

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.501 of 2019**

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1. Md. Rustam Son of Md. Karim, resident of Village-Valuchak, P.O.-Kabirchak, P.S. and Anchal- Sadar, District- Darbhanga.
2. Md. Rayesh, Son of Md. Karim, resident of Vilage-Valuchak, P.O.-Kabirchak, P.S. and Anchal-Sadar, District- Darbhanga.

... .. Plaintiffs-Petitioners

Versus

1. The State of Bihar through Collector, Darbhanga.
2. Deputy Collector, Land Reform (D.C.L.R.) Sadar Darbhanga, District-Darbhangha.
3. Sub-Divisional Officer Sadar Darbhanga, Districct- Darbhanga.
4. Circle Officer, Sadar Darbhanga, District- Darbhanga.
5. Circle Inspector, Sadar Anchal, District- Darbhanga.
6. Halka Karamchhari, Sadar, Mauza Kabirchak Sadar Anchal, District-Darbhangha.
7. Anchal Amin, Sadar Anchal, District- Darbhanga.

.... .. Defendants 1<sup>st</sup> Parties/Respondents 1<sup>st</sup> Parties

8. Nisar Ahmad Khan, son of Late Md. Aziz Khan, resident of Village-Valuchak, P.O.- Kabirchak, P.S.-Sadar, District- Darbhanga.
9. Md. M.S. Khan @ Bikki, son of Late Md. Aziz Khan, resident of Village-Valuchak, P.O.- Kabirchak, P.S. Sadar, District- Darbhanga.

... .. Defendants 2<sup>nd</sup> Parties-Respondents 2<sup>nd</sup> Parties

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**Appearance :**

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| For the Petitioners :       | Mr. Alok Kumar Sinha, Advocate  |
| For the Respondent-State:   | Mr. Surekha Kumari, AC to GP-18 |
| For the Private Respondent: | Mr. Uma Shankar Singh, Advocate |

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**  
**ORAL JUDGMENT**

**Date : 30-08-2019**

Heard learned counsel for the petitioners, learned  
counsel for the State of Bihar and learned counsel for the  
defendants 2<sup>nd</sup> party /respondents 2<sup>nd</sup> party.

2. This application under Article 227 of the



Constitution of India has been filed by the petitioners for setting aside the order dated 01.12.2018 passed by the learned Sub-Judge-VII, Darbhanga in Title Suit No. 76 of 2013 whereby the petition dated 12.09.2018 filed on behalf of defendant 1<sup>st</sup> party/respondent 1<sup>st</sup> party for marking certified copy of Cadastral Survey Khesra Panji of plot nos. 143, 144, 145 as exhibit was allowed and were marked as Ext. E for defendant 1<sup>st</sup> party/opposite 1<sup>st</sup> party.

3. Learned counsel for the petitioners submitted that true copy of the register of Khata No. 497 endorsed by the Circle Officer, Sadar, Darbhanga is not a certified copy of a public document in terms of Section 76 of the Indian Evidence Act, 1872. The said Circle Officer has transcribed a copy of register of Khata No.497 having Plot Nos. 143, 144 and 145 but it did not compare the same with original. Hence, in terms of illustration E of Section 63 of the Evidence Act, said copy of register of Khata No. 497 is not a secondary evidence. He has further contended that even if it is believed to be a secondary evidence the same could not have been proved save and except by way of filing a certified copy of the document.

4. On the basis of the aforesaid pleading, he contended that the order impugned passed by the trial court



whereby it has allowed the petition dated 01.12.2018 filed by the defendant 1<sup>st</sup> party for marking the certified copy of Cadastral Survey Khesra Panji as exhibit is bad in law and is fit to be set aside.

5. *Per contra*, learned counsel appearing for the State submitted that since the true copy of register of Khata No. 497 was filed with endorsement “certified to be true” by the Circle Officer, no illegality can be found in the order impugned dated 01.12.2018.

6. Learned counsel appearing for the defendant 2<sup>nd</sup> party/respondent 2<sup>nd</sup> party has also adopted the arguments advanced by the learned counsel for the State. He has further contended that the endorsement made by the Circle Officer on the true copy of the register of Khesara No. 497 would come under the purview of certified copy. Hence, no illegality can be found in the order impugned. He has further contended that the entry by public servant in a public record or other official book or register or record stating a fact in issue or relevant fact is relevant and when public servant makes it himself in discharge of his official duty the probability of its being true and correct is high. The entry in the revenue record is to be accepted at its face value, there cannot be any inquiry into the correctness of the



said entries. According to him, the entries made in Cadestral Survey Khesra Panji in terms of Section 35 of the Evidence Act are admissible piece of evidence and the same would also carry presumption of its correctness.

7. I have heard learned counsel for the parties and carefully perused the record.

8. The brief facts of the case are that Title Suit No. 76 of 2013 was instituted in the court of Sub-Judge-VII, Darbhanga for declaration of title and possession of plaintiff over the suit land and for issuance of order of permanent injunction restraining the defendants not to disturb the plaintiffs' possession over the suit land and to maintain status quo over the same till final disposal of the suit.

9. On 12.09.2018, a petition was filed on behalf of defendants-respondents 1<sup>st</sup> party in said suit in the court of Sub-Judge-VII, Darbhanga praying therein that the certified copy of Cadastral Survey Khesra Panji of Plot Nos. 143, 144 and 145 be marked as exhibit.

