

IN THE HIGH COURT FOR THE STATE OF TELANGANA

AT: HYDERABAD

CORAM:

*** THE HON'BLE SRI JUSTICE K. LAKSHMAN**

+ CIVIL REVISION PETITION No.738 OF 2022

% Delivered on: 27-04-2022

Between:

Mr. Seepathi Keshavalu .. Petitioner

Vs.

\$ Smt. Pogaku Sharadha & others .. Respondents

! For Petitioner : Mr. Kondadi Ajay Kumar

^ For Respondents : - - -

< Gist :

> Head Note :

? Cases Referred :

1. Laws (APH) 2016 9 50
2. AIR 1967 SC 526
3. AIR 2001 AP 394
4. C.R.P. No.1132 of 1968, decided on 10.04.1969
5. AIR 1971 SC 1070
6. 2007 AIR SCW 6368

HON'BLE SRI JUSTICE K. LAKSHMAN

CIVIL REVISION PETITION No.738 OF 2022

ORDER:

This Revision is filed to set aside the docket order dated 17.03.2022 in C.A. No.95 of 2022 in O.S. No.735 of 2008 passed by the learned Principal Junior Civil Judge, Mancherial.

2. Heard Mr. Kondadi Ajay Kumar, learned counsel for the petitioner. Respondents are not necessary parties to the present revision and the said fact was also mentioned by learned counsel for the petitioner in the cause title itself.

3. The petitioner herein, third party to the suit, had filed an application vide Copy Application No.95 of 2022 in O.S. No.735 of 2008 under Rule - 188 (2) of the Civil Rules of Practice, 1990 (for short 'CRP'), seeking copies of certified copies of Exs.A11 to A14 for the following purposes:

- i) For verification;
- ii) To keep in record; and
- iii) To file in Court.

4. The Court below while refusing the said application, passed the following order dated 17.03.2022:

“Heard.

This is a petition filed under Rule 188 (2) of CRP along with third party affidavit and vakalat on behalf of defendants seeking certified copies of Ex.A11 to A14 marked in O.S. No.735/2008.

Heard the counsel for petitioner. Perused the record.

Upon perusal it can be seen that the documents Ex.A11 to A14 are the certified copies of the original exhibits marked in O.S.no.735/2008 which were substituted in place of the original documents while returning the same vide orders in I.A. No.627/2021 in OS No.735/2008, dated 14.07.2021.

As per rule 188 (2) of CRP any person who is not a party to a suit may apply to the court for grant of copies of judgments, decrees or orders made or of any documents exhibited in such suit or proceeding. In this suit the exhibits are original documents which were returned to the plaintiff and the case record consists of certified copies of the documents. Since the certified copies are not the exhibited documents, this application is refused. “

5. The above stated facts would reveal that the petitioner herein is a third party to O.S. No.735 of 2008. The said suit was disposed of on 02.08.2014. In the said suit, Exs.A1 to A15 were exhibited. The plaintiff in the said suit had filed an application vide I.A. No.627 of 2021 to return the said Exs.A1 to A15. The Court below vide order dated 14.07.2021 allowed the said I.A. and returned the said documents i.e., Exs.A1 to A15, with a direction to substitute certified copies of the said documents. The plaintiff therein had complied with the said order by substituting the certified copies of the said documents.

6. Now, the petitioner herein, who is a third party to the said suit, filed the above Copy Application supported by an affidavit under Rule - 188 (2) of the CRP seeking certified copies of Exs.A11 to A14 on the above stated purpose.

7. The Court below, vide order dated 17.03.2022 refused the said Copy Application on the following grounds:

i) Originals of the said documents were returned to the plaintiff;

ii) The case record consists of certified copies of the documents; and

iii) Certified copies are not the exhibited documents.

8. Challenging the same, the petitioner herein filed the present revision.

9. Learned counsel for the petitioner would submit that on an application made by the petitioner, on payment of required fee, the petitioner herein is entitled to obtain the certified copies of the documents which are available in the Court. Rule - 188 of the CRP and Circular Orders, 1980, the Court is bound to issue the certified copies. He has placed reliance on the principle laid down in **Sri Kathi Narsinga Rao v. Kodi Supriya**¹.

