

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition Nos.7010 and 1423 of 2018

COMMON ORDER :

In both these Revisions same point arises for consideration, therefore, they are being disposed of by this Common Order.

2. The petitioner in Civil Revision Petition No.1423 of 2018 is 3rd defendant in Original Suit No.251 of 2006.

3. The said suit was filed by 2nd respondent against petitioner and other respondents for declaration of his title and recovery of possession of the plaint schedule property therein.

4. It is the contention of 1st respondent in the suit that the suit schedule property was gifted to her by her father, but the petitioner and other respondents are contending that it was gifted to them by 1st respondent herein, but it was later cancelled on the ground that they are landless poor persons.

5. In Civil Revision Petition No.7010 of 2018, the petitioners are defendant nos.3 and 4 in Original Suit No.263 of 2006 on the file of Principal Junior Civil Judge, Kalwakurthy.

6. The 1st respondent / plaintiff (who is also the plaintiff in Original Suit No.251 of 2006) had filed the said suit for declaration of title and recovery of possession of the suit schedule property therein

which is another parcel of land in Survey No.384 of Veldanda Village.

7. Written Statement was filed by petitioners in the Revisions in both the suits contending that plaintiff had no right, title or interest in the suit schedule property, and there was grant in their favour by Bhoodan Board.

8. Pending both suits, the General Power of Attorney holder of plaintiff in both the suits filed Interlocutory Application No.325 of 2017 in Original Suit No.251 of 2006 and Interlocutory Application No.128 of 2018 in Original Suit No.263 of 2006 under Section 65 of the Indian Evidence Act requesting the Court below to permit him to submit secondary evidence of the following documents, viz.,

“1.Xerox copies of the show cause notices in file No.C/120/05, dated 27.08.2005.

2.Xerox copies of the Reply dated 29.08.2005 issued by the defendants.

3.Xerox copies Cancellation proceedings bearing file No.C/834/98-06 dated 23.06.2006 issued by the Bhoodan Board.

4.Xerox copies consequential Cancellation Proceedings bearing No.A/2695/2006 dated 13.07.2006 issued by the M.R.O, Veldanda.”

9. In the affidavit filed by him in support of these applications, he contended that the pattas granted to petitioners have been cancelled, and the said documents are evidence thereof. He also contended that he had filed photocopies of the said documents at the time of filing of the suit, and when he filed an application to call for the entire file from the Office of the M.R.O., they issued a Memo stating that the

file containing these documents is not traced out, that they alleged that these documents are final documents which were communicated to the then M.R.O. by the Bhoodan Board; and since they are lost, secondary evidence of the said documents may be permitted.

10. Counter-affidavit is filed by petitioners in both the applications opposing the same, and contending that photocopies of the said documents cannot be received in evidence. They admitted that show-cause notice was issued on 27.08.2005 to the parties to which a reply notice was given on 29.08.2005, and cancellation orders were issued by the Bhoodan Board on 23.06.2006, and consequential orders were also passed by the M.R.O., Veldanda on 13.07.2006.

11. By orders dt.01.02.2018 and 05.05.2018, both these applications were allowed. The Court below held that there was an attempt to get these documents from the Office of the Tahsildar in the past, but the Tahsildar sent a letter stating that they were not available; that the existence of these documents is admitted by petitioners; and since these documents were not available with the Tahsildar and the plaintiff had made all efforts to secure them, but failed, therefore he is entitled to file photocopies of the said documents, and they ought to be received as secondary evidence.

12. Assailing the same, the present Civil Revision Petitions are filed.

13. The counsel for petitioners sought to contend that the Court below erred in allowing photocopies of the said documents to be received as secondary evidence under Section 65 of the Evidence Act. He also contended that the said documents are not relevant for consideration in the suit, and that admission of the said documents does not dispense with proof of the documents.

14. Sri K. Srinivas, counsel appearing for 2nd respondent / plaintiff in Civil Revision Petition No.1423 of 2018 supported the order passed by the Court below.

15. When petitioners had admitted that these documents were in existence and petitioners had even challenged in Writ Petition the orders of cancellation of their pattas passed by the Andhra Pradesh Bhoodan Board in this Court, and when the Tahsildar says that he does not have these documents, the plaintiff in the suits cannot be prevented from filing photocopies of these documents.

16. I also do not agree with the contention of counsel for petitioners that these documents are not relevant for adjudication of the suits because admittedly these four documents pertain to the property which is subject matter of both the suits.

17. I therefore do not find any error of jurisdiction in the order passed by the Courts below warranting interference by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India.

18. Accordingly, the Civil Revision Petitions fail, and they are dismissed. No order as to costs.

19. As a sequel, miscellaneous petitions pending if any in these Civil Revision Petitions, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 02.08.2019

Ndr/*

