

Item-57. 13-04-2023

SAT 174 of 2015

sg Ct. 8

Pan Mohammad
Versus
State of West Bengal & Ors.

Mr. Ramkrishna Bhattacharya, Adv.
Mr. K. Chowdhury, Adv.
Mr. Busra Khatun, Adv.

...for the appellant

We have heard the learned counsel for the appellant.

We are in agreement with the judgements passed by the learned Trial Judge as well as the Learned First Appellate Court that the certified copy of the deed being No. 2495 dated 10-07-1950 has not been proved in accordance with law.

The learned Counsel for the appellant submits that in view of the judgment passed in ***Bhaskar Sahu vs. Anama Swara & Ors.*** reported in ***AIR 1987 Orissa 138***, the matter may be remanded to the First Appellate Court by giving an opportunity to the appellant to cure the defects.

We are unable to accept the same at this stage. The appellant had the opportunity before the trial court as well first appellate court as they were aware that the said document was marked with objection. In fact, the judgment relied upon by the learned counsel clearly states that:

“The rule of evidence requires that a document must be proved by primary evidence exception being that the secondary may be given of the existing condition, or contents of a document in cases enumerated in Section 65, Evidence Act. One of the conditions where secondary evidence can be admitted in evidence is, when the party offering evidence of the contents of the

document cannot, for any reason, not arising from his own default or neglect, produce the original document in a reasonable time. In the present case the plaintiff wants to bring his case within the aforesaid exception contending that, it was a fit case where the certified copy of the sale deed should be accepted as secondary evidence as the original thereof is not available to be produced. It is so well settled in law that it requires no reference to any decided case for the proposition that a foundation must first be laid for the reception of secondary evidence and no secondary evidence of a document is permissible unless the conditions mentioned in Section 65 are satisfied.”

The deed of gift which the source of title of the appellant is an importune document and where a person relying on a document is unable to bring the original thereof before the Court, the Court is competent to admit secondary evidence for the purpose of having the contents of the original document proved, only when non-production of the original is satisfactorily accounted for. Moreover, the said alleged Heba was never acted upon as would be evident from the conduct of the parties. PW1 could not prove the contents of the document which became necessary as the name of Chaitu Mohammad was not recorded in the settlement record which would have been natural consequence of the Heba-bil-ewaz being actually executed in his favour by Hasiruddin.

The appeal fails in both the counts. The appeal stands dismissed at the admission stage. However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)

