

**HIGH COURT OF TRIPURA
AGARTALA
RSA No.26 of 2022**

Sri Arun Chandra Paul

Son of Late Ashit Ranjan Paul
Resident of Santinagar,
PS – Teliamura,
District – Khowai, Tripura.

----- Appellant-Defendant No.1

Versus

1. Sri Tarun Paul,

Son of Late Ashit Ranjan Paul
Resident of Santinagar,
PS – Teliamura,
District – Khowai, Tripura.

-----Respondent-Plaintiff

2. Smti Apu Rani Paul

Wife of Gopal Paul,
D/o, Late Ashit Ranjan Paul
Resident of village – Sanitala,
P.S.-Sidhai, District-West Tripura

3. Smti Tapu Rani Paul,

Wife of Sri Bikash Paul
D/o, Late Ashit Ranjan Paul
Resident of village – Gollabari,
PS – Teliamura, District – Khowai
Tripura.

4. Smti Shila Rani Paul,

Wife of Sri Babul Paul
Resident of Subhash Park,
P.S. – Khowai, District – Khowai.
Tripura.

-----Respondents-defendants

For Appellant(s) : Mr. Kohinoor N. Bhattacharjee, Adv.

For Respondent(s) : Mr. S. Lodh, Adv.

Date of hearing : 19.02.2024

Date of delivery of
Judgment & Order : 23.02.2024

Whether fit for
reporting : NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This appeal under Section 100 of CPC is preferred challenging the judgment dated 09.12.2021 and decree dated by 06.05.2022 passed by Learned District Judge, Khowai District, Tripura in connection with T.A. No.06 of 2018 dismissing the appeal of the appellant and by affirming the judgment dated 20.03.2018 and decree dated 07.04.2018 passed by Learned Civil Judge (Jr. Division), Khowai in T.S.(Partition) No.08 of 2011.

2. Before proceeding with the merit of the appeal let us discuss the subject matter of the dispute amongst the parties. The respondent-plaintiff and his mother filed one suit for partition before the Court of Learned Civil Judge (Jr. Division), Khowai, Tripura alleging inter alia that the suit land measuring 0.12 acres recorded in Khatian No.739 comprising old C.S. plot no.1241(part) corresponding to Revisional Survey plot No.1999,2001 described in the Schedule of the plaint was originally owned and possessed by one Ashit Ranjan Paul till his death on 29.12.2008 and after that, the respondent-plaintiffs and the defendant i.e. herein referred as the appellant and other pro-respondent-defendants being the legal heirs of deceased enjoyed the suit land jointly. Owing to inconvenience faced by respondent-plaintiffs, they approached the appellant-defendants on 07.02.2011 with a proposal for an amicable partition claiming their 1/3rd shares upon the suit land which

was refused by the appellant-defendant No.1 who was trying to possess the suit land in excess of his entitlement and the other defendants remained silent to the respondent-plaintiffs. Finding no alternative way, the respondent-plaintiffs filed the suit claiming 1/3rd share over the suit land. It is to be noted here that the original plaintiff No.1 was expired, so, by order dated 01.09.2016, her name was struck off from the record.

3. It was the further case of the respondent-plaintiffs that owing to transfer of the shop property owned by their predecessor Ashit Ranjan Paul in favour of the present respondent-plaintiff by registered Gift Deed No.1-2766 recorded in Khatian No.2303 appertaining to C.S. Plot No.2560(part) corresponding to R.S. Plot No.7119/8043, the suit shop was outside the ambit of joint property as it was exclusively owned by the present respondent-plaintiff and this fact was incorporated in the plaint by way of amendment of the plaint.

4. The suit of the respondent-plaintiffs was contested only by the present appellant as defendant No.1 and according to him, all the property of the original owner was not brought into hotchpot. It was further asserted by him that his father had left some shop viti which were not included. It was also stated that the present respondent-plaintiff had claimed to have such shop viti by way of transfer by his father to him. But actually, no such transfer took place and he further submitted that the present respondent-plaintiff ousted all his co-sharers from the suit land and therefore, the suit was not maintainable as no

prayer for recovery of possession was made. It was further asserted by the present appellant-defendant No.1 that he was possessing the suit land for more than 12 years adversely against his co-sharers. Hence, the appellant-defendant No.1 by his written statement prayed for dismissal of the suit with costs.