10. In view of the above said discussion, the seminal question that arises for consideration in the present revision is:

Whether the Court below is justified in rejecting the Copy Application filed by the petitioner herein, who is a third party to the suit, for grant of copy of the certified copies of the documents?

FINDING OF THE COURT:

11. As the question involved in the present revision is concerned with all the Civil Courts in the State and having regard to the importance to the matter, this Court made an effort to deal with the matter in detail.

12. To decide the said *lis* involved in the present revision, it is relevant to refer Rules - 188 and 199 of the CRP and Circular Orders, 1980 and also some of the provisions of the Indian Evidence Act, 1872.

13. **CIVIL RULES OF PRACTICE & CIRCULAR ORDERS, 1980.**

i) In exercise of power under Article - 227 of the Constitution of India and Section - 126 of the Code of Civil Procedure, 1908, the High Court framed the Rules for the guidance of subordinate Civil Courts in the State except the Court of Small Causes.

ii) Chapter - XV of Circular Orders, 1980 deals with certified copies.

¹. Laws (APH) 2016 9 50

“Rule 188 (128-B (2)) Persons entitled to apply for copies.____

(1) Any party to a suit or proceeding shall be entitled to obtain copies of judgments, decrees, or orders made or of any documents exhibited in such suit or proceeding on payment of charges in the manner prescribed under these rules.

(2) Any person who is not a party to a suit or proceeding requiring, copies of judgments, decrees or orders made or of any documents exhibited in such suit or proceedings may apply to the court for grant of such copies by duly stamped petition supported by an affidavit stating the purpose for which the copy is required:

Provided that, in cases of doubt whether, the copy applied for should be furnished, the application shall be placed before the judge for his decision. If the application is refused by the Judge it shall be returned to the applicant with the order of Judge endorsed on it.”

“Rule - 199(132) Sealing and certificate:- All copies furnished by the court shall be certified to be true copies, and shall be sealed with the seal of the court. The Superintendent of copyists or other officer appointed by the Judge, shall initial every alteration and interlineations in the copy, and shall sign a certificate at the foot thereof that the same is a true copy, and shall

also state the number of alterations and interlineations made therein.”

14. Rule - 188 of the CRP and Circular Orders, 1980 consists of two limbs. The first limb authorizes the party to the suit to obtain the certified copies as a matter of right. The second limb authorizes the third party to the suit to apply for certified copy, with a rider that Court is having discretion to refuse the same.

15. For more clarity, a close reading of sub-rule (1) of Rule - 188 would reveal that a party to the suit or proceedings are entitled to obtain a certified copy of the pleadings, documents and orders as a matter of right in terms of Rule - 188 (1) of the CRP.

16. Sub-rule (2) of Rule - 188 of the CRP would reveal that the Court on the application of a person, who is not a party to the proceedings, allow such person to receive such copies, with a rider that the third party is required to show the **purpose for which the certified copies required**.

17. The very fact that a proviso was inserted in Rule - 188 of the CRP can only mean that the discretion conferred on the Judge/Court, under this Rule to refuse the same.

18. A third party to the suit, seeking copies of documents, in any matter pending or disposed before the Court of law, has to file an application along with an affidavit stating the purpose for which those documents are required. The purpose for insisting to file an affidavit (duly mentioning the reasons) is to satisfy the Court that the information is sought is *bona fide*, and for *public interest*.

19. At this stage, it is also apt to refer to Section - 76 of the Indian Evidence Act, which is as under:

“76. Certified copies of public documents.—Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.”

20. As discussed supra, in the present case, the petitioner herein, third party to the suit, filed an application under Rule – 188

(2) of the CRP seeking copies of the certified copies which are lying in the Court. If at all the Court wants to furnish the documents, it should furnish to the party in accordance with the provisions of Section - 76 of the Evidence Act read with Rule - 199 of the CRP. The certification in accordance with Rule - 199 is also mandatory.

21. In both the above said Rules, i.e., Rules - 188 and 199 of the CRP, the word used is “true copy”. Now, the question is what is meaning of “true copy”.

