

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1918 of 2017**

1. Surendra Prasad,
2. Yogendra Prasad,
3. Satyendra Prasad @ Sadhu Prasad
All Sons of Sri Ram Dahin Prasad Yadav, Resident of Village - Nadaul, P.S.
- Masaurhi, District - Patna.

... .. Petitioner/s

Versus

- 1.1. Nazre Moin Salim R/o at present R/o Flat No. -301, Rajendram Plaza, Phase 2, Exhibition Road, P.O.G.P.O., P.S. Gandhi Maidan, Distt-Patna.
- 1.2. Mohammad Ali Salim, R/o at present R/o Flat No. -301, Rajendram Plaza, Phase 2, Exhibition Road, P.O.G.P.O., P.S. Gandhi Maidan, Distt-Patna.
- 1.3. Burhanuddin Salim, R/o at present R/o Flat No. -301, Rajendram Plaza, Phase 2, Exhibition Road, P.O.G.P.O., P.S. Gandhi Maidan, Distt-Patna.
- 1.4. Mossarrat Salim, R/o at present R/o Flat No. -301, Rajendram Plaza, Phase 2, Exhibition Road, P.O.G.P.O., P.S. Gandhi Maidan, Distt-Patna.
- 1.5. Shaheen Imam, R/o at present R/o Flat No. -301, Rajendram Plaza, Phase 2, Exhibition Road, P.O.G.P.O., P.S. Gandhi Maidan, Distt-Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Om Prakash Upadhyay, Advocate
		Mr. Abhay Kumar Pandey, Advocate
For the Respondent/s	:	Mr.Ajay Kumar, Advocate

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT**

Date : 30-09-2024

The present petition has been filed under Article 227 of the Constitution of India challenging the order dated 04.09.2017 passed by learned Sub Judge-X, Patna in Title Suit No. 145/1996 whereby and whereunder the learned Sub Judge dismissed the petition dated 06.07.2017 filed by the plaintiffs/petitioners seeking permission to enter as exhibits some documents.



2. Shorn of unnecessary details, the relevant facts of the case are that the petitioners are plaintiffs before the learned trial court and the respondents are defendants. It further transpires that an application has been filed on behalf of the plaintiffs for entering on record certain documents as exhibits as the documents were stated to be public documents requiring no formal proof. The plaintiffs filed their application mentioning altogether eleven documents which they sought to be marked exhibits without formal proof. The plaintiffs further pleaded that documents were relevant and would facilitate the court to reach at just decision. The defendants filed their rejoinder contesting the claim of the plaintiffs. The learned trial court vide order dated 04.09.2017 rejected the application and the said order has been challenged in the present petition.

3. The learned counsel for the plaintiffs/petitioners submitted that the impugned order has been passed against the settled principles of law and without considering the relevant provisions of the Indian Evidence Act (hereinafter referred to as the 'Act'). The learned counsel further submitted that though the plaintiffs filed the application mentioning altogether eleven documents, the learned trial court mentioned just three documents observing these documents were not public



documents and did not record any finding about remaining eight documents. The learned counsel further submitted that it seems the learned trial court only considered the rejoinder of the defendants wherein they have also mentioned about these documents at sl. nos. (v), (vi) and (x) to be not the public documents. The learned counsel further submitted that the documents are certified copies of sale deeds, sale certificate, report of Additional Collector, notice in Case No.63/1951, orders of the High Court, register II and order of House Controller dated 07.06.1949. Since all the documents are certified copies of public records maintained by the State authorities, all of them are public documents within the meaning of Section 74 of the Act. The learned counsel further submitted that all the documents are more than 30 years old, so these documents could be straightway taken on record without requiring any formal proof, but the learned trial court missed this point and failed to appreciate the presumption of genuineness of documents said to be exhibited. The learned trial court, without examining the genuineness of documents and wrongly holding that documents which are exhibited are not public documents, rejected the prayer of the plaintiffs/petitioners by an erroneous order. The learned counsel



further submitted that even the documents at sl.nos. (v), (vi) and (x) are certified copies. The document at sl.no. (v) is a report of the Managing Officer-cum-Assistant Custodian, Patna in Eviction Case No.63/1951, which is an official document more than 30 years old and there is presumption of genuineness under Section 90 of the Act and it is filed from the custody of the plaintiffs. Similarly, document at sl. no. (vi) is certified copy of the notice dated 27.02.1952 in Case No. 63/1951 and the said notice was issued by the State Authority, which would come within the purview of public document. The certified copy of the notice is filed under Section 79 of the Act and there is presumption of genuineness. In the similar manner, document at sl.no. (x) is the certified copy of the Register II of the year 1966-67 to 1986-87. Again it is certified copy of the government record and there is presumption of genuineness under Section 79 of the Act. The learned counsel further submitted that all the documents were already on record and the learned trial court wrongly refused to mark these documents as exhibits.