5. Upon the pleading of the parties, Learned Court below framed the following issues:

I. Whether the suit is maintainable in its present form and nature?

II. Whether the father (Ashit Ranjan Paul) of the plaintiffs and the defendants was the owner of the suit land?

III. Whether the land of Ashit Ranjan Paul under Khatian No.2303 of Teliamura Mouja and Tehshil transferred vide registered Deed No.1-2766 dated : 11.12.2006 in favour of the plaintiff No.2?

IV. Whether the suit land is the joint property of the plaintiffs and the defendants by way of inheritance?

V. Whether the suit land is liable to be partitioned among the plaintiffs and the defendants in equal share each?

VI. Whether the plaintiffs are entitled to get their share as per prayer in the plaint of the suit?

VII. To what other relief/reliefs the parties are entitled to get?

6. To substantiate the issues, both the parties have adduced oral/documentary evidence on record :

Name of the witnesses of the plaintiffs:

- 1. PW-1(plaintiff) : Sri Tarun Paul**
- 2. PW-2 : Sri Jiban Biswas**

Exhibits of the Plaintiffs:

- 1. Exbt 1: Khatian No.739 of Mouja and Tehshil Teliamura.**
- 2. Exbt 2: Khatian No.2303 of Mouja and Tehshil Teliamura.**
- 3. Exbt 3: Certified to be true copy of the Gift Deed No.1-2766 compared with the original volume book.**

Name of the witnesses of the defendants:

- 1. DW-1(defendant) : Sri Arun Chandra Paul**

Exhibits of the Defendants:

- 1. Exbt A: Original agreement dated 02.09.12 containing the signatures of the DW1.**
- 2. Exbt B: Original memorandum dated 25.09.12 containing the signatures of the DW1.**

7. The Learned Trial Court discussed all the issues in detail but decided the issue No.III against the respondent-plaintiff but decreed the suit by a judgment and order. The operative portion of the Judgment runs as follows:

ORDER

I. The plaintiff has demonstrated his title and resultantly the present suit succeeds by holding that the plaintiff is entitled to get preliminary Decree declaring his interest to the extent of 1/5th share of the suit land.

II. As discussed, since the plaintiff has perfected his 1/5th share over the suit land, the defendants are hereby directed to get the suit land to be equally partitioned effectuating the 1/5th share of the plaintiff and consequently the defendants are bound to deliver the possession of 1/5th share of the suit land in favour of the plaintiff.

III. However, the parties shall bear their own costs.

IV. A preliminary decree be drawn up accordingly within the prescribed time.

V. The suit stands disposed of on contest.

VI. Make necessary Entry in the relevant TR.

8. Challenging that judgment, the defendant No.1 of the original suit as appellant preferred an appeal before the Court of Learned District Judge, Khowai District, Tripura which was numbered as T.A. No.06 of 2018 and the Learned District Judge after hearing arguments of both the sides delivered the judgment on 09.12.2021. The operative portion of the judgment of the Learned First Appellate Court runs as follows:

ORDER

In the result, the appeal is dismissed being devoid of merit with cost in favour of respondent no.1.

The parties to this appeal are directed to effectuate the partition of suit land mutually within 03 months from today in terms of decree of Ld. Trial Court, else Ld. Trial Court will take up the matter of preparation of final decree in accordance with law after notifying the parties.

The appeal is accordingly disposed of on contest.

It is to be mentioned here that Learned First Appellate Court at the time of delivering the judgment discussed and decided the issue No.III in favour of the respondent-plaintiff Tarun Paul.

9. Challenging the judgment of the Learned First Appellate Court, the present appellant-defendant No.1 has preferred this appeal under Section 100 of C.P.C. before the High Court. At the time of admission of appeal by order dated 12.07.2022, following substantial questions of law were framed:

i. Whether the certified copy of the Gift Deed is admissible in evidence?

ii. Whether the judgments of the learned courts below are perverse?

