

THE HONBLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION Nos.3031 of 2015 and batch

11-12-2015

Datti Kameswari Petitioner

Singam Rao Sarath Chandra and another Respondent

Counsel for the Petitioner : Sri Prakash Buddarapu

Counsel for the Respondent: M/s. Bhaskari Advocates

Gist :

Head Note:

Cases referred

1) (2010 (5) ALD 339)

2) AIR 2006 Madhya Pradesh 107

HONBLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition Nos.3031 and 3048 of 2015

Date: 11-12-2015

C.R.P.No.3031 of 2015

COMMON ORDER:

These two Civil Revision Petitions are being disposed of by this common order as they both involve a decision on the nature of the document obtained under the Right to Information Act, 2005 in civil proceedings.

C.R.P.No.3031 of 2015:

The revision petitioner is the 5th respondent in E.P.No.1 of 2014 on the file of Senior Civil Judges Court, Parvathipuram, Vizianagaram District. The 1st respondent in the revision petition filed an Election Petition challenging the election of the 5th respondent, who was a successful candidate for the post of Member of Mandal Praja Parishad Territorial Constituency of Gavampeta Territorial Constituency, Jiyyammavalasa Mandal Praja Parishad in the elections held in the year 2014. The 1st respondent herein, as the petitioner in the said Election Petition wanted to mark the documents obtained under the Right to Information Act, 2005 as exhibits for which the petitioner herein raised an objection on the ground that the said documents are neither certified copies nor originals. The Tribunal overruled the objection raised by the petitioner herein and allowed the marking of documents obtained under the Right to Information Act, 2005 from the custodian of the documents on the ground that the petitioner herein is not disputing the correctness of those entries and the documents can be permitted to be marked as a single exhibit, by order dated 16-06-2015. Challenging the said order, the present Civil Revision Petition is filed.

C.R.P.No.3048 of 2015:

The petitioners in the present Civil Revision Petition are the landlords in R.C.No.305 of 2012 on the file of I Additional Rent Controller, Hyderabad who filed a petition under Section 4 (1) of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 for fixation of fair rent in respect of a shop admeasuring 240 sft. Of super built-up area bearing Door No.22-5-73/2, situated at Balaji Market, Charkaman, Hyderabad. The respondent-tenant filed certain documents obtained under the Right to Information Act and an objection was taken by the petitioner herein that those documents cannot be marked. The Rent Controller overruled the objection by order dated 19-06-2015 and observed that those documents obtained under the Right to Information Act are admissible as secondary evidence under Section 63 of the Evidence Act, 1872 so long as the Court has no reason to doubt that the said certified copies are not faithful and accurate reproduction of the original documents in custody of Government Departments.

Thus, in both cases, the nature of the documents obtained under the Right to Information Act, 2005 and their admissibility was in issue. In both cases, the learned counsel for the objectors relied on a decision of this Court in K. Bhaskar Rao v. K.A. Rama Rao (2010 (5) ALD 339) and submitted that the xerox copies of the documents which are certified as true copies under the Right to Information Act, 2005 cannot be equated with certified copies mentioned in the Evidence Act.

In the light of the above issue, it is not necessary for this Court to go into the merits of the respective cases.

The Right to Information Act was enacted in the year 2005 and came into force with effect from 15-06-2005. It provides for designation of a Public Information Officer for obtaining information with exemptions from such disclosure and the grounds for rejection in appropriate cases. Section 22 of the Act says that the provisions of the said Act shall have overriding effect on the provisions of other enactments including Official Secrets Act, which are not inconsistent.

