

Mahendra Investment Advisors Pvt. Ltd. and Others Vs Md. Abdul Asad Aleem and Others

Court: Andhra Pradesh High Court

Date of Decision: Nov. 13, 2008

Acts Referred: Evidence Act, 1872 " Section 63, 65, 66, 74
Registration Act, 1908 " Section 57, 57(3)

Citation: (2009) 2 ALD 284 : (2009) 2 ALT 516

Hon'ble Judges: P.S. Narayana, J

Bench: Single Bench

Advocate: Manjiri S. Ganu, for the Appellant; Md. Shafiuddin, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

P.S. Narayana, J.

Heard Ms. Manjiri S. Ganu, learned Counsel representing the petitioners and Mr. Mohd. Shafiuddin, learned Counsel representing Mr. J. Prabhakar, counsel for the contesting respondents.

2. The civil revision petition is filed as against the order made in I.A. No. 644 of 2008 in O.S. No. 588 of 2006 on the file of the II Additional

District Judge, Ranga Reddy District at L.B. Nagar. The petitioners as plaintiffs filed the said suit O.S. No. 588 of 2006 praying for the relief of

specific performance of the agreement of sale. The said application I.A. No. 644 of 2008 in O.S. No. 588 of 2006 aforesaid was filed by the

petitioners-plaintiffs u/s 65 of the Indian Evidence Act, 1872 (hereinafter for short would be referred to as "the Act" for the purpose of

convenience) praying for reception and admit all the documents specified in the application as secondary evidence. The procedure of serving notice

for production of the originals had been followed. The learned Judge by order dated 11.4.2008 came to the conclusion that the petitioners are not

entitled to adduce Photostat copies of the documents, but, however, can obtain the extracts of sale deeds and GPA documents from the

Registration Department and can produce them and so also the petitioners also can obtain the certified copies of pahanies and can produce them

as documentary evidence on their behalf and hence the petitioners are not entitled to adduce the Photostat copies of documents as secondary

evidence as prayed for and accordingly dismissed the application with costs. Aggrieved by the same, the present civil revision petition had been

preferred.

3. Ms. Manjiri S. Ganu, learned Counsel representing the revision petitioners had taken this Court through the respective stands taken by the

parties in the respective pleadings and also the contents of the notice issued u/s 66 of the Act and the reply filed thereto and further had taken this

Court through the contents of the affidavit filed in support of the application and the stand taken in the counter affidavit of respondents 1 and 2. The

learned Counsel would maintain that the reasoning adopted by the learned Judge cannot be sustained since the copies of the registered General

Power of Attorney specified as items 7 and 8 cannot be obtained from the Registration Department in the light of limitations and prohibitions

imposed by Section 57(3) of the Indian Registration Act. The learned Counsel also would further maintain that it is not the case of the other side

that conditions specified u/s 65(a) of the Act had not been complied with, when the said conditions are satisfied the application for reception of the

documents as secondary evidence should have been allowed by the learned Judge and after recording certain reasons the learned Judge had

chosen to dismiss the said application. The counsel also had drawn the attention of this Court to Section 65(e) and (f) of the Act as well and further

had drawn attention of this Court to Sections 63 and 66 of the Act and would further maintain that inasmuch as the conditions are satisfied the

dismissal of the application is not justified. Further, the learned Counsel made certain submissions relating the aspect of public documents. The

learned Counsel also would maintain that as far as pahanies are concerned, these are copies of the certified copies obtained from the revenue

office, but, however, as far as other documents are concerned these are all Xerox copies of the original documents in the custody of the opposite

party and in view of the fact that the conditions specified under Sections 65 and 66 of the Act having been complied with the reasons recorded by

the learned Judge that copies can be obtained from the Registration Department is an unsustainable reason. The counsel also placed strong reliance

on certain decisions to substantiate her submissions.

