

SB Civil writ Petition No.2796/2005

Hanuman Bux & Ors. v. Shri Srinivas & Ors.

Date of Order        ::        19<sup>th</sup> December, 2005

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. J.K.Bhaiya, for the petitioners.  
Mr. Vikas Balia        ]  
Mr. D.D.Chitlangi] for the respondents.

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The plaintiff respondent No.1 in his statement exhibited an original trust deed as Ex.3, certified copy of the same was put before him during the course of cross examination. Counsel for the petitioners objected it on the ground that certified copy is a piece of secondary evidence and on basis of it no question could be asked, as the original document itself is on record as Ex.3. The objection so raised was accepted by the trial court and by order impugned dated 26.4.2005 counsel for the defendants was restrained from asking any question to PW-1 Shri Srinivas on basis of certified copy of the trust deed Ex.3. The trial court granted permission to counsel for the defendants to ask question to PW-1 on basis of document Ex.3.

Being aggrieved by order dated 26.4.2005 the instant petition for writ is preferred by the petitioners with a contention that the court below erred while restraining counsel for the defendants from asking question during cross examination by

producing certified copy of trust deed Ex.3 as the provisions of Order 13 Rule 1(3)(a) restrains the application of sub-rule(1) of Order 13 Rule 1 CPC. According to counsel for the petitioners a document can always be produced before a witness of other party during cross examination.

On the other hand, contention of counsel for the respondents plaintiffs is that present one is not a case for production of document before the witness of other party. According to him certified copy which is sought to put forward in evidence is admittedly not a public document and original of it is already on record, therefore, the same is inadmissible in evidence. To substantiate the contention reliance is placed upon a Division Bench judgment of this Court given in the case of Kirpal Singh v. Mst. Kartaro and others, reported in AIR 1980 Rajasthan 212, wherein Hon'ble Division Bench held as under:-

“Now, we have something interesting about this condition. The original agreement Ex.1 has been produced by the plaintiff and proved by the scribe D.W.1 Ramchander and attesting witnesses D.W.2 and D.W.3 Charandass and Shriram respectively. Ex.1 does not contain any clause that the possession of a part of the land which was to be delivered to the plaintiff on 13.1.1968 would be handed over back to the defendant in case of default by the defendant to execute the sale deed. However,

such a condition is contained in Ex.2., copy of the agreement contained in the register of P.W.1 Ramchander - scribe. P.W.1 Ramchander states that the defendants was known to him from before but not the plaintiff, and that Ex.1 was scribed by him at the instance of the defendant and that the defendant had put his signaures on it in his presence and had admitted the contents of the same. Then, he states that there is a copy of Ex.1 contained in his register. It may be noted that he is not a petition-writer maintaining a regular register of the petitions scribed by him. All that he says is that Ex.2 is not a copy of Ex.1. He does not say that Ex.2 was prepared from or compared with the original Ex.1. A document is required to be proved by primary evidence and only under certain circumstances when primary evidence is not available, then the contents of the document may be proved by secondary evidence. In order that an uncertified copy of the document may be admitted in evidence, it is necessary that the copy must be prepared from or compared with the original. But in the present case Ramchander P.W.1 nowhere states that he prepared Ex.2 from Ex.1 or compared it with Ex.1. In this view of the matter, the primary evidence having been let in, secondary evidence of the same, according to us, was inadmissible in evidence more particularly when it does not satisfy the requirements of being a copy from or compared with the original. Mr. Hastimal, however, strongly urged that it is a document produced by the plaintiff's witness at the instance of the plaintiff, and,

therefore, the plaintiff is bound by the same. We regret, we cannot accept this contention. When the primary evidence is on the record, no credence whatever can be given to Ex.2 even though it has been produced by the plaintiff's witness. We are, therefore, of opinion that the learned Single Judge was not justified in pressing into service the contents of Ex.2 which did not exist in the primary document Ex.1."

`Learned trial court also passed the order impugned dated 26.4.2005 by relying upon the Division Bench judgment above.

Heard counsel for the parties.

In the instant case the counsel for the defendants want to ask a question in cross examination to plaintiff's witness by producing certified copy of the trust deed Ex.3 for the purpose of corroboration and contradiction. According to defendant petitioners some difference exists in original trust deed and its certified copy. However, there is no dispute that certified copy of the trust deed Ex.3 is a secondary evidence. A secondary evidence may be given of the existence, conditions or contents of a document in the cases enumerated in Section 65 of the Indian Evidence Act, 1872 (hereinafter referred to as "the Act of 1872"). In the present case not a single circumstance as enumerated in Section 65 of the Act of 1872 exists.

The trust deed is not a public document as defined under Section 74 of the Act of 1872, as such it is certainly a private document. When the original document itself is on record then it is required to be proved by it only being primary evidence. The trial court, therefore, rightly accepted the objection and restrained counsel for the defendants to ask questions during cross examination to PW-1 on basis of certified copy of document Ex.3. The provisions of Order 13 Rule 1(3)(a) is having no application in present set of facts as the document sought to be produced is already available on record in its original. The law laid down by this Court in the case of Kirpal Singh (supra) is having total application in present controversy.

In view of whatever discussed above, I do not find any error in the order impugned which may warrant interference of this Court in its extraordinary as well as supervisory jurisdiction. The writ petition, therefore, is dismissed with no order as to costs.

( GOVIND MATHUR ),J.

kkm/ps.