

04.10.2021
Item No.21
Ct. No.7
CHC

**C.O.1434 of 2021
(Physical Hearing)**

**Srimati Geeta Nair & anr.
Vs.
Aloke Sarkar & ors.**

Mr. Kaustav Chandra Das
...for the petitioners

Mr. Utpal Maitra,
Md. Sajid,
Mr. Kalyan Bhaumik
...for the opposite parties

This revisional application is directed against the order dated 14th January, 2021, passed by learned Civil Judge (Junior Division), 4th Court, Alipore, South 24 Parganas, in Ejectment Suit No.58 of 2014, marking the registered deed of partition as exhibit, which is the subject of challenge in this revisional application.

Mr. Kaustav Chandra Das, learned advocate representing the petitioners/defendants submits that without ascertaining the admissibility of the document, the learned court below has erroneously marked the document exhibit, even without offering the petitioners any scope to raise any objection.

It is thus contended that no copy of the document, marked as exhibit, has been supplied to the petitioners,

and the document has been marked behind the back of the petitioners.

Mr. Utpal Maitra, learned advocate representing the plaintiffs/opposite parties submits that the original of the partition deed, registered on 2nd June, 1964 was produced before the learned court below, and upon proof of custody the learned court below rightly marked the document as exhibit in accordance with the provisions of the law.

It is also submitted by the learned advocate for the opposite parties, upon furnishing a copy of the information slip, that the copy of the document already marked exhibit, has already been served upon the petitioners, and as such there lies nothing to be interfered with.

Admittedly, the plaintiff/P.W.1 adduced evidence on 14th January, 2021 upon recalling his evidence in terms of the direction passed in C.O.508 of 2020. This is a suit for eviction wherein the petitioners have raised a plea that the plaintiffs/opposite parties have their alternative accommodation available elsewhere. The proposition of law is very clear that certified copy of a document is ordinarily not admissible in evidence, unless an explanation is given in support of non availability of the original record. This proposition of law is not even attracted in the case at hand, as there is nothing to

prove that the copy of the partition deed has been produced, and thereafter the same was marked exhibit. That being the position, the impugned order does not call for any interference.

However, the petitioners are free to cross-examine the witness/PW-1 including to challenge the veracity and authenticity of the document, already marked exhibit, while making cross-examination of P.W.1.

Learned court below is accordingly directed to give adequate opportunity to petitioners/defendants so that the valuable right of defence available to the petitioners/defendants is not taken away, and petitioners are not any way deprived of making cross-examination to the extent necessary for resolving the matter in controversy between the parties.

With the above observations/directions, the instant revisional application stands disposed of.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)