22. In this regard, it is useful to refer to the judgment of the Hon’ble Supreme Court in **Hindustan Construction Company Limited v. Union of India**². In the said case, the Apex Court has considered the entire gamete of the controversy on the present issue including the word ‘signed copy’ and held in paragraph Nos.5 and 6 as follows:

“5. Now the word "copy" as such is not defined in the Indian Evidence Act, of 1872. But we get an idea of what a copy is from the provisions of Section - 63 of the Evidence Act. That section inter alia defines what

². AIR 1967 SC 526

secondary evidence means and includes namely--(i) certified copies as provided, in Section - 76 of the Evidence Act, (ii) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies, and (iii) copies made from or compared with the original. Obviously, therefore a copy means a document prepared from the original which is an accurate or true copy of the original. In Webster's New World Dictionary, the word "copy" means "a thing made just like another; full reproduction or transcription". 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 would be a copy. In the present case it is not in dispute that what was produced by Sri Dildar Hussain was a true or accurate and full reproduction of the original. It was therefore a copy of the original, and the only question that remains is whether it was signed, for if it was signed, it would be a signed copy.

6. This brings us to the meaning of the word "sign" as used in the expression "signed copy". In Webster's New World Dictionary, the word "sign" means "to write one's name on, as in acknowledging authorship, authorising action etc." To write one's name is signature. Section 3 (56) of the General Clauses Act, No.10 of 1897, has not defined the word "sign" but has

extended its meaning with reference to a person who is unable to write his name to include "mark" with its grammatical variations and cognate expressions. This provision indicates that signing means writing one's name on some document or paper. In *Mohesh Lal v. Busunt Kumaree* (1881) ILR 6 Cal 340, a question arose as to what "signature" meant in connection with Section 20 of the Limitation Act, No.IX of 1871. It was observed that "where a party to a contract signs his name in any part of it in such a way as to acknowledge that he is the party contracting, that is a sufficient signature". It was further observed that the document must be signed in such a way as to make it appear that the person signing it is the author of it, and if that appears it does not matter what the form of the instrument is, or in what part of it the signature occurs."

23. In view of the above authoritative pronouncement by the Apex Court, a 'copy' means a document prepared from the original which is an accurate or "true copy" of the original. As already observed, in the present case, the originals were returned to the plaintiff on filing of an application after substituting by its certified copies on record. Based on the above mentioned Copy Application filed by the petitioner herein, if the Court below has delivered the copy, it will not come under the definition of 'certified copy'.

Hence, the Court below is justified in refusing the application filed by the petitioner herein seeking copies of certified copies.

24. The judgment cited by the learned counsel for the petitioner in **Sri Kathi Narsinga Rao**¹ has no application to the facts of the present case. In the said judgment, a paragraph No.14, the learned Judge has held as follows:

“14. Now coming to the contention that these are the certified copies to the certified copies and not certified copies to the original, and thereby not admissible as secondary evidence even concerned; the Apex Court in Bibi Aisha Vs. Bihar SS MA Vaquf [AIR 1969 SC 253] held with reference to Section 63 Illustration C of the Evidence Act that even certified copy to a certified copy also comes within the meaning of secondary evidence to admit. Here once it is the certified copy to the certified copy obtained from Court and these are the public documents there is nothing to doubt on genuineness of the documents in question apart from any such objections for exhibiting public documents even is left open, that too for most of the documents the defendants were parties in earlier proceedings either before the revenue authorities or before the Civil Court.”

25. In the above referred judgment, learned Judge relying upon the Apex Court judgment in **Bibi Aisha (Supra)**, held that certified copy to certified copy is admissible in evidence in view of Section 63, Illustration C of the Indian Evidence Act. In fact, in the above referred judgment of the Apex Court, the question fell for consideration was under Section - 65 (a) of the Evidence Act, but not under Section - 63 Illustration C of the Evidence Act. Therefore, the facts of **Sri Kathi Narsinga Rao**¹ have no application to the facts of the present case.