Chapter-V of the Evidence Act, 1872 deals with documentary evidence. Section 61 says that the contents of the documents may be proved either by primary evidence or by secondary evidence. The primary evidence is stated to be the document itself produced for the inspection of the Court under Section 62 of the Act. Secondary evidence is defined under Section 63 of the Act. As per Section 64 of the Act, normally, the documents must be proved by primary evidence except in the cases mentioned under the provisions of the Act. Section 65 provides for the circumstances under which secondary evidence may be given. Public documents are defined under Section 74 of the Act. Section 75 of the Act says that all documents other than mentioned in Sec.74 are private. Section 77 says that certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies. The proof of different categories of public documents is provided under Section 78 of the Act. Section 79 speaks of the presumption as to the genuineness of certified copies. The presumption of documents produced as record of evidence is provided under Section 80 of the Act. Section 81 deals with presumption as to Gazettes, newspapers, private Acts of Parliament and other documents. Hence, the relevant sections of the Evidence Act for the purpose of disposal of the present case are as follows:

Section-62: Primary evidence:

Primary evidence means the documents itself produced for the inspection of the Court.

Explanation 1 Where a document is executed in several parts, each part is primary evidence of the document :

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2- Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest ; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.

Section-65: Cases in which secondary evidence relating to documents may be given

Secondary evidence may be given of the existence, condition, or contents of a documents in the following cases:-

(a) When the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved , or of any person out of reach of, or not subject to, the process of the Court or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(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;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is public document within the meaning of section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in 40[India] to be given in evidence ;

(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in court and the fact to be proved is the general result of the whole collection. In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

Section-74: Public documents

The following documents are public documents :-

(1) documents forming the acts, or records of the acts

(i) of the sovereign authority,

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive, [of any part of India or of the Commonwealth] or of a foreign country;

(2) Public records kept 49[in any State] of private documents.

Hence, a reading of the above provisions makes it clear that the copies obtained under the Right to Information Act certified by the Authorised Information Officer cannot be called as public documents or primary evidence.

Explanation-2 of Section 62 makes the position clear.

However, if a document is obtained under the Right to Information Act from a competent Authority, it can be asked to be taken as a certified copy if the original satisfies the definition of public document and no formal proof of the same is required.

But, in the case of other private documents, the copies of which are obtained under the Right to Information Act, the provisions of Evidence Act with regard to secondary evidence have to be satisfied.

In the light of above provisions, it is necessary to consider the decided cases on the point. Since the parties were relying on the decision of this Court in *K. Bhaskar Rao v. K.A. Rama Rao*, it is necessary to consider the same first. The said case arose out of a suit for partition filed in the court of II Additional Senior Civil Judge, Ranga Reddy District. The Court was considering the production of additional evidence filed by the plaintiff as one of the issues. In that connection, this Court commented with regard to the documents sought to be produced as additional evidence as follows:

I am unable to appreciate any of the said ingredients in the affidavit filed in support of the said application. It is not as if that in spite of existence of due diligence, the appellant was not able to trace out and produce these documents before the trial Court. All the said documents relate to proceedings before the ULC authorities and while the appellant got marked Ex.A.1 certified copy of the declaration of the defendant under the Act, there is no reason as to why he could not get the rest of the documents, which he is now proposing to file by way of additional evidence. Further, none of the said documents are certified copies and only the Xerox copies of the documents are certified as true copies under the Right to Information Act. True copies cannot, therefore, be equated to certified copies under the Evidence Act.

The affidavit does not state as to why these documents could not be produced earlier nor it is supported by any other sufficient cause as contemplated under Order 41 Rule 27 CPC.

This Court observed that the true copies obtained under the Right to Information Act cannot be equated to certified copies under the Evidence Act. But that observation has to be understood in the light of the facts of that case.

In *Rekha Rana and others v. Ratnashree Jain*, the Madhya Pradesh High Court had an occasion to consider the following points.

- 1) Whether a sale deed (duly registered) is a public document?
- 2) Whether a certified copy of a sale-deed issued by the Registering Officer is a public document?
- 3) Whether a certified copy of a public document can be received in evidence without any further proof?
- 4) What is the effect and efficacy of producing and marking a certified copy of the sale deed?

After examination of Section 65 of the Evidence Act, it was held as follows:

.Section 65 further provides that in cases (a) (c) and (d), any secondary evidence of the contents of document is admissible; in case (b), the written admission is admissible; in case (e) and (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

We therefore answer points (i) and (ii) as follows:

(i) A Registered document (Deed of sale etc.) is not a public document. It is a private document.

