

10.02.2021
Court No. 19
Item No.54
CP

C.O. 3494 of 2018

Gorachand Halder & ors.
vs.
Kashinath Halder

(via video conference)

Mr. Saunak Bhattacharya

....for the petitioners.

Ms. Sharmistha Ghosh Sharma

....for the opposite party.

This revisional application has been filed challenging an order dated September 5, 2018, passed by the learned Civil Judge (Junior Division), 3rd Court, Diamond Harbour, South 24-Parganas, in Title Suit No. 60 of 2013.

The petitioners are aggrieved because the petitioners' application for appointment of a Government hand writing expert to compare the signatures of Nani Gopal Halder mentioned in the sale deed dated April 10, 1973 with the signature of Nani Gopal Halder in the Baynapatra being Exhibit - D was rejected. Both the plaintiffs and the defendant claimed title over the suit property through Nani Gopal Halder.

The plaintiffs' case is that the Baynapatra on the basis of which the defendant has claimed title was void as the signature of Nani Gopal Halder was not genuine but a forged one.

It is the defence case that the said Nani Gopal Halder entered into an agreement for sale with the defendant and for which a suit for specific performance of contract has also been filed and the defendant is claiming title over the suit property on the basis of the said deed; that the signature of Nani Gopal Halder is genuine.

At an advanced stage of the suit, the petitioners filed an application for amendment of the plaint to incorporate certain facts with regard to the signature of Nani Gopal Halder on the basis of some sale deeds executed in favour of third parties. This application for amendment was filed only to prove at a subsequent stage that the signature of Nani Gopal Halder on the Baynapatra was not genuine. The said application for amendment was rejected by the learned trial court. A civil revision was preferred and the civil revision was also rejected. This court held that an amendment of pleadings which would amount to pleading of evidence with regard to execution of documents was not required. The court gave liberty to the petitioners to apply for appointment of a hand writing expert for comparison of the signature of Nani Gopal Halder with any other admitted documents. Thereafter, the petitioners filed an application for appointment of the hand writing expert for comparing the signature of Nani Gopal Halder appearing on the sale deed dated April 10,

1973 with Exhibit – D. The learned court below rejected the said application on the ground that the plaintiffs' claim to the said premises were not based on the deeds dated April 10, 1973 and, as such, it was for the plaintiffs to prove their own case claiming title to the suit property as heirs of Nani Gopal Halder.

Ms. Ghosh Sharma, learned advocate appearing for the opposite party/defendant, submits that unless the signature on the document, i.e., the sale deed dated April 10, 1973 was admitted, comparison with the signature of Nani Gopal Halder in the said deed with the signature of Nani Gopal Halder in the Baynapatra could not be allowed. She refers to Section 73 of the Indian Evidence Act, 1872. She further submits that the sale deed purported to contain the signatures of Nani Gopal Halder was a photocopy of the original and the genuineness of the same was in question. According to her, unless the said deed formed a part of the records and exhibited, the comparison of the signature of Nani Gopal Halder on the basis of such documents could not be allowed.

Mr. Bhattacharya refers to Section 90 of the Indian Evidence Act, 1872, and submits the sale deed being 30 years old documents should be admitted to be genuine and the signature of Nani Gopal Halder should be treated to be genuine. The sale deed is of April 10, 1973, is admittedly 30 years

old but the petitioners have produced a photo copy thereof. The genuineness has been challenged. Thus, unless the said document is tendered and marked as an exhibit and admitted by following the procedure under the Indian Evidence Act, 1872, the question of comparison of the signature of Nani Gopal Halder as appearing in the said deed with the signature as appearing in the Baynapatra would not arise.

The petitioners have to first undergo the process of getting the photo copy of the sale deed dated April 10, 1973 to be marked as an exhibit and admitted in accordance with law. If the said document is admitted and marked as an exhibit and taken on record, by the learned court below the petitioners will be entitled to renew the prayer for appointment of a hand writing expert for comparison of the signature of Nani Gopal Halder as appearing in the said deed with the signature as appearing in the Baynapatra, on the self-same application.

The learned court below shall proceed in accordance with law with regard to admission and marking of the document as also with regard to the decision on the appointment of the hand writing expert thereafter.

With the above observations, the revisional application is disposed of. The order impugned is set aside and quashed.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)