

(2015) 08 KAR CK 0177
In the Karnataka High Court
Case No : W.P. No. 105395/2015 (GM-CPC)

Mallikarjun Basangouda Patil

APPELLANT

Vs

Gangawa Shankargouda Patil and Others

RESPONDENT

Date of Decision : 14-08-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Evidence Act, 1872 — Section 63, 64, 68, 76, 77

Citation : (2015) 08 KAR CK 0177

Hon'ble Judges : K.N. Phaneendra, J.

Bench : Single Bench

Advocate : V.M. Sheelavant, Advocate, for the Appellant; R.K. Hatti, Advocate, for the Respondent

Judgement

K.N. Phaneendra, J.—Heard learned counsel for the petitioner and the counsel for respondents and perused the records.

2. This petition is filed calling in question the order passed by the II Addl. Senior Civil Judge, Hubballi, in O.S. No. 266/2010 on I.A. No. 13 dated 03.06.2015 refusing to permit the defendant Nos. 7 and 8 to mark the documents produced by them in the list of documents marked at Sl. Nos. 2, 3, 4 and 6 as exhibits.

3. Learned counsel for the petitioner has drawn my attention to the application filed by the petitioner producing those documents before the Court. The list of documents shows that the document captioned

"a) at Sl. No. 2 is a certificate issued by the Sub Registrar stating about registration of a particular document.

b) Document at Sl. No. 3 is the certified copy of the Will executed by Fakkiragouda Siddanagouda dated 19.07.2010.

c) Document at Sl. No. 4 is the certified copy of the registered Will dated 20.11.1928.

d) Document at Sl. No. 6 is the original of the Will dated 31.10.1974. Defendant Nos. 7 and 8 claim legal custody of the said original documents with them and they sought permission that, those documents to be produced before the Court in order to prove their case."

4. So far as the original documents which are produced before the Court which does not require registration under any law for the time being in force, the Court cannot refuse to get those documents marked irrespective of the proof of the contents of the document. Further, so far as the other documents noted above are, certified copies of the certificate issued by the Sub Registrar and certified copy of the Will.

5. The provision under Section 76 and 77 of the Evidence Act clearly disclose that the certified copy of the public document of which they purported to be the documents of original can be produced for proof. Without looking into these provisions the trial Court has wrongly rejected the prayer of defendant Nos. 7 and 8 for marking of the documents at Sl. Nos. 2, 3, 4 and 6 of the list of documents.

6. The trial Court has ignorantly passed such order relying upon a decision of this Court reported in *Prakash Vs. Doddathayamma*, wherein this Court has observed that Photostat copy of the sale deed cannot be marked before the Court without following proper procedure under Section 63 and 64 for production of the secondary evidence. Here, that is not the case at all. Because two documents, i.e., Will at Sl. Nos. 3 and 6 are produced which are original Wills according to defendant Nos. 7 and 8 and other documents are the certified copies which are issued by the competent authority. Therefore, there is no reason to reject the prayer of the petitioner.

7. For the aforesaid reasons, the order passed by the II Addl. Senior Civil Judge, Hubballi, dated 03.06.2015 on I.A. No. 13 filed by defendant Nos. 7 and 8 u/S 151 of CPC is hereby quashed. Consequently, I.A. No. 13 filed by the defendant Nos. 7 and 8 is hereby allowed. The trial Court is directed to permit defendant Nos. 7 and 8 to mark the documents at Sl. Nos. 2, 3, 4 and 6 which are already produced vide I.A. No. 13.

18.08.2015

ORDER ON BEING SPOKEN TO

8. The learned counsel for the petitioner cites two decision of this Court reported in ILR 2006 KAR(4) PAGE 4213 and AIR KARR-2014-4-239.

9. AIR KARR-2014-4-239 at Para No. 4 this Court has held that,-

"In the scheme of the code, no provision is made for filing an application invoking Sections 63 and 64 of the Evidence Act requesting the Court to permit him to adduce evidence. Such an application is not warranted and is not maintainable. Unfortunately, the recent trend is such applications are filed, case

is posted for filing of the objections by the opposite party, after objections are received, the arguments are heard and detailed order is passed, which takes considerable precious judicial time of the Court. It is yet another reason for the delay in disposal of the Civil cases. This tendency is to be eschewed. Such applications should be dismissed at the threshold even without calling for any objection from the opposite party, much less passing a detailed order as was being done in this case. If a party wants to lead secondary evidence, he has to enter the witness box, give evidence to show that why he could not produce primary evidence and after laying a foundation for non-production of primary evidence, he can produce secondary evidence. The tendency of filing application, receiving objections, hearing arguments and passing considered order is deprecated as much of the court's time is wasted in this exercise."

10. This ruling is not applicable for the simple reason that in this case, the party has not sought for leading any evidence, but he has sought for production of documents and permission to mark those documents in the evidence. Therefore, this ruling which refers to secondary evidence is not presently applicable.

11. In another ruling reported in ILR 2006 KAR(4) 4213, the learned counsel has replied upon at paragraph Nos. 4 and 5, which read thus:

"4. So far as the submission of the learned counsel for the petitioners that mere marking of a document does not amount to providing of a document. There cannot be any two opinion. But the question is that if Section 68 of the Indian Evidence Act requires a party to produce the said document in evidence by examining an attesor, petitioners cannot be permitted to mark such document in their examination-in-chief without marking a Will through an attesor. In such circumstances, by seeking permission of the court to lead further evidence on the document in question, petitioners can examine the attesor to the Will and mark the Will through an attesor and thereafter if necessity arises petitioners can request the court to lead further evidence on the Will in question by the petitioners.

Therefore, in the circumstances, I do not see any reasons to interfere with the orders of the trial court.

5. Accordingly, this petition is rejected by observing that petitioners may be permitted to examine the attesor first to mark the Will and prove the Will and thereafter if necessity arises they can seek permission of the court to lead further evidence on the document in question and if such a request is made by the petitioners, trial court shall permit the petitioners in accordance with law."

12. This rule is also not presently applicable to the facts and circumstances of this Court. Because the Court itself has said that mere production of document is not a proof of the document. Therefore, the power vested with the party to examine the attesor first to mark the Will and then examine himself for the purpose of marking documents. However, event if the document is for the sake of marking, marked through some other person, it will not take away the burden

of proving the document as per Law.

13. Therefore, these ruling are not applicable in order to review the order already passed by this Court. Therefore, the request made by the learned counsel for the petitioner to consider the order already passed by this Court is rejected.