4. Per contra, Mr. Mohd. Shafiuddin representing Mr. J. Prabhakar, learned Counsel representing the contesting respondents while making

elaborate submissions would maintain that when the very documents are inadmissible the question of receiving Xerox copies of such documents by

way of secondary evidence would not arise. The learned Counsel specifically pointed out to the clear strikings made on these documents especially

the sale deeds. The learned Counsel also had drawn attention of this Court to Sections 63 and 66 of the Act and specifically pointed out to the

stand taken in the reply to the notice. Further, the learned Counsel would maintain that may be in the light of Section 57(3) of the Indian

Registration Act the documents i.e., copies of the power of attorney, since cannot be obtained by the petitioners from the Registration Department

such documents may be received by way of secondary evidence. The counsel also would further maintain that as far as other documents are

concerned, they cannot be received as secondary evidence. The counsel also specifically pointed out to the documents which had been referred to

and the documents which had been specified in the plaint and further pointed out to certain irrelevant documents also are being produced to be

received as secondary evidence and this is also impermissible. To substantiate his submissions, the learned Counsel also placed reliance on certain

decisions.

5. Heard the counsel.

6. Petitioners as plaintiffs instituted the suit O.S. No. 588 of 2006 on the file of the II Additional District Judge, Ranga Reddy District, praying for

the relief of specific performance of an agreement of sale. Defendants 1 and 2 had denied the transaction and had taken a stand that the 3rd

defendant had no such authority to enter into any transaction on their behalf. No doubt, it is the case of the petitioners that the 3rd defendant

handed over the said Xerox copies of title deeds and power of attorney to the petitioners-plaintiffs while making negotiations. Several other facts

also had been narrated. It is not in serious dispute that the plaintiffs had issued notice u/s 66 of the Act on 2.4.2008 to Sri J. Prabhakar, counsel

for defendants 1 and 2 and Sri Md. Shujauddin, counsel for defendant No. 3 mentioning that the originals are in possession of defendants 1 and 2

and defendant No. 3 and called upon them to produce the originals by listing them as documents 1 to 11 in the said notice. The counsel for

defendants 1 and 2 got issued a reply notice on 8.4.2008 denying handing over of Xerox copies by defendant No. 3 to the petitioners-plaintiffs

and no doubt certain further objections also had been taken in view of the fact that defendants were not inclined to produce the documents though

copies had been issued an application in I.A. No. 644 of 2008 was filed u/s 65 of the Act praying for admission to lead secondary evidence in

relation to the Xerox copies of the said documents. The said application was opposed and the learned Judge after recording reasons dismissed the

application. Being aggrieved of the same, the petitioners-plaintiffs had preferred the present civil revision petition.

7. The notice issued u/s 66 of the Act reads as hereunder:

Along with the plaint filed in the above suit, the plaintiffs have filed Xerox copies of title deeds and other link documents of defendants 1 and 2 in

respect of the suit schedule property. Existence of originals of the said documents is not in dispute. Defendant No. 3 has admitted in his written

statement in para 4 that he has handed over a set of Xerox copies of the documents in his possession at the request of Mr. Nirmal Kumar Pandey

i.e., the representative of the plaintiffs to him. The originals of the said documents are admittedly in possession of defendants 1 and 2 on one part

and defendant No. 3 on the other. The defendants 1 and 2 as well as defendant No. 3 are, therefore, hereby called upon to produce the originals

of the below mentioned documents.

The defendants are also put to notice that in absence of the same, the plaintiffs are entitled to lead secondary evidence in respect of the said

documents u/s 65 of Evidence Act. The notice is, therefore, being issued in compliance with the provisions of Section 65 read with Section 66 of

Evidence Act calling upon the defendants to produce originals of the below mentioned documents.

1. Xerox copy of original sale deed dt. 19.12.1992 being document No. 11832/92.
2. Non encumbrance certificates from 1970 to 1982.
3. Xerox copy of link document of Syed Abdul Aziz i.e., Sale deed dt. 17.6.1977 being document No. 108/1977.
4. Copy of Pahani for the year 1975-76 and 1976-77.
5. Copy of Pahani for the year 1990-91, 1991-92, 1992-93, 1993-94.
6. Copy of Pahani for the year 1994-95, 1995-97
7. Xerox copy of registered General Power of Attorney executed by defendant No. 1 in favour of defendant No. 3 being document No. 1353/92,
8. Xerox copy of registered General Power of Attorney executed by defendant No. 2 in favour of defendant No. 3 being document No. 2203/91.
9. Xerox copy of pattedar passbook in respect of suit schedule property.
10. Copy of memo issued by Mandal Revenue Officer, dt. 13.4.2006.
11. Copy of memo issued by Dy. Mandal Revenue Officer, dt. 13.4.2006.

