
(2014) 02 AP CK 0004

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1690 of 2013

Suddapalli Lakshmi Saroja

APPELLANT

Vs

Vishnu Botla Murali Krishna

RESPONDENT

Date of Decision : 07-02-2014

Acts Referred:

Evidence Act, 1872 — Section 63 65 68 69

Citation : (2014) 3 ALD 427 : (2014) 5 ALT 439

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The petitioner filed O.S. No. 183 of 2008 in the Court of Principal Senior Civil Judge, Tenali against the respondents for partition and separate possession of the suit schedule properties. A common written statement was filed by all the respondents. In addition to opposing the plea of partition, they stated that there existed a prior partition and that the father of defendant No. 1 executed a Will on 20.10.2013. It was pleaded that the originals of the deed of partition as well as the Will, dated 20.10.2003, were lost on the way to the office of their counsel on 26.02.2011. They have also stated that a complaint was submitted in the Police Station on the same day and after thorough search, the police informed that the documents are not traceable. Stating those reasons, the respondents enclosed the xerox copies of the deed of partition and the Will. The petitioner filed a memo before the trial Court with a prayer to refuse to receive the xerox copies of the deed of partition and the Will. Opposing the memo, the respondents filed a detailed counter. After hearing both the parties, the trial Court passed a detailed order, dated 13.03.2013, holding that the Xerox copy of deed of partition cannot be received, as the certified copy thereof can be obtained, but the xerox copy of the Will can be received as secondary evidence. It was also observed that the respondents have laid adequate foundation in their written statement for receiving the secondary evidence of the Will. The said

order is challenged in this revision.

2. Heard Sri Ms. Goda Rama Lakshmi, learned counsel for the petitioner and Sri N. Srihari, learned counsel for respondent No. 1.

3. The subject matter of this revision is only the secondary evidence of a Will, dated 20.10.2013. It was filed by the respondents herein, along with the written statement. The trial Court examined the admissibility of the secondary evidence on a memo filed by the petitioner, duly taking into account the plea of the respondents in their counter.

4. Section 63 of the Indian Evidence Act (for short "the Act") defines the types of secondary evidence and Section 65 thereof stipulates the conditions under which the secondary evidence of a document can be received. If there is no dispute as to the existence or execution of the original document, the Courts would not face much difficulty in the context of receiving the secondary evidence thereof. Where, however, the parties seriously dispute the very existence of the original, of which, the secondary evidence is sought to be adduced, thorough scrutiny and verification are to be undertaken.

5. A xerox copy, no doubt, can be treated as a mechanical reproduction of the original, falling within the ambit of Section 63 of the Act and can be treated as a piece of secondary evidence. However, the party who intends to rely upon the secondary evidence is required to lay the foundation therefor. What constitutes such foundation, would depend upon the nature of the document. In case there is no dispute as to the existence of the original, the burden of such party gets substantially reduced. If, on the other hand, the very document is disputed, various steps are required to be taken. The burden would be still heavier if the document is of a category which is required to be attested.

6. Way back in 1954, the Hon'ble Supreme Court in Sital Das Vs. Sant Ram and Others, held that laying of foundation for receiving the secondary evidence would take in its fold, the steps such as furnishing of contents of the documents, the persons who scribed it, the persons who attested it and the details of the persons who had the possession of the document immediately before it was lost. If those tests are applied to the present case, the respondents would miserably fail. Except stating that the Will was executed by the father of defendant No. 1 and that it was lost, they did not state as to who scribed it and who are the attestors.

7. The Will is a typical document. It is required to be proved as provided for under Sections 68 and 69 of the Evidence Act. Even if no opposition is offered by the other party, it is only on examination of the attestors, that the document can be acted upon.

8. The trial Court proceeded on the assumption that certain paragraphs in the written statement wherein the disputed Will was referred to would constitute the foundation. However, the same does not accord with the judgment referred to above.

9. Hence, the civil revision petition is allowed and the order under revision is set aside. There shall be no order as to costs. The miscellaneous petition filed in this revision shall also stand disposed of.