
(2014) 09 MP CK 0198
In the Madhya Pradesh High Court
Case No : Writ Petition No. 12870/2013

Rajendra

APPELLANT

Vs

Anjam Khan and Others

RESPONDENT

Date of Decision : 24-09-2014

Acts Referred:

Constitution of India, 1950 — Article 227 — Evidence Act, 1872 - Section 65

Citation : (2015) 1 MPJR 276

Hon'ble Judges : Prakash Shrivastava, J.

Bench : Single Bench

Advocate : Padmnabh Saxena, Advocate, for the Appellant; M.S. Dwivedi, for the Respondent

Final Decision : Disposed off

Judgement

Prakash Shrivastava, J.—This writ petition under Article 227 of the Constitution of India is at the instance of the plaintiff in the suit challenging the order of the trial Court dated 26.8.2013 rejecting the petitioner's application under Section 65 of the Evidence Act. In brief, the petitioner in a suit for recovery had filed an application under Section 65 of the Evidence Act stating that inspite of the direction of the Court, the respondent has not produced the original agreement dated 15.10.2010, therefore, the photocopy of the agreement filed by the petitioner be accepted as secondary evidence. The said application was opposed by the respondent and it has been rejected by the trial Court by the impugned order.

2. Having heard the learned counsel for the parties and on the perusal of the record, it is noticed that the trial Court while rejecting: the application of the petitioner has mentioned that the petitioner could not clarify that the original agreement is in possession of the respondent No. 1. It has further been noted that the photocopy of the agreement filed by the petitioner does not reflect that it has been prepared from the original agreement or it has been compared with the original agreement. It has also been noted that the copy is not the certified

copy and on each page of the copy, it is not stated to be the true copy. The trial Court by mentioning that unless the copy is compared with the original, it cannot be accepted in secondary evidence.

3. This Court in the matter of Haji Mohd. Islam and Another Vs. Asgar Ali and Another, in a case where the plaintiff had denied execution of the document and no proof was produced that the document was executed and was in possession of the plaintiff and that the copy which was filed in tendering the secondary evidence was neither a certified copy nor a true copy of the original, nor it was a true copy indicating endorsement, has held that the document does not meet with the requirement of Section 65 of Evidence Act.

4. In view of the above position in law, I am of the opinion that the trial Court has not committed any error in rejecting the petitioner's application under Section 65 of the Evidence Act. The petitioner placing reliance upon the judgment of this Court in the matter of Aneeta Vs. Saraswati, has sought liberty to adduce secondary evidence in the shape of oral evidence by examining the witnesses, in order to prove the contents of the document in question. Therefore, the present writ petition is disposed of without interfering in the impugned order but giving liberty to the petitioner to file an appropriate application in terms of the Para 15 of the judgment in the matter of Aneeta (supra) and if such an application is filed by the petitioner, the same will be considered and decided by the trial Court in accordance with law.