8. In reply filed to the said notice, it was stated as hereunder:

1. We are in receipt of notice dt. 2.4.2008 u/s 66 of the Evidence Act. The contention of your clients that defendant No. 3 admitted in his written

statement about handing over a set of Xerox copies of the documents in his possession at the request of Mr. Nirmal Kumar Pandey, i.e., the

representative of the plaintiffs, to him, is incorrect and hence denied.

2. Out of the documents now set out at Sl. Nos. 1 to 11 in your notice, it is noticed that document Nos. 10 and 11 do not figure anywhere in the

list of documents filed along with the plaint. Therefore, it is clear that the same are now sought to be pressed into service and never formed part of

the record before this Hon"ble Court, the same having not been referred to even in the plaint.

3. The documents referred to are public documents and as such, the plaintiffs can as well obtain certified copies. However, Xerox copies can

neither be received in evidence nor marked as exhibits. The handing over of the documents by defendant No. 3 as alleged in the notice, plaint and

affidavit of evidence of P.W.1 are specifically denied. The said allegations are incorrect. Hence this reply.

9. In the affidavit filed in support of the application, it is averred that the suit had been instituted praying for the relief of specific performance in

respect of the suit schedule property. Admittedly copies of the title deed and link documents in respect of the suit schedule property as well as

copies of power of attorneys in favour of defendant No. 3 by the defendants 1 and 2 were handed over to the plaintiffs by defendant No. 3.

Defendant No. 3 has specifically admitted to this effect in para 4 of his written statement as follows:

That as it is open land his brother-in-law and sister did not give him GPA of this particular piece of land and more over this particular piece of

property was acquired after the GPA was given to him in the year 1991-92, however, he was having one set of Xerox copies of the properties of

his brother-in-law and sister and some other relatives. At the request of Mr. Nirmal pandey, the defendant passed on the same to him.

10. It is also stated that admittedly the said document filed along with the plaint being documents in respect of title of defendants 1 and 2 at SI.

Nos. 1 to 6 and 8 to 12 are the copies handed over to the plaintiffs by defendant No. 3. The existence of originals thereof is not in dispute and in

any case a separate notice had been issued u/s 66 of the Act calling upon the defendants to produce the originals. In the absence of the same,

Xerox copies furnished by the defendants especially by defendant No. 3 to the plaintiffs as explained being admissible as secondary evidence and

the same to be received. In the application filed u/s 66 of the Act, the documents 1 to 11 had been specified. Counter affidavit had been filed by

respondents 1 and 2. Specific stand had taken to the allegation that the link documents in respect of the suit schedule property as well as copies of

Power of Attorneys in favour of defendant No. 3 by defendants 1 and 2 were handed over to the plaintiffs by the defendant No. 3 is not correct. It

was also averred that the contention of the plaintiff that defendant No. 3 admitted in his written statement about handing over a set of Xerox copies

of the documents in his possession at the request of Mr. Nirmal Kumar Pandey i.e., the representative of the plaintiff to him is incorrect and hence

denied. Further, it is stated that the documents set out at S. Nos. 1 to 11, the document Nos. 10 and 11 do not figure any where in the list of

documents filed along with the plaint. Hence, it is clear that the same are not sought to be pressed into service and never formed part of the record.

Thus, the petitioners are not entitled to mark Xerox copies of these documents. In the counter affidavit filed by respondent No. 3, relevant

provisions of Sections 63, 64 and 65 of the Act had been referred to and the said allegation had been specifically denied and dismissal of the

application had been prayed for. The learned Judge having formulating the point for consideration at para 3, came to the conclusion that as per

Section 65 of the Act the petitioners are not entitled to adduce Photostat copies of the documents, but obtain the extracts of sale deeds and GPA

documents from the Registration Department and can produce them and so also the petitioners can obtain certified copies of pahanies and can

produce them as a documentary evidence on their behalf and hence the petitioners are not entitled to adduce the Photostat copies of documents as

a secondary evidence as prayed for.

