

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 543 OF 2021

Sukanta Kumar Behera and others* *Petitioners

Mr. Bhaskar Chandra Panda, Advocate

-versus-

Sukanta Kumar Swain and another* *Opp. Parties

Mr. Manoj Kumar Panda, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

Order No.

25.07.2022

4. 1. This matter is taken up through Hybrid mode.
2. Order dated 22nd September, 2021 (Annexure-6) passed in CS No.263 of 2012 is under challenge in this CMP, whereby learned 3rd Additional Civil Judge (Senior Division), Cuttack has dismissed an application filed by the Defendants/Petitioners to exhibit documents, i.e., RSD No.363 dated 29th March, 2000, certified copy of RSD No.1120 dated 8th June, 2004 and receipt dated 14th April, 2005 on behalf of the Petitioners.
3. Mr. Panda, learned counsel for the Petitioners submits that during cross-examination of PW-1, the Defendants/ Petitioners confronted the aforesaid documents to the witnesses to which PW-1 in his cross-examination at para-22 deposed as under:-

“22. It is a fact that R.S.D. No.1120 dtd.08.06.2004 has been executed by my father namely Kangali Charan Swain in favour of one Maheswar Behera. I cannot say the detail of the land particulars which was sold vide R.S.D. No.1120 dtd.08.06.2004 but after going through the contents of the R.S.D. I find the land was sold from consolidation Khata No.109.”

In that view of the matter, Mr. Panda, learned counsel, submits that PW-1 did not admit execution of RSD No.363 dated 29th March, 2000 or the signature on receipt dated 14th April, 2005.

However, PW-1 has admitted the execution of RSD No.1120 dated 8th June, 2004. Hence, the same ought to have been admitted into evidence subject to its formal proof. Learned trial Court by mis-interpreting law, refused the prayer made by the Petitioners. Hence, this CMP has been filed. In support of his case, Mr. Panda, learned counsel placed reliance on a decision of the Delhi High Court in the case of **Rakesh Kumar Vs. Pawan Khanna** [CM (M) No.630 of 2015 disposed of on 29th July, 2015], wherein it is held as under:-

“8. Order 7 Rule 14(4), Order 8 Rule 1 (A) (4), as well as Order 13 Rule 1(3) provide that the provisions requiring parties to file documents along with their pleadings and/or before the settlement of issues do not apply to documents produced for the cross examination of the witnesses of the other party. To the same effect, Section 145 of the Evidence Act also permits documents to be put to the witnesses, though it does not provide whether such documents should be already on the court record or can be produced / shown for the first time. However, in view of the unambiguous provisions of the CPC, it cannot be held that the document cannot be produced/shown for the first time during cross examination. If the witness to whom the said document is put, identifies his handwriting / signature or any writing / signatures of any other person on the said document or otherwise admits the said documents, the same poses no problem, because then the document stands admitted into evidence. However, the question arises as to what is the course to be followed if the witness denies the said document. Is the document to be kept on the court file or to be returned to the party producing the same?”

He, therefore, prays for setting aside of the impugned order and to direct learned trial Court to mark RSD No. 363 dated 29th March, 2000 as exhibit on behalf of the Defendants/Petitioners.

4. Mr. Panda, learned counsel for the Plaintiffs/Opposite Parties refuting such submission contended that the ratio in the case of **Rakesh Kumar (supra)** is not applicable to the case at hand. Certified copy of a document being a secondary evidence

can only be admitted if the party seeking admission of such document has laid the foundation to lead secondary evidence. In the instant case, such a situation has not yet arisen. Thus, the document can only be marked as 'X' and be placed on record to be admitted in evidence by the Defendants when they lead evidence. He, therefore submits that learned trial Court has committed no error in refusing the prayer to mark the aforesaid documents on behalf of the Defendants.

5. Taking into consideration the rival contentions of the parties and on perusal of the materials on record, this Court finds that along with other documents, the Petitioner filed certified copy of RSD No.1120 8th June, 2004. True it is that PW-1 has admitted its execution by his father, but that being a secondary evidence cannot be admitted into evidence unless foundation is laid to lead such secondary evidence as required under Section 65 of the Evidence Act. Thus, the learned trial Court has committed no error in refusing to admit the aforesaid documents in evidence through PW-1. Since the execution of RSD No.1120 dated 8th June, 2004 has been admitted by PW-1 it can be marked as 'X' to be exhibited by the Defendants following due procedure of law. As such, I find no infirmity in the impugned order.

6. Accordingly, the CMP being devoid of any merit stands dismissed.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge