

14.06.2023
Court No. 19
Item no.08
CP

C.O. 293 of 2023

Amit Ruia & anr.
Vs.
Rajnesh Kumar Malhotra & anr.

Mr. Sounak Bhattacharya
Mr. Chandra Nath Sarkar
Mr. Sounak Mandal

.....for the petitioners.

Mr. Kanai Lal Mondal

.....for the opposite parties.

The revisional application has been filed challenging an order dated November 28, 2022, passed by the learned Civil Judge (Junior Division), 2nd Court, Baruipur in Title Suit No. 80 of 2011. The application filed by the defendants claiming that Exhibit – 6 be expunged from the records, was rejected on the ground that the credibility of a document would be adjudicated at the stage of final hearing and the defendants would not suffer any prejudice as the volume was also produced by the Upper Division Clerk of the office of the ADSR, Alipore.

Mr. Bhattacharya, learned advocate for the petitioners, submits that the document is a copy of a power of attorney which was neither endorsed to be a copy prepared and compared with the original or by a

mechanical process. He further refers to the cross examination of the representative of the ADSR, Alipore, who had categorically deposed in his cross-examination that the document was neither a certified copy nor does it bear the seal and signature.

Learned advocate for the opposite parties opposes such submission of Mr. Bhattacharya, and submits that the volume automatically proved the existence of the document and, hence, the learned court below rightly rejected the application by marking the copy of the power of attorney as an exhibit.

Heard the learned advocates for the respective parties. Secondary evidence means and includes:

- a) Certified copies given under the provisions contained in the Evidence Act, 1872 or the relevant statutes.
- b) Copies made from the original by a mechanical process which in themselves ensure the accuracy of the copy and copies compared with such copies.
- c) Copies made from and compared with the original.
- d) Counter-parts of the documents as against the parties who did not execute them.

e) Oral accounts of the contents of a document given by some person who has himself seen it.

In this case, a copy of the power of attorney was produced which the Upper Division Clerk said in his cross-examination not to be a certified copy. It did not bear the seal and signature of the authority. In the cross-examination, the said representative further submitted that he was not aware whether the deed was issued from the said office or not.

This court is of the view that the provisions of Section 63 of the Evidence Act has not been followed by the learned court below while admitting Exhibit-6 and marking the same.

Under such circumstances, the plaintiffs are granted liberty to tender the certified copy of the said power of attorney or tender a copy prepared by a mechanical process from the original and compared with such copy with necessary endorsement by the authority. An application laying the foundation as to why such secondary evidence instead of primary evidence should be permitted to be tendered, shall also be filed.

If such document is tendered by following the provisions of Section 65 of the Indian Evidence Act, 1872, the same shall be marked as an exhibit.

The evidentiary value or probative value of such document, shall be decided in the trial.

The revisional application is accordingly disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)