Smt. J. Yashoda vs Smt. K. Shobha Rani on 19 April, 2007

Equivalent citations: AIR 2007 SUPREME COURT 1721, 2007 (5) SCC 730, 2007 AIR SCW 662, 2007 AIR SCW 2713, 2007 (2) ALL LJ 241, 2007 (4) AIR KAR R 20, (2007) 55 ALLINDCAS 261 (SC), 2007 (3) SCC(CRI) 9, 2007 (6) SCALE 6, (2008) 2 MAD LJ(CRI) 1772, (2007) 3 ALLMR 823 (SC), (2007) 2 CLR 562 (SC), (2007) 3 LANDLR 683, (2007) 3 CTC 781 (SC), (2007) 68 ALL LR 146, (2007) 6 BOM CR 783, (2007) 3 ICC 629, 2007 (1) UPLBEC 647, 2007 (3) ALL MR 823, 2007 (2) CLR 562, 2007 (2) HRR 8, 2007 (2) SCALE 356, 2007 (2) SCC 461, 2007 (55) ALLINDCAS 261, (2007) 51 ALLINDCAS 749 (SC), (2007) 3 CIVILCOURTC 195, (2007) 2 RECCIVR 840, (2007) 6 SCALE 6, (2007) 1 RENCR 466, (2007) 103 REVDEC 191, (2007) 2 ALL RENTCAS 834, (2007) 104 CUT LT 503, (2007) 2 KER LT 804, (2007) 2 CAL LJ 70, (2007) 3 CURCC 170, (2007) 2 LANDLR 525, (2007) 2 MAD LJ 663, (2007) 3 RAJ LW 2258, (2007) 1 UPLBEC 647, (2007) 1 SUPREME 765, (2007) 2 ICC 244, (2007) 2 SCALE 356, (2007) 3 ANDH LT 38, (2007) 2 ALL WC 1681, (2007) 3 CIVLJ 211, (2007) 2 UC 659, (2007) 1 RENTLR 640, (2007) 2 WLC(SC)CVL 253, (2007) 3 MAD LW 1066, (2007) 3 ALL WC 2353, (2007) 2 ALL RENTCAS 194, (2007) 3 CIVILCOURTC 798, (2007) 4 MAH LJ 43, (2007) 4 MAD LJ 958, (2007) 2 ORISSA LR 166, (2007) 3 PUN LR 310, (2007) 5 SUPREME 293, (2007) 3 CAL HN 139, (2007) 3 ALLMR 1 (BOM), (2007) 3 BOM CR 118

Author: Arijit Pasayat

Bench: Arijit Pasayat, Lokeshwar Singh Panta

CASE NO.:
Appeal (civil) 2060 of 2007

PETITIONER:
Smt. J. Yashoda

RESPONDENT:
Smt. K. Shobha Rani

DATE OF JUDGMENT: 19/04/2007

BENCH:
Dr. ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:

J U D G M E N T (Arising out of S.L.P. (C) No.12625 of 2005) Dr. ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is to the judgment rendered by a learned Single Judge of the Andhra Pradesh High Court allowing the civil revision petition filed. Challenge in the said petition was to the order dated 3.11.2003 in OS No. 30 of 1999 on the file of learned First Additional Chief Judge, City Civil Court, Secunderabad wherein document Exh. B-1 to B-8 were marked and taken as secondary evidence. The challenge in the civil revision was that the aforesaid documents could not have been marked and taken as secondary evidence since they are photo copies.

Learned Single Judge held that the documents which were sought to be received and marked as secondary evidence are photo copies. It was noted that it may be a fact that the original of the documents are not available with the parties but at the same time the requirement of Section 63 of the Indian Evidence Act, 1872 (in short the 'Act') is that a document can be received as an evidence under the head of secondary evidence only when the copies made from or compared with the original are certified copies or such other documents as enumerated in the above section. The High Court found the photo copies can not be received as secondary evidence in terms of Section 63 of the Act and they ought not to have been received as secondary evidence. Since the documents in question were admittedly photo copies, there was no possibility of the documents being compared with the originals. Accordingly the Civil Revision was allowed.

Learned counsel for the appellant submitted that a rigid view has been taken by the High Court. The High Court could not have ignored the mandatory requirements as contemplated under Section 63 of the Act more specifically when the Section provides that when the copies made from the evidence can be adduced as secondary evidence. It was further submitted that the mandatory prescriptions in Section 65(a) of the Act have been lost sight of.

