

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.11232 OF 2016

Kailash s/o Satyanarayan Khandal,
age: 59 years, Occ: Business,
R/o Ambedkar Chowk, Hingoli.

Petitioner

Versus

01 Vijaykumar s/o Satnarayan Khandal,
age: 65 years, Occ: Business,
R/o Royal Residency, Pushpa Nagari,
Aurangabad.

02 Santoshkumar s/o Satnarayan Khandal,
age: 56 years, Occ: Business,
R/o Laxmi Vyankatesh,
Ward No.15, House No.280/3,
Jamdade Mala, Parshwanath Colony,
Ichalkaranji, District Kolhapur.

03 Jagdish s/o Satnarayan Khandal,
age: 50 years, Occ: Business,
R/o Gulab Bhavan, in front of
Parashar Bank, Indore (MP).

04 Jyoti w/o Sunil Khandal,
age: 39 years, Occ: Household,
R/o Vijay Kirana Stores,
Gorakshan Road, Akola, through
G.P.A. Rajendra s/o Satyanarayan
Khandal, age: 55 years,
Occ: Business, R/o Anmol Complex,
Ganesh Colony, Nagpur Road,
Wardha, District Wardha.

05 Rajendra s/o Satnarayan Khandal,
age: 56 years, Occ: Business,
R/o Anmol Complex, Ganesh Colony,
Nagpur Road, Wardha,
District Wardha.

- 06 Bhumika d/o Sunil Khandal,
age: 23 years, Occ: Education,
R/o Jay Bhole Kirana Shop,
Gorakshan Road, Akola,
District Akola.
- 07 Satnarayan s/o Chothmal Khandal,
age: 84 years, Occ: Nil,
R/o Ambedkar Chowk, Hingoli.
- 08 Parwatibai w/o Satnarayan Khandal,
age: 80 years, Occ: Household,
R/o Ambedkar Chowk, Hingoli.
- 09 Smt.Pushpadevi w/o Satnarayan
Khandal, age: 64 years,
Occ: Household, R/o Marwadi Galli,
Maheboobabad, Taluka Maheboobabad,
District Warangal (AP).
- 10 Padmawati w/o Dwarkadas Sharma,
age: 60 years, Occ: Household,
R/o A-2, Sara Garden, Behind Sharolet
Showroom, Mukundwadi,
Aurangabad.
- 11 Leeladevi w/o Nandkumar Ghan,
age: 56 years, Occ: Household,
R/o A.P. Patel & Company,
Near Ambedkar Chowk, Hingoli,
District Hingoli.

Respondents

Mr.S.S.Gangakhedkar, advocate for the petitioner.
Mr.Dhananjay M. Shinde, advocate for Respondents No.1 to 6.

CORAM : S.B.SHUKRE, J.
DATE : 18th January, 2017

ORAL JUDGMENT :

Heard. Rule. Rule made returnable forthwith and

heard finally by consent of learned Counsel for respective parties.

2 The writ petitioner challenges legality and correctness of the impugned order whereby learned Joint Civil Judge, Senior Division, Hingoli, has allowed the application vide Exhibit-54 and granted permission to the respondents to lead secondary evidence in respect of family arrangement agreement dated 16.02.2011, which was in the nature of photostat copy.

3 Learned Counsel for the petitioner submits that neither in the entire application vide Exhibit-54 nor in the affidavit of evidence filed on record by the respondents, there was any reference to the fact that the photostat copy, being led as secondary evidence, was taken out from the original document of family arrangement agreement. He submits that it would be a basic requirement of law, as provided under Section 63 of the Indian Evidence Act and it has not been fulfilled in this case.

4 According to learned Counsel for the respondents, there has been admission given by the petitioner that family arrangement agreement was executed, but it was vitiated in law as there was no consent and this fact itself shows that all the requirements of law, in the instant case, have been fulfilled by the respondents. He also submits that notice to produce original family arrangement agreement, as provided under Section 66 of the Evidence Act, was also given to the petitioner, but the petitioner did not produce the same.

5 The impugned order shows that it assumes some facts

which are not borne out from the record of the case. In paragraph no.11 of the impugned order, the learned Joint Civil Judge has observed thus:

..... the xerox copy of the family arrangement agreement is made from the original by mechanical process and therefore accuracy thereof need not be ensured.

6 No where in the application Exhibit-54 or anywhere else, the respondents have stated that the copy of the family arrangement agreement is made from “original”. Under Section 65 of the Evidence Act, a party can be permitted to adduce secondary evidence in the cases enumerated therein and upon fulfillment of conditions stated therein and by following the procedure provided under Section 66 of the Evidence Act. But, before such permission is granted, the evidence must qualify itself to be called as secondary evidence, as contemplated under Section 63 of the Evidence act. In the instant case, sub-sections (2) and (3) of Section 63 of the Evidence act, would be relevant. They indicate that secondary evidence would mean copies made from the original by mechanical process, which in themselves ensure accuracy of the copy; and copies made from or compared with the original. The process of making photostat copy is not such a process unlike process of cyclostyling, which, by itself, ensures accuracy of the copy. It is that process which allows taking photo of a document and the document of which photo is taken may not be the original and may be a copy only. However, such is not the case in the case of taking out copies through cyclostyling or for that matter, by means of manual type writers. Therefore, the only way to ensure accuracy of a photostat copy would be an assurance that it is

taken from the original in its untampered state or it is compared with the original. So, the photostat copy, sought to be adduced by way of secondary evidence, would be required to be produced on record by following the mandate of sub-sections (2) and (3) of Section 63 of the Evidence Act. This has, however, not been complied with by the respondents. The trial Court has perversely observed that photostat copy, in question, has been taken from the original, which is not the fact present on record. The impugned order, therefore, cannot stand the scrutiny of law and deserves to be quashed and set aside.

7 In the result, writ petition is allowed. The impugned order is quashed and set aside. The application vide Exhibit-54 stands rejected.

8 Rule is made absolute in above terms. No costs.

S.B.SHUKRE
JUDGE

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