26. It is also relevant to refer to a judgment of a Division Bench of the combined High Court of Andhra Pradesh at Hyderabad in **Badrunnisa Begum v. Mohamooda Begum**³. In the said case, the Division Bench had an occasion to deal with the evidentiary value and admissibility of the evidence under the provisions of the Indian Evidence Act, 1872, more particularly, Illustration C of Section - 63 and Section 65 of the Act. In the said judgment, the Division Bench has also relied upon the principle laid down by the Full Bench of the said High Court in **Land Acquisition Officer v. N. Venkata Rao** [1990 (3) ALT 305 (FB)].

In the said judgment, the Full Bench has summarized the position on the question of admissibility of copy of a copy as secondary evidence in paragraph No.30, and the same is extracted as under:

“30. Summarising the position, we hold firstly that if 'secondary evidence' is allowed to be marked for one party without objection at the trial, no objection can be permitted to be raised by the opposite party at any later stage in the same Court or in appeal that conditions from adducing secondary evidence have not been made out initially. Secondly, we hold that though ordinarily **copies of copies** are not to be treated as 'secondary evidence' unless such copies are again compared with the original, the said principle does not apply to certified copies granted by the Sub-Registrar under the Registration Act. These certified copies are, under law, to be treated as secondary evidence and once they have acquired such a status, the marking of such documents at the trial without objection result in such documents and their contents being evidence in the case. No objection can be raised in the same suit or proceeding or in appeal later by the opposite party that before marking the certified copies, the necessary conditions for adducing secondary evidence have not initially been established. We hold accordingly on point No.2.”

³. AIR 2001 AP 394

27. Referring to Sections - 63 and 65 of the Evidence Act, the principle laid down by the Full Bench in the above said judgment and other judgments including the judgment of the Hon'ble Supreme Court in **Bibi Aisha (Supra)**, the Division Bench held that copy of the copy is not admissible as per the provisions of the Evidence Act. The said principle was up held by the Apex Court.

28. In **V. Hanumantha Rao v. Inder Singh**⁴, the High Court of Andhra Pradesh at Hyderabad, held that “so long as the documents are in the custody of the Court, whether they are marked as exhibits or not, the Court is bound to grant certified copies thereof, provided those are not documents, certified copies of which cannot be granted.”

29. It is also relevant to note that Section - 2 (14) of the Indian Stamp Act deals with the definition of “Instrument”. The Hon'ble Apex Court in **Jupudi Kesava Rao v. Pulavarthi Venkata Subbarao**⁵, considered the scope of the said definition and held that instrument includes every document by which any

⁴. C.R.P. No.1132 of 1968, decided on 10.04.1969

right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded. There is no scope for inclusion of copy of a document as an instrument for the purpose of the Stamp Act.

30. It is also relevant to note that referring to the principle laid down by it in **Jupudi Kesava Rao**⁵, a Three-Judge Bench of the Hon'ble Apex Court in **Hariom Agrawal v. Prakash Chand Malviya**⁶ held that by various authorities of the Apex Court, an instrument is held to be an original instrument and does not include a copy thereof. Thus, the Hon'ble Apex Court has considered the Legislative intent of the definition of 'instrument' under Section - 2 (14) of the Indian Stamp Act.

31. In view of the law laid down in the judgments cited supra, coming to the facts of the case on hand, as discussed supra, in the above said suit, the original documents exhibited and marked as Exs.A11 to A14 were returned to the plaintiff therein on her application filed on the condition of substituting the original documents with certified copies. Only certified copies of the above

⁵. AIR 1971 SC 1070

⁶. 2007 AIR SCW 6368

said Exs.A11 to A14 are available in the suit, O.S. No.735 of 2008. The petitioner herein, third party to the said suit, had filed Copy Application to furnish copies of the said certified copies, which is impermissible. Therefore, the Court below rightly refused the application filed by the petitioner herein. There is no error in it.

32. In view of the above said facts and circumstances and also the discussion, this Court does not see any merit in the present revision and the same is liable to be dismissed.

33. The Civil Revision Petition is accordingly dismissed. However, there shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the revision shall stand closed.

K. LAKSHMAN, J

27th April, 2022

Note: L.R. copy to be marked.
(B/O.) Mgr