11. Section 57 of the Registration Act, 1908 deals with Registering officers to allow inspection of certain books and indexes, and to give certified

copies of entries. Section 57(3) of the Act specifies subject to the same provisions, copies of entries in book No. 4 and in the Index relating

thereto shall be given to any person executing or claiming under the documents to which such entries respectively refer, or to his agent or

representative. In the light of the clear language of Section 57(3) of the Registration Act, it is needless to say that copies of General Power of

Attorneys shown as Sl. Nos. 7 and 8 cannot be obtained by the revision petitioners. In the light of the same, the reasons recorded by the learned

Judge in this regard that the extracts of these documents can be obtained from the Registration Department cannot be sustained. However, certain

submissions were made relating to the strikings made in the copies of sale deeds. This being a factual controversy, at this stage this Court is not

inclined to express any opinion. Sl. No. 1 is the Xerox copy of registered sale deed dated 19.12.1992 being document No. 11832 of 1992.

Section 63 of the Act dealing with secondary evidence reads as hereunder:

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 insure 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.

12. Section 65 of the Act deals with cases in which secondary evidence relating to documents may be given and the relevant clauses on which

strong reliance had been placed are (a), (e) and (f) and said clauses read as under:

(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;

(e) when the original is a public document within the meaning of Section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in India, to be given in evidence;

13. Section 66 of the Act dealing with rules as to notice to produce reads as hereunder:

Rules as to notice to produce:- Secondary evidence of the contents of the documents referred to Section 65, Clause (a), shall not be given unless

the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his

attorney or pleader, such notice to produce it as is prescribed by law; and if no notice is prescribed by law then such notice as the Court considers

reasonable under the circumstances of the case;

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case

in which the Court thinks fit to dispense with it:

(1) when the document to be proved is itself a notice;

(2) when, from the nature of the case, the adverse party must know that he will be required to produce it;

(3) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force;

(4) when the adverse party or his agent has the original in court;

(5) when the adverse party or his agent has admitted the loss of the document;

(6) when the person in possession of the document is out of reach of or not subject to, the process of the Court.

14. It is not in controversy that the procedure contemplated u/s 66 of the Act had been complied with. Section 74 of the Act deals with public

documents and the said provision reads as hereunder:

Public documents:- The following documents are public documents:

(1) documents forming the acts or records of the acts:

(i) of the sovereign authority

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive, of any part of India or of the Commonwealth, or of a foreign country;

(2) Public records kept in any State of private documents.

15. Sl. No. 2 is a Xerox copy of non encumbrance certificates from 1970 to 1982. Sl. No. 3 is the Xerox copy of link document of Sayed Abdul

Aziz i.e., sale deed dated 17.6.1977 being document No. 108 of 1977. Sl. Nos. 4, 5 and 6 are the copies of pahanies. Sl. No. 7 is the Xerox

copy of registered General Power of Attorney executed by defendant No. 1 in favour of defendant No. 3 being document No. 1353 of 1992. Sl.

No. 8 is the Xerox copy of registered General Power of Attorney executed by defendant No. 2 in favour of defendant No. 3 being document No.

2203 of 1991. Sl. No. 9 is the Xerox copy of pattedar pass book in respect of suit schedule property. Sl. No. 10 is the copy of memo issued by

Mandal Revenue Officer dated 13.4.2006. Sl. No. 11 is the copy of memo issued by Deputy Mandal Revenue Officer dated 13.4.2006.

16. In Mst. Bibi Aisha and Others Vs. The Bihar Subai Sunni Majlis Avaqaf and Others, while dealing with Section 65(a) and (f) of the Act

approving the view expressed in (1879) ILR 5 Cal. 568, the Apex Court observed that when cases falls under Clause (a) in secondary evidence

(a plain copy of document) and not necessarily certified copy of document is admissible, though the case may also falls under Clause (f).

17. In Sajana Granites, Madras and Another Vs. Manduva Srinivasa Rao and Others, the Division Bench of this Court while dealing with Section

63 of the Act observed as para 12 as under:

Therefore, the question as to who is the owner of the suit property has to be gone into independently, irrespective of the allegation that a patta was

granted in respect of the suit property under the Estates Abolition Act. Since Ex.A-11 is not the patta, which is the primary evidence, and is only

an extract from the revenue register, it is secondary evidence on the issue relating to grant of patta. Since no record from the Office of the

Settlement Officer was summoned to show that the Settlement Officer examined the history of the suit property, and since Supreme Court in

Keshavram case, Jagtsingh case and M. Papaiah case held that entries in revenue records do not confer title, nor are conclusive of title, relying

merely on Ex.A-11 and Ex.A-12 appellants cannot seek a declaration of their title to the suit property.