10. At the time of hearing of appeal, Learned Counsel for the appellant drawn the attention of the Court that both the Learned Courts below ignored the provisions of law regarding proving of Gift Deed and come to an erroneous observation beyond the prescribed provisions of law. Learned Counsel for the appellant submitted that the respondent-plaintiff did not produce the original Gift Deed before the Court. Nor took any step to produce the same. Even to substantiate the case, the respondent-plaintiff relied upon certified copy of Gift Deed which was marked as Exhibit-3 series but without complying with the mandatory provisions of law as mentioned in Section

64 and 65 of the Evidence Act, the document was taken into evidence. According to Learned Counsel for the appellant, the Learned Trial Court below in deciding issue No.III rightly come to the conclusion that Exhibit-3 series was not proved in accordance with law and accordingly decided the issue against the respondent-plaintiff although decreed the suit. But the Learned First Appellate Court after hearing argument of both the sides reversed the finding of Learned Trial Court regarding Issue No.III and ultimately decided the said issue in favour of the respondent-plaintiff. It was further submitted that name of the father of the respondent-plaintiff was Ashit Paul not Ashit Chandra Paul or Ashit Ranjan Paul. But in the alleged Gift Deed (Exhibit-3 series), it was written as Ashit Chandra Paul alias Ashit Ranjan Paul. The respondent-plaintiff could not give any proper account of that. So, according to Learned Counsel for the appellant excluding the land of Exhibit-3 series, both the Learned Courts below granted preliminary decree which was not tenable in the eye of law. Learned Counsel for the appellant submitted that since the certified copy of Gift Deed was not proved in accordance with law and both the Learned Courts below have failed to appreciate the legal provisions, so, the interference of this Court is required and finally urged for setting aside the judgment of the Learned First Appellate Court regarding the determination of issue No.III in favour of the respondent-plaintiff as the mandatory provision of law was not complied with by the respondent-plaintiff.

11. On the other hand, Learned Counsel for the respondent-plaintiff at the time of hearing submitted that the present appeal is not maintainable as there is no substantial question of law to be decided in the present appeal. Learned Counsel further submitted that Learned First Appellate Court after considering the legal provisions rightly delivered the judgment in favour of the respondent-plaintiff and urged for dismissal of the appeal with costs. It was further submitted that in the pleading i.e. in the written statement, there was no assertion or whisper that the Gift Deed i.e. Exhibit-3 series was a forged one, it was not executed by their predecessor rather it was executed by one Ashit Chandra Paul. But the actual name of their predecessor was Ashit Paul but in this regard, no documentary evidence was produced by the appellant defendant in either of the forums. So, according to Learned Counsel, although Learned Trial Court could not properly decide the issue No.III in favour of the respondent-plaintiff but the Learned First Appellate Court after considering the legal provision decided the said issue in favour of the respondent-plaintiff and further drawn the attention of the Court referring the evidence of PW-1, Tarun Paul i.e. respondent-plaintiff and submitted that the said witness PW-1 in course of examination before the Learned Trial Court proved the certified copy of Gift Deed bearing No.1-2766 dated 11.12.2016 which was marked as Exhibit-3 series but during cross-examination of the said witness, there was not a single question from the side of the

appellant regarding the validity of Exhibit-3 series. No objection was raised by them that there was no scope to appreciate said Exhibit-3 series. Nor they submitted any written objection challenging the marking of Exhibit-3 series before the Learned Trial Court even to the Learned First Appellate Court. It was further submitted that the said certified copy of Gift Deed (Exhibit-3 series) was marked without any objection from the side of the appellant-defendant before the Learned Trial Court. So, there was no scope to disbelieve Exhibit-3 series i.e. the Gift Deed executed by the father of the respondent-plaintiff in his favour.

12. Further, according to Learned Counsel for the respondent-plaintiff, although the appellant in course of hearing of argument stressed upon Exhibit-A but in the written statement submitted by the appellant-defendant before the Learned Trial court, there was no whisper regarding execution of Exhibit-A and furthermore, before the Learned First Appellate Court also, no such plea was taken by the appellant-defendant that Exhibit-A was not considered by the Learned Trial Court. So, at this stage, there is no scope on the part of the appellant-defendant to agitate this issue that Exhibit-A was not properly appreciated by the Learned Courts below and finally urged for dismissal of the appeal with costs.