(ii) Book 1 kept in the Registration Offices under the Registration Act, where the Registered documents (private documents) are copied, entered or filed, is a public document.

(iii) A certified copy of a registered document, copies from Book 1 and issued by the Registering Officer, is neither a public document, nor a certified copy of a private document, but is a certified copy of a public document.

While answering Point No.(iii), the Court held as follows:

We have already held that a certified copy of a registered Instrument/document issued by the Registering Officer, by copying from Book 1, is a certified copy of a public document. It can therefore be produced in proof of the contents of the public document or part of public document of which it purports to be a copy. It can be produced as secondary evidence of the public document (entries in Book 1), under Section 65(e) read with Section 77 of the Act without anything more. No foundation need be laid for production of certified copy of secondary evidence under Section 65(e) or (f). But then it will only prove the contents of the original document, and not be proof of execution of the original document. (Vide Section 57(5) of Registration Act read with Section 77 of Evidence Act). This is because registration of a document is proof that someone purporting to be 'X' the executant admitted execution, but is not proof that 'X' executed the document, We will elaborate on this aspect when dealing with Point No. (iv)..

While answering Point No.(iv) with regard to production and marking of a certified copy of a sale deed, which would amount to proving the sale deed, it was held as follows:

..The position therefore is that a certified copy of a sale deed issued by the Registration Officer under the Registration Act can be produced and marked as secondary evidence of a public document (that is Entries in Book 1 maintained under Section 51 of the Registration Act containing the copy of the registered document). Such certified copy issued by the Registration Officer in view of the certificates copied therein and the certificate made while issuing the certified copy will prove (i) that a document has been presented before the Registration Officer for registration; (ii) that execution had been admitted by the person who claimed to be the executant of the document and (iii) that the document was thereafter registered in the Registration Office and entered (copied) in Book 1. It is not however proof of the fact that original sale deed was duly executed by the actual person described as Executant. Production of a certified copy of a public document under Section 65(e) or production of a certified copy under Section 65(f) is completely different from production of a certified copy as secondary evidence of a private document (for eg, a sale deed under clauses (a), (b) and (c) of Section 65.

18. Proving execution of a registered sale deed (or any other registered document which is not required by law to be attested) has two steps. The first step is production of the original sale deed or lay the foundation for letting in secondary evidence of the sale deed, by way of certified copy of the sale deed, by showing the existence of any of the circumstances mentioned in clauses (a), (b) and (c) of Section 65. In other words, a certified copy can be offered as secondary evidence of the original sale deed under Clause (a) of Section 65, by establishing that the original is in the possession or power of the person against whom the document is sought to be proved, or in the possession or power of any person out of reach of or not subject to the process of the Court, or in the possession of any person who is legally bound to produce it, and such person (of the three categories) does not produce it in spite of notice under Section 66 of the Act. A certified copy of the sale deed can also be offered as secondary evidence under Clause (c) of Section 65, by showing that the original is 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). Lastly a certified copy can be offered as second evidence under Clause (b) of Section 65, where the existence, condition or contents of the (sic) has been admitted in writing by the person against whom it is proved or by his representative in interest, and such admission is proved.

18.1 The second step is to prove the execution of the deed (whether what is produced in the original or certified copy or other secondary evidence thereof given under Clause (a), (b) or (c) of Section 65) as required by Section 67 of the Act, where the document is not one which is required by law to be attested or as required by Section 68 of the Act where the document is one which by law is required to be attested. This is because registration is not proof of execution. A private document cannot be used in evidence unless its execution is admitted by the party against whom it is intended to be used, or it is established by proof that it is duly executed. Due execution is proved by establishing that the signature (or mark) in token of execution was affixed to the document by the person who is stated to have executed the document. This is normally done either (i) by examining the executant of the document; or (ii) by examining a person in whose presence the signature/mark was affixed to the document; or (iii) by referring the document to a handwriting expert and examining such expert; or (iv) by examining a person acquainted with handwriting/signature of the person who is supposed to have written/signed the document; or (v) by requesting the Court to compare the signature of the executant in the document with some admitted signature of the person shown as executant; or (vi) by proving admission by the person who is said to have signed the document, that he signed it.