18. Strong reliance was placed on the decision of the Division Bench of this Court in Badrunnisa Begum Vs. Mohamooda Begum, wherein the

Division Bench was pleased to observe at para 5 as under:

The learned Counsel for the appellant (defendant) submits that under illustration (c) a copy transcribed from a copy but compared with the original

is secondary evidence, but the copy not so compared is not secondary evidence of the original although the copy from which it was transcribed

was compared with the original. Now, if one goes by this illustration in the light of the evidence that is on record, one finds that there is no evidence

whatsoever showing thereby that the copy taken from the copy was compared with the original. What the plaintiff has tried to do is that, she has

tried to prove comparison of the copy with the copy by exhibiting Ex.A-32 which is a photo-copy along with the negatives. The requirement of

illustration (c) was that the copy taken from the copy should have not been done in view of the pleadings of the plaintiff herself as the original was

not with her. In order to get the benefit u/s 65(a) three things have to be shown: (1) that the document is, or appears to be, in the possession or

power of the person against whom the document is sought to be proved; (2) it is in possession of any person out of reach, or not subject to the

process of the Court, or of any person legally bound to produce it; and (3) that even after a notice u/s 66 the person who has its custody does not

produce it. Section 66 lays down the mode of getting the document before the Court. Under this section the person who wants the document has

to give a notice to the person in whose custody the document is, and if no such notice is prescribed under law then a notice which the Court may

consider reasonable. Therefore, Section 63 of the Evidence Act lays down what can be termed a secondary evidence and Section 65 lays down in

which situations secondary evidence can be led. Section 65(a) does not in any way make a copy of a copy admissible in evidence as it is barred

u/s 63.

19. In B. Poornima Vs. Thoomu Ramdasu and Others, it was observed at para 13 as under:

Before parting with the case it is made clear that admissibility of secondary evidence of certified copy of a document given by the Sub Registrar or

Registrar's office and the procedure specified under Sections 65 and 66 of the Act are more procedural in nature and on procedural technicalities

the substantive rights of the parties cannot be defeated. Here I a case where the daughter who is fighting a suit for partition, had taken a specific

stand that the present heirs representing Varadarajulu branch are also hand-in-glove with the defendants, on the ground that a futile exercise of

notice, had not been exercised by the petitioner, to record a finding to that effect and declining to receive the document in question, in the facts and

circumstances of the case, is not warranted. This Court is thoroughly satisfied that in the facts and circumstances of the case, the petitioner is

entitled to adduce the document in question as secondary evidence. But, however, all other questions as to how far the recitals would be helpful

and the proof thereof, these questions are left open to be decided by the learned Judge at the appropriate stage.

20. In N.S. Prakash Rao Vs. Bala Krishna and Another, the learned Judge of this Court observed as para 6 as under:

Documents can be proved either by primary evidence or secondary evidence. Primary evidence means the document itself. Secondary evidence

means certified copies of the documents, copies made from the original by mechanical process, copies compared with such copies and/or copies

made from or compared with the original (Sections 61, 62 and 63 of the Act). All documents as far as possible must be proved by primary

evidence and secondary evidence may be given of the existence of the conditions or contents of the document, in the circumstances as defined u/s

65, of the Act, if the original is shown or appears to be proved and after issuing notice to the person in possession of original document (Sections

65(a) and 66 of the Act). Requirement of law is to give a notice to the possessor of the original document and in case he fails to produce original,

secondary evidence can be offered, it may also be noticed that merely because secondary evidence is received the same does not amount to be

proof. Even while secondary evidence is produced and permitted, document has to be proved in accordance with principles of evidence.

21. In Achutya Subba Rao v. Mukthipudi Devasahayam 2006 (5) ALT 502 following the decision in Trilokchand Jain Vs. Gurrapu Rajamouli and

Another, it was held at paras 7 and 8 as under:

In the context of permitting the secondary evidence, Section 65 of the Act provides for various circumstances. One of the conditions is that when

the original is shown or appears to be in possession or power of any person, who is legally bound to produce it. It hardly needs any emphasis that

the promissory note is expected to be in the possession or custody of the lender. In case he has returned it to the borrower, after discharge of the

debt, necessary facts in relation thereto are required to be stated in a given case, even a receipt evidencing the return of the documents may help.

