

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.5426 2018

ORDER:

This Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.11.07.2018 passed in I.A. No.1988 of 2017 in O.S. No.515 of 2013 by the III Additional Chief Judge, City Civil Court at Hyderabad dismissing the said application filed by the petitioner to direct the respondents 1 and 2 to produce the original of agreement of sale dt.12.12.2011 and extension to time agreement dt.12.05.2012.

2. It is the contention of the petitioner that these two documents were executed between the petitioner and the defendants 5 to 11, but these documents were left in the custody of the 1st defendant and when the petitioner issued notice to the 1st defendant to produce it, the 1st defendant has denied having custody of the documents in the written statement filed by the 1st defendant. It is also alleged that petitioner had issued notice dt.25.10.2017 to the respondents to produce the said documents and the respondents replied denying the very existence of the agreement of sale dt.12.12.2011 and agreement of extension of time dt.12.05.2012.

3. The Court below held that the very existence of those documents is in doubt because even petitioner had filed application with the copies of the documents without containing signatures of the parties and that according to the respondents there was no payment was made by the petitioner and those documents were not executed at all. It therefore held that the petitioner should comply with the requirements of Order XII Rule 8 and issue notice in Form No.12 in appendix (C).

3. Assailing the same, the present Revision Petition is filed.

4. Counsel for the petitioner contended that the Court below could not have dismissed the application filed by the petitioner merely on the ground that the notice issued by the petitioner did not comply with the requirements under Order XII Rule 8 CPC and petitioner cannot be denied an opportunity to lead evidence to show the existence and execution of those two documents and once he establishes the same he would be at liberty to lead secondary evidence.

5. Though the counsel for the respondents vehemently opposed his contention stating that no such agreements were executed between the parties, it is settled law that when existence of original is denied by the person who is alleged to have custody of it, it is open to the party intending to lead secondary evidence, to prove the existence and execution of the original (see **Smt. J.Yashoda Vs. Smt. K.Shobha Rani**¹ and **U.Sree Vs. U.Srinivas**²). This legal position is not disputed by the counsel for the respondents.

6. Therefore, the petitioner shall be given an opportunity by the Court below to prove the existence and execution of those two documents to the satisfaction of the Court below; and if he is able to establish the same, the petitioner shall be entitled to lead secondary evidence, in the event the 1st respondent continues to deny the existence of the said documents and their custody.

7. With the above, this Revision Petition is disposed of accordingly. There shall be no order as to costs.

8. As a sequel, miscellaneous applications, if any, pending shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 01.05.2019
LSK

¹ (2007) 5 SCC 730

² (2013) 2 SCC 114