13. I have heard detailed argument of both the sides and gone through the records of the Learned Court below. It is the admitted position that the respondent-plaintiff could not

produce the original Gift Deed as alleged but he relied upon certified copy of Gift Deed which was marked as Exhibit-3 series before the Learned Trial Court during trial. The respondent-plaintiff also preferred another witness to substantiate his case namely Sri Jiban Biswas, Staff of Sub-Registry Office, Khowai who as PW-2 deposed that on 11.12.2006, one Gift Deed was executed in their office in between Ashit Chandra Paul alias Ashit Ranjan Paul and Sri Tarun Paul bearing No.1-2766. He further deposed that he preferred one certified copy of the same and identified Exhibit-3 series in comparison with the original volume book.

During his cross, nothing came out relevant. But at the time of hearing of argument, Learned Counsel for the respondent-plaintiff did not submit anything in this regard. Even Learned Counsel for the appellant also did not submit anything. More so, the Learned Courts below at the time of delivery of the judgment failed to appreciate the evidence of said PW-2. So, the contentions of Learned Counsel for the appellant that Exhibit-3 series was not duly proved, is not correct and not tenable in the eye of law.

14. Here, I would like to refer relevant provision of Section 63 and 65 of the Evidence Act which provides as under:

"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 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."

"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;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(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;

(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is

skilled in the examination of such documents.”

From the aforesaid provisions, it appears since the Exhibit-3 series was a certified copy of Gift Deed so the respondent-plaintiff before the Learned Court below duly proved the said document in accordance with law. So, there is no scope to disbelieve Exhibit-3 series and in my considered view, Learned Trial Court below failed to appreciate the evidence of PW-2 and also failed to appreciate the legal provisions as mentioned in Section 63, and 65 of Evidence Act. The appellate Court although decided the issue in favour of the respondent-plaintiff but did not mention anything in respect of evidence of PW-2 in proving Exhibit-3 series. More so, said Exhibit-3 series was also proved and marked as Exhibit without any objection from the side of the present appellant also.

15. Furthermore, Ashit Paul and Ashit Ranjan Paul was not the same person could not prove any documentary evidence on record. Rather in the written statement submitted before the Learned Court below, it appears that the appellant-defendant also admitted the name of the father as Ashit Ranjan Paul. So, legally, the plea of the appellant-defendant cannot be accepted by this Court that Ashit Paul alias Ashit Ranjan Paul was not the same person.

16. Regarding Exhibit-A, Learned Counsel for the appellant drawn the attention of the Court to draw an inference in favour of the appellant-defendant but it appears that the same was an unregistered document and the contents of the same also could

not be proved. On perusal of Exhibit-2, it appears that the land of respondent-plaintiff has been mutated in favour of the respondent-plaintiff vide MR case No.204/96 which draws an inference under Section 43 of TLR & LR Act of 1960 which provides as under:

43. Publication of the record of rights.-

(1) When a record of rights has been prepared, the survey officer shall publish a draft of the record in such manner and for such period as may be prescribed and shall receive and consider any objections which may be made during the period of such publication, to any entry therein or to any omission therefrom.

(2) When all objections have been considered and disposed of in accordance with the rules made in this behalf, the survey officer shall cause the record to be finally published in the prescribed manner.

(3) Every entry in the record of rights as finally published shall, until the contrary is proved, be presumed to be correct.

There is no rebuttable evidence on record in this regard from the side of appellant. Even challenging Exhibit-2, no step was taken by the present appellant-defendant and in the considered opinion of the Court, the Revenue Authority finding the respondent-plaintiff in possession of the suit shop mutated the said land in his favour and ROR also prepared in his name. Exhibit-1 is the Khatian standing in the name of Ashit Ranjan Paul i.e. the predecessor of the parties for land measuring 0.12 acres. Further, on perusal of Exhibit-3 series, it appears that on the body of same, the name of the donor was written as Ashit Chandra Paul alias Ashit Ranjan Paul.