It is true that granting permission to adduce secondary evidence is not a matter of course and before granting such permission, the Court must be

satisfied as to the existence of the document as well as its contents. It was so held by this Court in Trilokchand Jain's case. In fact that is the

requirement under Clause (b) of Section 65 of the Act, where, however, existence of original document is not disputed by the person who is

supposed to hold its custody, the burden of the person, who proposes to adduce secondary evidence, gets substantially lightened. On receiving

notice u/s 66 of the Act, if a person, in whose custody the original of the document is supposed to be, does not dispute the existence of such

document, the way for receiving the secondary evidence, virtually gets cleared. So far as the contents of the documents are concerned, the parties

can certainly put forward their contentions, once the document becomes part of the record.

22. In Trilokchand Jain Vs. Gurrapu Rajamouli and Another, while dealing with J. Sathya Narayana v. J. Lakshmiddevamma 2002 (1) An.W.R.

630 (A.P.), the learned Judge observed at para 13 as under:

The first respondent got issued a notice to one Mr. Ladda requiring him to produce the document. The trial Court proceeded under assumption

that issuing of such notice and a non-satisfactory response to it constitutes compliance with Clause (a) of Section 65 of the Act. The trial Court did

not take into account, the fact that the petitioner did not lead any independent evidence to establish that the document is in possession of Mr.

Ladda. He was neither a party to the suit, nor was under any obligation to produce the document. Therefore, the issuance of notice by the

petitioner was of no consequence. It is in such cases, that the circumstances provided for in Clause (b) gets attracted. The person intending to

adduce secondary evidence has to prove to the satisfaction of the Court, the existence, condition, or contents of the original. For this purpose mere

assertion is not sufficient. Independent evidence has to be adduced to show that the document in its original form existed, as to its contents, and

obviously, the availability of it with a particular individual. It is only then, that the secondary evidence of such a document can be received.

Inasmuch as the first respondent did not exist valid basis for the trial Court to receive Xerox copy, as secondary evidence. Reference, in this

context, maybe made to the judgment of this Court in S. Sathya Narayana v. J. Lakshmiddevamma.

23. In Murtaza Moosavi Vs. Hemendra V. Shah and Another, the learned Judge of this Court observed that when the original document in

possession of a party which had not produced in spite of requirement by other party who sought production can lead secondary evidence. The

learned Judge relied upon the decisions in Nawab Singh Vs. Inderjit Kaur, and P. Meharunnissa Begum and Others Vs. P. Noorunnissa Begum

and Others, .

24. In Babulal Shiva Shankar and Sri Brig Mohan Agarwal Vs. Sri Praveen Kumar Agarwal, the learned Judge of this Court held at paras 5 and 6

as hereunder:

The respondent pleaded that he got the quit notice issued through another advocate and that the office copy of that notice handed over to him, was

filed into the Court. The Evidence Act mandates that the documentary evidence has to be adduced, in its original form. Permission, is accorded to

lead secondary evidence in exceptional cases, after ensuring that the steps provided for under Sections 65 and 66 of the Act are complied with, in

the context of marking of an office copy of a notice, somewhat different connotations arise. The reason is that except for the text, the office copy

cannot be said to be original by itself, of the notice. The original of the notice is supposed to be with the recipient thereof. It is only when factum of

service of notice is proved that the question as to the content of the notice becomes relevant. In such an event, the occasion to compare the text of

the office copy, with the one received by the other party, arises.

The person issuing the notice, may some times ensure that the copy retained by him possesses all the characteristics of the one, which is sent to the

other party. It is not uncommon that only rough and unsigned copy, which conforms to the text of the notice, is preserved. Authenticity of such

copy does not depend on the signature of the sender or his counsel. If the proof of the service is established, the party objecting to the text can

certainly confront the sender as to the accuracy and requirements in comparison with the one, received by him. If the service of the notice is not

established, the text and form of the office copy become, almost irrelevant. The effort is only to drive home the point that the characteristics of

secondary evidence, in relation to an office copy of a legal notice, cannot be the same as those of the secondary evidence of original documents.

