
(1992) 01 KAR CK 0019
In the Karnataka High Court
Case No : Company Petition No. 25 of 1979

M. Manohar and Another

APPELLANT

Vs

T.R. Mills and Others

RESPONDENT

Date of Decision : 23-01-1992

Acts Referred:

Evidence Act, 1872 — Section 63

Citation : (1992) 2 KarLJ 635

Hon'ble Judges : K. Jagannatha Shetty, J

Judgement

1. Mr. Manohar, P.W. 1, has been examined by Sri Udaya Holla, counsel appearing for him. During the course of examination-in-Chief the witness P.W. 1 state that he had taken inspection of certain documents which were made available to him for inspection by the respondent-Company, in pursuance of the order of this Court. He took notes of certain documents during the course of inspection of these documents. The documents which were given to him for inspection have been listed as per the list given to him. Some of those documents which were given to him for inspection were not produced into the Court despite his making a request by filing an application in the Court. He has stated all these facts in his examination-in-chief and he further stated that he has made "notes" of the contents of the documents which he wants to produce and mark it as document to prove the contents of those documents which have been inspected by him.

2. This was objected by Mr. S.G. Sundaraswamy, senior counsel appearing for the respondent-Company.

3. The examination-in-chief of P.W. 1 was deferred and the matter was heard on the question whether the notes of the documents prepared by the person who had seen the document could be produced and marked as a proof of the contents of documents by way of secondary evidence, since the original documents are not produced by the opposite party in whose possession and power they are said to be.

4. Learned counsel appearing for P.W. 1 has drawn my attention to the provision

of Sections 63 and 65 of the Evidence Act, and argued that provisions of Section 63 enables to give secondary evidence, by giving oral accounts of contents of a documents given by a person who has himself seen it. He further argued that the contents of private document may be proved by secondary evidence by any witness who has, in fact, seen and read them. He has also argued relying on the provision of Section 63(3) of Evidence Act that the "notes" taken by P.W. 1 is copies made from as well as compared with the original, which can be produced and marked as exhibit to prove the contents of unproduced documents by way of secondary evidence. Elaborating his arguments, he relied on the passage contained in Sengupta on Evidence at page 556, which reads as follows:

"An entry in a deed-writer's register which contains the essential particulars contained in the document itself and is also signed or thumb-marked by the person executing the document, amounts to a copy and is admissible in evidence."

The witness has taken inspection of documents as per the list of documents and he had seen and read it. He has taken notes from the documents which he had seen and read as such that can be produced and marked to prove the contents of unproduced documents.

5. Mr. Sundaraswamy, learned senior counsel appearing for the respondent-Company has controverted the submission made by Mr.Udaya Holla and submitted that firstly there is no evidence that the documents given for inspection were all originals and the notes or copies made by the person (P.W. 1) were from the original. Nextly, he contended referring to Sections 22 and 59 of the Evidence Act, that the contents of the documents are provable by the production of the documents itself except where the secondary evidence is admissible, and all facts except the contents of documents could be proved by oral evidence. It is further argued by Mr. Sundaraswamy that the result of these sections taken with Section 65(b) is that the contents of the documents may be proved by written admission against whom it is to be used, but cannot be proved by oral admission, much less by production of notes of the documents taken by the person who had read and seen under Section 63(5) of the Act. Elaborating his arguments, he has referred to the Commentary on Section 63 of the Evidence Act by CD. Field's Law of Evidence, Vol. III, page 2721 which read that "the definition of secondary evidence contained in the section is exhaustive and cannot be added.....An abstract translation which does not purport to be a copy or even a full and complete translation of the document does not come within the terms of Section 63 and is inadmissible."

6. It is an undisputed fact that certain documents were given to P.W. 1 for inspection as per the list furnished to him and he had taken inspection. These documents inspite of the request made by P.W. 1 to produce to the Court, have not yet been produced by the respondent in whose possession and power the documents are said to be.

7. P.W. 1 has stated that he had seen and read the documents and taken the "notes" of it and he wants to produce it to prove the contents of unproduced documents by way of secondary evidence.

8. Section 63 of the Evidence Act speaks of secondary evidence which may be given in the absence of that better evidence which the law requires to be given, has been proved that primary evidence is not obtainable. It envisages five kinds of secondary evidence. One of such secondary evidence is oral account of contents of the document given by a person who has himself seen and read the original. As per Section 65 of the Act any secondary evidence of the contents of the document is admissible provided the foundation laid to the effect that the original is lost or destroyed or not in the possession or power of the person or unproduced despite the notice given to the person to produce into Court. Thus, it is apparent, firstly it is to be established that the document is original and secondly it is to be shown that the copy of the originals taken are the copies compared with the original. Unless it is established that the copy document is of the original, it cannot be taken as a secondary evidence. A copy which is neither a carbon copy nor a copy compared with the original cannot be treated as a secondary evidence.

9. The learned counsel Mr. Udaya Holla has tried to establish that any portion of the contents of the unproduced document taken down in the form of notes by a person (P.W. 1) do come within Section 63(3) of the Act which read that "Copies made from or compared with the original". The notes made by P.W. 1 of the unproduced documents can at best be construed to be a piece of written paper. A piece of written paper cannot be admitted as a secondary evidence of the contents of the document simply by calling it as a notes of the original. It is true that the word "copy" is not defined in the Act. But the "copy" means the document prepared from the original which is an accurate or true copy of the original. In other words, the "copy" is an accurate or true and full reproduction of the original. Mere notes jotted down from the original is not a copy or a copy compared with the original for it can never be an accurate true and full reproduction of the original. In support of this contention, Mr. Sundaraswamy, learned counsel, has relied on the decision reported in Hindustan Construction Co. v Union of India, AIR 1967 SC 526 and the Supreme Court has observed thus:

"What the word "copy" in Section 14(2), therefore, requires is that it must be a full reproduction of the original and that it should be accurate or true. When a document is an accurate or true and full reproduction of the original it should be a copy."

10. I am of the view that the "notes" of the original document is neither a copy of the original as it is not and cannot be the true and full reproduction of the original, as such, it cannot be tendered as secondary evidence. The objections raised by Mr. Sundaraswamy, learned counsel for the respondent-Company, for production and marking them as secondary evidence by P.W. 1 is upheld.

11. The question still remains to be answered on other submission of Mr.Udaya Holla that in view of the provision of Section 63(5) of the Act, the person who had seen and read the original documents can give the oral accounts of the contents of unproduced documents. Section 63(5) provides that oral accounts of the contents of the original and not of the copy would be secondary evidence. Nevertheless, to give such oral accounts of the documents, it shall be established by the person giving oral accounts that the document read and seen by him is the original.

12. Secondary evidence, no doubt, is admissible if the person giving the oral account of it is original and that original document is admissible in evidence. If that original document itself is not admissible either for want of registration or for want of stamp, the secondary evidence in any form is inadmissible in evidence.

13. The point raised by Mr.Udaya Holla is answered accordingly. A copy prepared from another copy does not come within the meaning of secondary evidence unless it is compared with the original. The person P.W. 1 in this case could give oral account of the documents which he is said to have seen and read it while he took inspection of documents listed in the list of documents given to him provided he establishes that those documents he took inspection are the originals.