

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21622 of 2012

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1. Jagat Raj Devi W/O Late Gupteshwar Prasad Singh R/O Village-Bhadawar, P.S.-Koelwar (Chandi), District- Bhojpur, At Present Residing At Bhadawar Kothi, Mohalla- Pakari, P.S.- Nawad (Arrah), District- Bhojpur

2. Shashi Kumar S/O Late Gupteshwar Prasad Singh R/O Village-Bhadawar, P.S.-Koelwar (Chandi), District- Bhojpur, At Present Residing At Bhadawar Kothi, Mohalla- Pakari, P.S.- Nawad (Arrah), District- Bhojpur

.... Petitioner/s

Versus

1. Deoki Singh S/O Late Hargobind Singh, R/O Vill.- Kapur Dihra, P.S.-Tarari, District- Bhojpur, At Present Residing In Mohalla- Nawada, District- Bhojpur Holder Of Special Power Of Attorney Of Sureshwar Prasad Singh, S/O Late Shyam Bahadur Singh, R/O Village- Bhadwar, P.S.-Koelwar (Chandi), District Bhojpur At Present Residing At 22, L.N. Court, E.L.M. Wood, 35 Pank, J.J. 07407, U.S.A. America

2. Sidheshwar Prasad Singh S/O Late Gupteshwar Pd. Singh R/O Village-Bhadawar, P.S.-Koelwar (Chandi), District- Bhojpur, At Present Residing At 1734, Lake Charloppe Ln, Rich Mond - T.X.-77469, U.S.A. (America)

3. Suraj Kumar Singh S/O Shri Sidheshwar Prasad Singh R/O Village-Bhadawar, P.S.-Koelwar (Chandi), District- Bhojpur, At Present Residing At 1734, Lake Charloppe Ln, Rich Mond - T.X.-77469, U.S.A. (America)

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sachchida Nand Singh, Advocate
For the Respondent/s : Mr. Vaidehi Raman Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 14-01-2016 Heard learned counsel for the petitioners as well as learned counsel for the respondents.

2. Petitioners have challenged the order dated 04.10.2012 passed by Sub-Judge, 4th Bhojpur at Ara in Title Suit No. 68/2003 whereby the learned lower court accepted the photo copy of the document under the garb of Section 90 of the Evidence Act (in short 'the Act'). The learned lower court also referred **2002(2) PLJR 772** in order to fortify his finding.



3. Learned counsel for the petitioners has submitted that the photo copy cannot be taken into consideration and on account thereof, the finding recorded by the learned lower court is wrong.

4. On the other hand, learned counsel for the respondents submitted that the learned lower court had taken into consideration the relevant provisions of law and after having proper scrutiny thereof, arrived to the conclusion whereby and whereunder the photo copy of the document has been marked as an exhibit. Therefore, the order impugned does not require interference.

5. Before adjudicating upon the order impugned, certain salient feature of the Act has to be taken into consideration which could enlighten the issue in hand.

6. Two kinds of documents have been identified, the first one is the public document in terms of Section 74 of the Act and further, has been properly classified. Other kind of document beyond the aforesaid category, so identified under Section 74 of the Act, has been labelled to be the private document. Furthermore, the nature of document has again been classified under two categories. When there happens to be document in its original form, that is the primary document in terms of Section 62



of the Act whereas the document, being a certified copy, being a document prepared by way of mechanical process certifying the accuracy of the copy and further duly compared, the copies made from or compared from original, counter parts of document, oral accounts relating to document by the witnesses who have had an opportunity to see the original, comes within the purview of secondary evidence in terms of 63 of the Act.

7. At the present juncture, as the learned lower court accepted the document in terms of Section 90 of the Act that has also to be taken into consideration which speaks with regard to the document primary in nature having 30 years old has to be taken into consideration by the Court itself brushing aside the requirement for getting the document exhibited. With regard to mode of exhibit, Section 68, 69, 70, 71, 72 and 73 of the Evidence Act suggest the mode of procedure wherein document is to be made exhibit of the record.

8. From the order impugned, it is evident that document happens to be the photo copy, that means to say, having been prepared under mechanical process and further, in terms of Section 63(2) of the Evidence Act the same could be identified as secondary evidence. How it could be brought on record for which Section 63(2) is to be taken into consideration. For better

appreciation the same is quoted below:-

Section 63 (1)... ..

“Section 63(2):- Copies made from the original by mechanical processes which in themselves insure the accuracy of the copy and copies compared with such copies.”

9. Therefore, there should be a positive evidence before the court to satisfy that the photo copy which has been filed before the court has been compared and found to be the exact photo copy of the original, that means to say, the accuracy of the document is to be substantiated. Unless and until, the aforesaid nature of evidence is brought up on record, the document cannot be said to be the photo copy of the original in its legal sense and further, it happens to be prepared in mechanical way which, the parties intend to exhibit in support of their plea. At the present moment, as learned counsel for the respondents has referred Section 65 of the Evidence Act, on perusal of the same, it is evident that it deals with the conditions whereunder the secondary evidence are to be led against primary evidence and not the mode of acceptance of the secondary evidence.

10. Therefore, the learned lower court should have taken the evidence on this score which could have satisfied that the document happens to be the photo copy of primary document



which was compared after having photo copy and further, there was accuracy on that very score regarding its authentication. Furthermore, it is apparent from plain reading of Section 90 of the Evidence Act that it is not with regard to secondary evidence rather it happens to be with regard to the primary document and by efflux of time the genuineness of document has to be accepted without going through the procedural law to get it exhibited.

11. The learned lower court had relied upon **2002(2) PLJR 772** in order to substantiate its finding. After going through the same, it is apparent that the learned lower court had not cared to go through the aforesaid decision. After going through the aforesaid decision, it is evident, more particularly, paragraph-2 thereof, that two witnesses were examined to substantiate that the photo copy which were produced before the court, happens to be the photo copy of the relevant document which was prepared in their presence and further, were compared and on account thereof, it has been observed thereunder:-

“The materials on record show that the petitioners examined two witnesses to prove the said document who have stated that photo copy of the said document was made in their presence. The evidence of witnesses fulfils the requirement as provided under Section 63(2) of the Indian Evidence Act for taking secondary evidence. It provides that the copies made from the original by mechanical processes which in themselves insure the accuracy of the copy and copies compared with such copies are to be taken as

secondary evidence.

12. That being so, the order impugned does not satisfy the mandate of law and on account thereof, is set aside. Petition is allowed.

13. However, it is open for the parties to have the document duly exhibited after complying with the mandate of Section 63(2) of the Evidence Act, if so desire and for that, a liberty be given to the respondents/plaintiffs.

(Aditya Kumar Trivedi, J)

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