25. Reliance was also placed on a decision of this Court in K. Krishna Appala Naidu Vs. B. Sohanlal and Others, wherein at paras 11 and 12 the

learned Judge observed as under:

Under what circumstances the secondary evidence relating to document must be proved by primary evidence is an exception to the cases falling

under Sections 65 and 66 of the Evidence Act. The person seeking to produce secondary evidence relating to a document can do so only when

the document is not in his possession, and this is explained in Section 65 of the Evidence Act, particularly in Section 65(a) of the Evidence Act,

which provides that 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, or of any person legally bound to produce it, and when, after

the notice mentioned in Section 66 of the Evidence Act, such person does not produce it. Though u/s 66 of the Evidence Act, the petitioners were

required to issue notice to the person in whose possession the document is, they have not mentioned in whose possession the document is, nor

issued any notice to the person from whom they are seeking to summon the document. To enable a person take recourse to the provisions of

Sections 65 and 66 of the Evidence Act, it is necessary for him to establish that the document sought to be summoned was executed and that the

said document is not with him, but is in possession of the person against whom the application is made to be produced for proving against him.

Another ancillary question that arises for consideration is whether notice is required to be issued to the person in whose possession the document

is, to produce the document. Merely because the person in whose possession the required document is, is himself or herself a party to the suit, the

same cannot be a ground for not giving notice to produce, and where there is nothing on record to show, then it would be ineffective. But if it is

established by the petitioners that the original document is lost or is destroyed or deliberately held by the party against whom they sought to be

used, then in respect of those documents, secondary evidence can be tendered, namely the certified copies of the document available in the

revenue records, unless those are the documents defined u/s 74 of the Act. The other circumstance where notice to the party is not required is by

the very nature of the case, namely the party must be held to be knowing that he would be required to produce it even without an application. It is

not the case of the petitioner-defendants that they issued notice to the respondents-plaintiffs to produce the original of the document sought to be

summoned from the Mandal Revenue Officer, Serilingampally. Mere making of application u/s 65 of the Evidence Act without following the

procedure contemplated u/s 66 of the Evidence Act, is premature.

26. Here is a case where the learned Judge observed that the extracts of sale deeds and GPA documents can be obtained from the Registration

Department to be produced before the court and further observed the petitioners also can obtain certified copies of pahanies and produce the said

documents as documentary evidence before the court and accordingly dismissed the application. As already referred to supra, in the light of the

language of Section 57(3) of the Registration Act the extracts of the registered General Power Attorneys shown as documents at Sl. Nos. 7 and 8

cannot be obtained by the petitioners. As far as sale deeds shown at Sl. Nos. 1 and 3, these are the copies of original sale deeds in the custody of

the opposite parties. The other factual controversy is whether the delivery was effected and whether defendant No. 3 was authorized, these

aspects may have to be gone into at the appropriate stage. Further, the Xerox copies of pattedar passbook and also copies of memos shown at Sl.

Nos. 9, 10 and 11 also are the copies of the original documents in the custody of the opposite party and though notice had been issued, the

opposite party had not produced the same.

27. In the light of the reasons recorded supra and the decisions referred to above, this Court is of the considered opinion that the dismissal of the

application by the learned Judge in toto cannot be sustained. As far as Sl. Nos. 2, 4, 5 and 6 xerox copy of non encumbrance certificate and also

copies of pahanis, these being copies of the copies and in the light of the view expressed by the two Division Benches referred to above, these

cannot be received as secondary evidence. In the light of the same, the petitioners are at liberty to obtain relevant certified copies relating to Sl.

Nos. 2, 4, 5 and 6. As far as other documents are concerned i.e., Sl. Nos. 1, 3, 7, 8, 9, 10 and 11 are concerned, the said documents be

permitted to be received as secondary evidence.

28. It is needless to say that the reception of secondary evidence is something different from marking of the documents. As such, in the light of the

same, liberty is given to the respondents to raise appropriate objections at the time of marking of those documents, if they are so advised.

29. The counsel no doubt pointed out that to probablise and substantiate the transaction, the copies of encumbrance certificate and copies of

pahanies also were being relied upon. The parties are at liberty to raise these contentions also at the appropriate stage.

30. In the light of the reasons specified above, the civil revision petition is partly allowed to the extent indicated above. No order as to costs.