17. Learned Counsel for the appellant in course of hearing relied upon one citation of the Hon'ble Supreme Court of India.

In **Saurav Jain and another v. M/s. A. B. P. Design and**

another dated 05.08.2021 reported in **AIR 2021 SC 3673**, Hon'ble Apex Court in para 30 of the said judgment observed as under:

"30. This Court in Bharat Kala Bhandar (P) Ltd. v. Municipal Committee :AIR 1966 SC 249 dealt with a civil appeal where a contention had not been raised in the suit or in the grounds of appeal before the High Court, and was advanced before this Court for the first time. Although the Court noted that the scope of the appeal cannot be broadened at the instance of the parties, if a plea raises a question of considerable importance, it can entertained by this Court. In a similar vein, this Court in Vasant Kumar Radhakisan Vora v. Board of Trustees of the Port of Bombay :(1991) 1 SCC 761, noted that pure questions of law which go to the root of the jurisdiction in a case can be raised for the first time in an appeal under Article 136 of the Constitution."

Referring the same, Learned Counsel for the appellant has drawn the attention of the Court that although the appellant-defendant could not raise any objection at the time of admission and marking of document i.e. Exhibit-3 series but still the appellant has got the scope to raise this issue even before this Court also at this stage. Since, it is already discussed that Exhibit-3 series was duly proved in accordance with Section 63 and 65 of the Evidence Act, so, the aforesaid citation as relied upon by the Learned Counsel for the appellant cannot be applied at this stage.

18. Per contra, Learned Counsel for the respondent-plaintiff referred the citation of Hon'ble Supreme Court of India. In **Dayamathi Bai(Smt) v. K. M. Shaffi** dated 04.08.2004 reported in **(2004) 7 SCC 107**, wherein the Hon'ble Apex Court in para 14 observed as under:

"14. To the same effect is the judgment of the Privy Council in the case of Gopal Das v. Thakurji :AIR 1943 PC 83 in which it has been held that when the objection to the mode of proof is not taken, the

party cannot lie by until the case comes before a court of appeal and then complain for the first time of the mode of proof. That when the objection to be taken is not that the document is in itself inadmissible but that the mode of proof was irregular, it is essential that the objection should be taken at the trial before the document is marked as an exhibit and admitted to the record. Similarly, in *Sarkar on Evidence*, 15th Edn., p.1084, it has been stated that where copies of the documents are admitted without objection in the trial court, no objection to their admissibility can be taken afterwards in the court of appeal. When a party gives in evidence a certified copy, without proving the circumstances entitling him to give secondary evidence, objection must be taken at the time of admission and such objection will not be allowed at a later stage."

Learned Counsel further referred another judgment of the Privy Council. In **Siddik Mahomed Shah v. Mt. Saran and others** dated 25.10.1929 reported in **1929 SCC OnLine PC 79**, wherein Hon'ble Apex Court observed as under:

"This is a hopeless appeal. A certain Hote Khan is alleged by the appellant, who is in possession of certain lands which belonged to Hote Khan to have given these lands to him. That story is not accepted, and there are concurrent findings as to the fact by both Courts. After Hote Khan's death there was a transference of the lands in question by mutation of names effected upon the application of Hote Khan's widow. The Judicial Commissioners think it very probable that Hote Khan's widow being an ignorant person and with no one to help her, transferred the lands in that way in order that her spiritual adviser might hold them as trustee. The spiritual adviser, who is the appellant wishes to keep them first upon the ground already specified which their Lordships have already disposed of and, secondly upon the ground that it was a gift made by the widow herself but that claim was never made in the defence presented and the learned Judicial Commissioners therefore, very truly find that no amount of evidence can be looked into upon a plea which was never put forward. The result is that their Lordships will humbly advise His Majesty that the appeal should be dismissed. As the respondents have not appeared, there will be no order as to costs."

Referring the same, Learned Counsel submitted that before marking of the document i.e. Exhibit-3 series, it was the duty of the appellant-defendant to raise objection but no such

objection was made by the appellant. So, at this stage, there is no scope to accept the plea.