18.2 If the person producing the certified copy of a registered instrument, without establishing the existence of any of the grounds under Clause (a), (b) or (c) of Section 65, seeks to mark the certified copy, then it will not be secondary evidence of the original sale deed, but only be secondary evidence of the entries in a public document, that is the entries in Book 1 in the Registration Office which issued the certified copy. Such certified copy marked without laying foundation for receiving secondary evidence, though admissible for the purpose of proving the contents of the original document, will not be proof of execution of the original document.

18.3 Certain amount of confusion exists because a certified copy can be produced as secondary evidence either under clauses (e) and (f) of Section 65 or under clauses (a), (b) or (c) of Section 65. But the difference is that a certified copy is the only mode of secondary evidence that is permissible in cases falling under clauses (e) or (f) of Section 65. But in the cases falling under clauses (a), (b) or (c), the secondary evidence can be a certified copy in the case of a registered instrument or by other modes described in Section 63 in regard to unregistered documents. Be that as it may..

Ultimately, the Court held as follows:

We may summarize the position thus:

(i) Production and marking of a certified copy as secondary evidence of a public document under Section 65(e) need not be preceded by laying of any foundation for acceptance of secondary evidence. This is the position even in regard to certified copies of entries in Book I under Registration Act relation to a private document copied therein.

(ii) Production and marking of a certified copy as secondary evidence of a private document (either a registered document like a sale deed or any unregistered document) is permissible only after laying the foundation for acceptance of secondary evidence under Clause (a), (b) or (c) of Section 65.

(iii) Production and marking of an original or certified copy of a document does not dispense with the need for proof of execution of the document. Execution has to be proved in a manner known to law (Section 67 and 68 and ensuing sections in chapter V of Evidence Act)

A learned Single Judge of the same High Court in W.P.No.7860 of 2014, dated 19-03-2015 held that the certified copies of the map of the house and building construction permission from Nigar Nigam obtained under the Right to Information Act, 2005 can be taken as secondary evidence and it was held as follows:

Clause (f) of Section 65 of Evidence Act makes it crystal clear that a certified copy permitted under the Evidence Act or by any other law in force can be treated as secondary evidence. Right to Information Act, in my view, falls within the ambit of "by any other law in force in India". The definition of "right to information" makes it clear that certified copies of documents are given to the citizens under their right to obtain information. In my view, the court below has rightly opined that the documents can be admitted as secondary evidence. I do not see any merit in the contention that the documents obtained under the Act of 2005 are either true copies or attested copies. The definition aforesaid shows that the same are certified copies. Even otherwise, it is interesting to note that in Black Dictionary, the meaning of "certified copy" is as under:-

"Certified copy" - a copy of a document or record, signed or certified as a true copy by the officer to whose custody original is entrusted."

Since the documents are covered under section 65 of the Evidence Act, there was no need to compare the same with the originals..

In view of the above analysis, the xerox copy certified by the designated Public Information Officer under Right to Information Act of the private documents are not certified copies within the meaning of the provisions of Section 65 of the Evidence Act. They are merely true copies of the private documents available in the records of the particular Department. The production and marking of such copies is permissible only after laying a foundation for acceptance of secondary evidence under clauses (a) (b) or (c) of Section 65 of the Act. The condition prescribed under the above cases (a), (b) or (c) of Section 65 of the Act have to be fulfilled before marking the true copies obtained under the Right to Information Act. However, the true copies of public documents certified by the designated Information Officer can be taken as certified copies of the public documents.

Thus, in C.R.P.No.3031 of 2015, since the documents sought to be produced are true copies of the public documents those documents can be treated as certified copies, whereas in C.R.P.No.3048 of 2015, the documents now sought to be produced are true copies of registered sale deeds, they can be marked as secondary evidence, if the party seeking to mark those documents fulfills the conditions prescribed under Section 65 (a) to (c) of the Act.

In view of the above, the C.R.P.No.3031 of 2015 is dismissed and C.R.P.No.3048 of 2015 is disposed of with the above observations. No costs.

A.RAMALINGESWARA RAO, J

Date: 11-12-2015