entitling him to give secondary evidence, the opposite party must raise an objection at the time of admission. In case, an objection is not raised at that point of time, it is precluded from being raised at a belated stage. Further, mere admission of a document in evidence does not amount to its proof. Nor, mere marking of exhibit on a document does not dispense

with its proof, which is otherwise required to be done in accordance with law vide **Kaliya v. State of Madhya Pradesh**. ((Vide: H. Siddiqui (dead) by Lrs. v. A. Ramalingam, AIR 2011 SC 1492; and [Rasiklal Manikchand Dhariwal & Anr. v. M.S.S. Food Products](#), (2012) 2 SCC 196), [The Roman Catholic Mission v. The State of Madras](#), AIR 1966 SC 1457; [Marwari Khumhar & Ors. v. Bhagwanpuri Guru Ganeshpuri & Anr.](#), AIR 2000 SC 2629; [R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami](#) and V.P. Temple & Anr., AIR 2003 SC 4548; [Smt. Dayamathi Bai v. K.M. Shaffi](#), AIR 2004 SC 4082; and [Life Insurance Corporation of India & Anr. v. Rampal Singh Bisen](#), (2010) 4 SCC 491).

In the normal course, unless some motive is suggested to the party proposing to adduce secondary evidence to the effect that he made an application to adduce secondary evidence on false grounds, normally he can be permitted to lead secondary evidence. A bare statement made on affidavit by a party would be sufficient proof of fact that the document has been lost or not traced out. There can never be an absolute proof of fact that the document had in fact been lost. A statement of the person that the document was lost and in spite of his best efforts he could not trace out the document would be sufficient evidence of the fact that the document had been lost. (**Ramakrishna Constructions, Karimnagar v. Singareni Collieries Co. Ltd., Warangal**)

In the judgment of **Smt.Sattamma v. Ch.Bhikshapati Goud alias Ch.Bhupal Goud** (6 supra), this Court held in Para No. 23 as under:

“In the case on hand, copy of the agreement of sale dated 05.02.1986 is attested by a Notary as Photostat copy

of the original. Photostat copy of a document is admissible in evidence, provided it is certified as a true copy. [Section 63\(3\)](#) of the Act, 1872, prescribes two alternatives viz. first that it may be a copy made from the original, and or second that it must be a copy compared with the original. The emphasis in [Section 63](#) illustration(c) is that the copy produced should be one which is compared with the original, and there is proof thereof that it contains that which the original contains. Whether xerox attested copy of a document comes within the meaning of [Section 63\(3\)](#) of the Act, 1872, is a matter required to be decided and resolved after adducing evidence, but not at the stage of threshold. Prima facie, at this stage, the first respondent/plaintiff had taken a specific plea that the original has been lost and xerox copy of the agreement is attested copy of the original, and therefore he is seeking to receive the document as secondary evidence and permit him to prove the document as secondary evidence. The trial Court rightly observed that the Court is entitled to reject any document which is irrelevant and inadmissible, at any stage of the case. Since the document sought to be received as secondary evidence is the suit document, necessary requirements that are to be followed under law, are required to be proved beyond preponderance of probability. It can be done ordinarily after adducing evidence. The trial Court, after consideration of the entire material on record, rightly allowed the petition, and it has not committed any mistake or error of law in allowing the petition.”

The law laid down in the above judgments relied on by counsel for the respondents/plaintiffs go to show that if conditions envisaged under Section 65 (c) of the Act are complied, secondary evidence can be permitted to be led in. The trial Court also relied on several judgments and came to the conclusion that conditions laid down in Section 65 (c) of the Act are satisfied and allowed the application to receive the document as secondary evidence and as held in the judgments cited supra, merits and demerits, truth or otherwise and validity of the said document can be gone

at appropriate stage. The judgment cited by learned counsel for the petitioner in **U.Sree v. U.Srinivas** (1 supra) is also to the effect that secondary evidence can be admitted subject to fulfillment of conditions under Section 65 of the Evidence Act and the trial Court found that said conditions are fulfilled and this Court also does not see any reason to interfere with the said finding.

Therefore, I see no reason to interfere with the impugned order passed by the trial Court by exercising power under Article 227 of Constitution. However, it goes without saying that mere admitting the secondary evidence cannot relieve the petitioner from proving the contents of documents.

Accordingly, the revision is dismissed. The trial Court shall decide the suit uninfluenced by the observations made herein, which are only made for the purpose of this revision.

As a sequel to the disposal of this revision, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY,J

14-02-2019

Note:
LR copy is marked.
B/o.
Nvl