19. In this regard, I would like to refer one judgment of this Court. In **RSA No.52 of 2022** dated 08.02.2023, the High Court of Tripura in para 9, 10, 11 and 12, observed as under:

"9. Certified copy of any document is treated as secondary evidence as contemplated under Section 63 of the Evidence Act. Admitted fact is that the plaintiffs/appellants have produced certified copy of the sale deed and not the original copy of the sale deed.

Section 63 of Evidence Act reads as under:

"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 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."

Section 65 of the Evidence Act deals with the cases in which secondary evidence relating to documents may be given.

Section 65 reads as under:

"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;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(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;

(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents."

10. In the instant case, the question raised and as urged by learned counsel for the appellants that the certified copy of the sale deed, when exhibited by the Court without any objection from the opposite party, is deemed to have been proved and its admissibility in evidence cannot be questioned at a later stage.

11. In *R.V.E. Venkatachala Gounder vs. Arulmigu Viswesaraswami & V.P. Temple*, (2003) 8 SCC 752 Hon'ble Supreme Court held that "Ordinarily, an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes:

(i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and

(ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as 'an exhibit', an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed

to be raised at any stage subsequent to the marking of the document as an exhibit...."

12. In the context of the present case, this Court finds that the defendants did not raise any objection when the certified copy of the sale deed was produced by the plaintiffs and taken into evidence by the learned trial Court being marked as (Ext.3 series). In this situation, certified copy of the original sale deed cannot be said to be inadmissible in evidence since the said deed was permitted to be exhibited by the defendants without any objection as regards the foundational aspects for non-production of original sale deed. In *Dayamathi Bai (supra)*, the Hon'ble Supreme Court had referred to *Venkatachala Gounder's case (supra)* and also took note of a passage from *Sarkar on Evidence, 15th Edn., p.1084*, where it has been stated that where copies of the documents are admitted without objection in the trial Court, no objection to their admissibility can be taken afterwards in the court of appeal. When a party gives in evidence a certified copy, without proving the circumstances entitling him to give secondary evidence, objection must be taken at the time of admission and such objection will not be allowed at a later stage. There is no quarrel with the aforesaid enunciation of law."

20. So, after hearing both the sides and after going through the records of the Learned Court below, it appears that since the respondent-plaintiff could prove Exhibit-3 series in accordance with law which the Learned Trial Court below failed to appreciate the evidence of PW-2 in proving the Gift Deed. The Learned First Appellate Court as already stated although decided the issue No.III in favour of the respondent-plaintiff but did not discuss anything regarding proving of Exhibit-3 series by the witness of respondent-plaintiff and furthermore, there was also no objection from the side of the present appellant-defendant in proving and marking the document as Exhibit. So, in my considered view, the Learned First Appellate Court rightly delivered the judgment in favour of the present respondent-plaintiff affirming the judgment of the Learned Trial Court regarding preliminary decree. Thus, the substantial question of

law as formulated leans in favour of the respondent-plaintiff of this appeal.

It is to be noted here that the Learned Trial Court although decided issue No.III against the respondent-plaintiff at the time of delivery of judgment but in the decree, shown the quantum of land as 0.12 acres i.e. the suit land as mentioned in the plaint. Since there is no infirmity of the judgment passed by Learned First Appellate Court, so, the present appeal deserves no interference at this stage.

21. In the result, the appeal filed by the appellant-defendant No.1 is hereby dismissed on contest with costs. The judgment dated 09.12.2021 and decree dated 06.05.2022 passed by Learned District Judge, Khowai, Tripura in T.A. No.06 of 2018 is hereby upheld and accordingly, it is affirmed. The suit property be partitioned in pursuance of the decree of the Learned Trial Court below affirmed by the Learned First Appellate Court.

Prepare decree accordingly.

Send down the LCRs.

Pending application(s), if any, also stands disposed of.

JUDGE

**MOUMITA
DATTA**

Deepshikha

Digitally signed by
MOUMITA DATTA
Date: 2024.02.28
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