10. The plaintiffs-petitioners filed a rejoinder on 04.10.2018 to the petition dated 12.09.2018 submitting therein that the document which has been filed does not fulfill the



requirement of certified copy as the same is not the true copy of the register of Khata No. 497 and the Circle Officer made an endorsement “Certified to be true”. Hence, the said petition dated 12.09.2018 be rejected.

11. Be it noted that the Circle Officer, Sadar, Darbhanga is the defendant no. 4 in the title suit and he himself has endorsed on the true copy of the register of Khata No. 497 “Certified to be true”.

12. After hearing the parties, vide impugned order dated 01.12.2018, the learned Sub-Judge-VII, Darbhanga allowed the petition dated 12.09.2018 filed by the defendant 1<sup>st</sup> party/respondent 1<sup>st</sup> party for marking the copy of the Cadastral Survey Khesra Panji as Ext. E.

13. Section 74 of the Evidence Act, 1872 which deals with public document reads as under:-

**“74. 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.”

14. Section 75 of the Evidence Act provides that all other documents are private.

15. Section 76 deals with certified copy of public documents. It provides that every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.

16. In the present case, it has been admitted by the parties that the register of Khata No. 497 having Plot No. 143, 144 and 145 is a public document under Section 74(1) (ii) of the Evidence Act. It would be evident from the record that the petitioner had filed a copy of Cadastral Survey Khesra Panji of



Plot No. 143, 144 and 145 with endorsement of the Circle Officer “certified to be true”. However, the same was not issued on payment of legal fees and was also not sealed. Some endorsement by the Circle Officer on a copy of khesara panji “certified to be true” would not make the copy a certified copy.

17. At this stage, it would be relevant to take note of Sections 61 to 65 of the Evidence Act. It read as under :-

**“61. Proof of contents of documents.-** The contents of documents may be proved either by primary or by secondary evidence.

**62. Primary evidence.-**Primary evidence means the documents itself produced for the inspection of the Court.

Explanation 1.—Where a document is executed in several parts, each part is primary evidence of the document :

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2.- Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the



contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.

**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 documents given by some person who has himself seen it.

**64. Proof of documents by primary evidence.**-Documents must be proved by primary evidence except in the cases hereinafter mentioned.

**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 documents 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 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, 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.”

18. Section 61 of the Evidence Act provides that contents of the document may be proved either by primary or by secondary evidence.

19. Section 62 of the Evidence Act provides that primary evidence means the document itself produced for the inspection of the Court.

20. Section 64 of the Evidence Act stipulates that secondary evidence must be proved by primary evidence except in the cases mentioned in Section 65 of the Evidence Act.

21. In absence of primary evidence, documents can be proved by secondary evidence as contemplated under Section 63 of the Act.

22. In absence of certified copies or copies made



from the original by mechanical process as provided under clause 1 and 2 of Section 63 of the Evidence Act, the copy to be given in evidence must be shown either to have been made from original or to have been compared with the original. When the copy to be given in evidence is neither made from original nor compared with original, it will be inadmissible. A copy transcribed from a original copy but not compared with original is not secondary evidence of the original.

23. It would further be manifest from the reading of Section 65 of the Evidence Act that in order to enable a party to produce secondary evidence, it is necessary for the parties to produce existence and execution of the original document.

24. Section 65 of the Evidence Act permits secondary evidence to be given of the existence, condition or contents of a document under the circumstances mentioned thereunder. The conditions laid down in the said section must be fulfilled before secondary evidence can be admitted. Section enumerates seven exceptional circumstances in which secondary evidence is admissible.

25. Clause (e) of Section 65 deals with proof of the document when original is a public document within the meaning of Section 74.



26. Cadastral Survey being a revenue record maintained by a public officer in his public duty is a public document. In terms of clause (e) of Section 65 secondary evidence may be given of the existence, condition or contents when the original is a public document. Thus, certified copy of a public document may be given in evidence.

27. The rejoinder to the application filed on behalf of the defendant 1<sup>st</sup> party for marking the document as exhibit has been brought on record by the petitioners as Annexure-2 to the present application. The same is of five paragraphs. They read as under:-

(i) That the petition as framed and filed is not maintainable either in law or on facts.

(ii) That no certified copy is filed by the defendant 1<sup>st</sup> party. It is further submitted that the document which is filed in the court does not fulfil the requirement of certified copy.

(iii) That in fact the defendant 1<sup>st</sup> party filed the true copy of Register of the Khata No.497 and the Circle Officer made an endorsement “certified to be true”. By the said endorsement the document cannot come under the purview of certified document as envisaged in Indian Evidence Act.

(iv) That the photo copy of C.S. Khatian is on



record.

(v) That on the aforesaid circumstances the said document cannot be a public document u/s 74 of Indian Evidence Act.

28. On perusal of the rejoinder filed by the petitioner in the court below, it would be evident that the petitioner admits that the documents contain endorsement of the Circle Officer “certified to be true”. There is no averment that the same was not sealed. I fail to understand as to how the petitioner claims that the documents filed by the defendant 1<sup>st</sup> party was not a certified copy.

29. The court below while passing the impugned order has rightly observed that the document produced by the defendant 1<sup>st</sup> party satisfied the requirement of Section 35 read with Section 74 of the Evidence Act and, thus, admitted in evidence for defendant 1<sup>st</sup> party and marked the same as Exhibit-A.

30. The order impugned passed by the court below is neither illegal nor perverse nor the same suffers from want of jurisdiction.

31. In that view of the matter, I see no reason to interfere with the same in exercise of supervisory jurisdiction



under Article 227 of the Constitution of India.

32. The application is dismissed.

**(Ashwani Kumar Singh, J.)**

Sanjeet/-

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