

S/L 18
07.02.2023
Court No.652
SD

CO 1945 of 2021

Ranjit Mondal
Vs.
Sri Shaktipada Mondal & Ors.

Mr. D.N. Chatterjee
Mr. Subhas Ch. Saha

...for the Petitioner.

Sk. Jayed Hossain

...for the Opposite Party Nos.2 & 3.

Leave is granted to the petitioner to correct the name of the Court in the cause title.

Affidavit of service filed by the petitioner in court today be kept with the record.

Being aggrieved by the impugned order no.64 dated 18.02.2020 and order no.68 dated 16.3.2021 in Title Suit No.141 of 2008 passed by the learned Civil Judge (Senior Division), 1st Court, Tamruk, present revisional application has been preferred.

The petitioner contended that the petitioner filed aforesaid title suit against the opposite parties/defendants in respect of the land described in schedule to the plaint. The petitioner's case, inter alia, is that one late Gopinath Mondal was the absolute owner in respect of the land measuring about 141 decimals of land under plot no.189, mouja Deulbar, Purba Medinipur which was recorded in the name of Gopinath Mondal in the record of rights.

The petitioner states that on the death of Gopinath Mondal, his only son Gayabishnu Mondal who is father of plaintiff/petitioner got the suit property by way of inheritance and the name of Gayabishnu Mondal should have been recorded in the record of rights but unfortunately, the said land was recorded erroneously in the name of one Balaram Mondal who was one of the nephews of Gopinath Mondal. The said record of rights in the name of Balaram Mondal and others is erroneous.

The petitioner further states that the petitioner subsequently surprised to know that a Nirupan Patra deed was allegedly executed and registered on 19.01.1937 by Gopinath Mondal in favour of all sons of Gopal Mondal and Gayabishnu Mondal, son of Gopinath Mondal. The petitioner's case is that the said Nirupan Patra is false, manufactured document and the petitioner is the absolute owner in respect of the suit property by way of inheritance and the plaintiff is not bound by the said deed.

During pendency of the said suit, the petitioner/plaintiff filed an application on March 8, 2018 before the court below for production of original deed of Nirupan Patra allegedly executed and registered in 1937. After hearing learned court was pleased to reject the said application and allowed the application filed by the defendant nos.2 and 3 to accept the certified copy of the said deed, as original deed is not in their custody.

Learned counsel appearing on behalf of the petitioner submits that it is the specific case of the plaintiff/petitioner that Gopinath Mondal never executed any deed of Nirupan Patra in the year 1937 and the said deed is a manufactured one and said Gopinath Mondal was in possession of the suit property till his death and the record of right is erroneous. Furthermore, learned court failed to apply his mind to the fact that in all documents, Gopinath Mondal put his signature and never put LTI whereas from the certified copy of the said Nirupan Patra, it appears that Gopinath Mondal put his LTI on the deed.

Learned counsel appearing on behalf of the opposite party nos.2 and 3 submits that the court below has rightly accepted certified copy of the deed in question as it is not in the custody of the opposite parties/defendants. The said deed was executed in the year 1937 and as such, they filed the certified copy and as such, the learned court rightly accepted the certified copy of the said deed and asked to take steps.

Considered the submissions made by the parties.

When it is the specific case of the defendants/opposite parties that the original deed for the year 1937 is misplaced and is not in their custody then obviously under the provisions of the Evidence Act, a certified copy of the deeds can be allowed to be filed but it's admissibly in evidence would be subject to proving the same in accordance with law.

In case of private on public document, where there is a denial of the existence and contents, then in that case, it would be necessary to prove such document by way of the ordinary method of proof of documents and their contents, even if it is a public document. Section 63 of the Evidence Act provides of leading secondary evidence. Filing certified copy of the deed as secondary evidence in such case led only of what the document states and not as to whether what the document states in true. Section 65(e) stipulates secondary evidence may be given, when original is a public document but certified copy of such public document so led only proves what the document states and nothing further. Under the provisions, when opposite parties herein have taken the plea that original deed misplaced, court has only relieved them of the obligation to produce the original and they are allowed to produce certified copies instead of original deed but all other requirements defendants must comply with to prove whether what the deeds speak are true, when the very existence and contents of deeds in question are under challenge by the plaintiff/petitioner. It is when the court believes not only in the existence but also truth of contents, then the documents would be exhibited by the court.

In the impugned order, the court below has not made it clear as to what steps plaintiff is supposed to take in respect of impugned deeds. Plaintiff has denied existence and contents of such deed. Here defendant no.2 and 3 seek to prove the certified copy of said deeds as true, then

obviously burden is upon defendants to prove at the time of evidence about genuineness of certified copies, by calling original book volume from the concerned Registry Office, which entry, if any, in Book volume can be proved by responsible officer of the concerned registry office.

With these observations, CO 1945 of 2021 is disposed of.

There will be no order as to costs.

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

(Ajoy Kumar Mukherjee, J.)