Learned counsel for the respondent on the other hand supported the judgment of the High Court stating that the requirement of Section 65(a) have not been fulfilled in this case and the High Court rightly held that the documents could not have been accepted as secondary evidence.

In order to consider rival submissions it is necessary to take note of Sections 63 and 65 (a). Sections 63 and 65(a) reads as follows:

> "63 : Secondary evidence Secondary evidence means and includes (1) certified copies given under the provisions hereinafter contained;
>
> (2) copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy and copies compared with such copies; (3) copies made from or compared with the original;
>
> (4) counterparts of documents as against the parties who did not execute them;

> (5) oral accounts of the contents of a document given by some person who has himself seen it.

65. Cases in which secondary evidence relating to documents may be given Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:-

> (a) When the original is shown or appears to be in the possession or power- of the person against whom the document is sought to be proved or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in Section 66, such person does not produce it."

Secondary evidence, as a general rule is admissible only in the absence of primary evidence. If the original itself is found to be inadmissible through failure of the party, who files it to prove it to be valid, the same party is not entitled to introduce secondary evidence of its contents.

Essentially, secondary evidence is an evidence which may be given in the absence of that better evidence which law requires to be given first, when a proper explanation of its absence is given. The definition in Section 63 is exhaustive as the Section declares that secondary evidence "means and includes" and then follow the five kinds of secondary evidence.

The rule which is the most universal, namely that the best evidence the nature of the case will admit shall be produced, decides this objection that rule only means that, so long as the higher or superior evidence is within your possession or may be reached by you, you shall give no inferior proof in relation to it. Section 65 deals with the proof of the contents of the documents tendered in evidence. In order to enable a party to produce secondary evidence it is necessary for the party to prove existence and execution of the original document. Under Section 64, documents are to be provided by primary evidence. Section 65, however permits secondary evidence to be given of the existence, condition or contents of documents under the circumstances mentioned. The conditions laid down in the said Section must be fulfilled before secondary evidence can be admitted. Secondary evidence of the contents of a document cannot be admitted without non-production of the original being first accounted for in such a manner as to bring it within one or other of the cases provided for in the Section. In Ashok Dulichand v. Madahavlal Dube and Another [1975(4) SCC 664], it was inter alia held as follows:

> "After hearing the learned counsel for the parties, we are of the opinion that the order of the High Court in this respect calls for no interference. According to clause (a) of Section 65 of Indian Evidence Act, Secondary evidence may be given of the existence, condition or contents of a document when the original is shown or appears to be in possession or power of the person against whom the document is sought to be proved or of any person out of reach of, or not subject to, the process of the Court of any person legally bound to produce it, and when, after the notice mentioned in Section 66 such person does not produce it. Clauses (b) to (g) of Section 65 specify some other contingencies wherein secondary evidence relating to a document may be

given, but we are not concerned with those clauses as it is the common case of the parties that the present case is not covered by those clauses. In order to bring his case within the purview of clause (a) of Section 65, the appellant filed applications on July 4, 1973, before respondent No. 1 was examined as a witness, praying that the said respondent be ordered to produce the original manuscript of which, according to the appellant, he had filed Photostat copy. Prayer was also made by the appellant that in case respondent no. 1 denied that the said manuscript had been written by him, the photostat copy might be got examined from a handwriting expert. The appellant also filed affidavit in support of his applications. It was however, nowhere stated in the affidavit that the original document of which the Photostat copy had been filed by the appellant was in the possession of Respondent No. 1. There was also no other material on the record to indicate the original document was in the possession of respondent no.1. The appellant further failed to explain as to what were the circumstances under which the Photostat copy was prepared and who was in possession of the original document at the time its photograph was taken. Respondent No. 1 in his affidavit denied being in possession appeared to the High Court to be not above suspicion. In view of all the circumstances, the High Court to be not above suspicion. In view of all the circumstances, the High Court came to the conclusion that no foundation had been laid by the appellant for leading secondary evidence in the shape of the Photostat copy. We find no infirmity in the above order of the High Court as might justify interference by this Court."

The admitted facts in the present case are that the original was with one P. Srinibas Rao. Only when conditions of Section prescribed in Section 65 are satisfied, documents can be admitted as secondary evidence. In the instant case clause (a) of Section 65 has not been satisfied. Therefore, the High Court's order does not suffer from any infirmity to warrant interference.

The appeal fails and is dismissed but in the circumstances without any order as to costs.