4. The learned counsel for the plaintiffs/petitioners further submitted that the learned trial court rejected the application dated 06.07.2017 relying only on the rejoinder filed



by the defendants/respondents without applying its judicial mind and for this reason, the impugned order is not sustainable in the eyes of law.

5. On the other hand, learned counsel appearing on behalf of the defendants/respondents vehemently opposed the contention made on behalf of the petitioners. The learned counsel for the defendants/respondents submitted that there is no infirmity in the impugned order and the same is perfectly a valid order. The documents sought to be entered into record as exhibits are not public documents and the learned trial court rightly held that these documents could not be marked as exhibits.

6. The learned counsel for the defendants/respondents further submitted that the signature on the report of Additional Collector is required to be proved and, as such, the said certified copy of the report of the Additional Collector dated 31.05.1954 is not public document under the provisions of Section 74 of the Act. In the same manner, the certified copy of notice dated 27.02.1952 in Case No. 63/1951 and certified copy of Register II of the year 1966-67 to 1986-87 are also not public documents in terms of Section 74 of the Act. The learned counsel further submitted that thus, these documents cannot be marked as



exhibits without formal proof. Further proper custody of the documents have also not been proved. Therefore, the learned trial court rightly rejected the application of the plaintiffs.

7. The learned counsel for the defendants/respondents further submitted that the title suit is of the year 1996 and the application for marking the documents as exhibits can not be entertained after passage of so many years. Thus, learned counsel submitted that there is no merit in the present petition and the same be dismissed.

8. I have considered the rival submission of the parties and also perused the record.

9. Section 74 of the Act reads as under :

“74. Public documents.—

The following documents are public documents:—

(1) Documents forming the acts, or records of the acts—

(i) of the sovereign authority,

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive, [of any part of India or of the Commonwealth], or of a foreign country;

(2) Public records kept [in any State] of private documents.”

10. Now, the documents which plaintiffs sought to enter as exhibits are as follows :

(i) Certified copy of sale deed Hazi



Mohammad Nurul Wahab Vs. Zahiruddin dated 13.01.1944.

(ii) Certified copy of sale deed dated 05.02.1964 Banarshi Das vs. Ramdahin Prasad.

(iii) Certified copy of sale deed dated 22.01.1963 Hazi Mohammad Nurul Wahab Vs. Mohammad Salimuddin.

(iv) Certified copy of sale certificate dated 21.12.1963 in the name of Banarshi Das.

(v) Certified copy of report of Additional Collector dated 31.05.1954.

(vi) Certified copy of notice dated 27.02.1952 in Case No. 63/1951.

(vii) Certified copy of order of Hon'ble High Court dated 13.07.1966.

(viii) Certified copy of order of Hon'ble High Court in CWJC No. 1482/1972 dated 27.04.1977.

(ix) Certified copy of order of Hon'ble High Court in Criminal Revision No. 249/1992 Ramdahin Prasad Yadav Vs. Kalimuddin and others dated 16.12.1992.

(x) Certified copy of Register-II in the name of Ramdahin Prasad and others of the year 1966-67 to 1986-87.

(xi) Certified copy of order of House Controller dated 07.06.1949.

11. Perusal of the aforesaid list of documents shows all



the documents are certified copies and some of the documents are certified copies of the sale deeds, whereas some are orders of the High Court or orders of the proceeding before the judicial/quasi judicial authority apart from the certified copies of record maintained by public officers of their acts or records of acts. Except for sale deeds, other documents are copies of such documents which are specifically covered under Section 74 (1) of the Act. The certified copy of the sale deeds would come under Section 74 (2) of the Act.

12. Now, relevant provisions of Section 65 (e) (f) of the Act reads as under:-

“65. Cases in which secondary evidence relating to documents may be given.—
Secondary evidence may be given of the existence, condition or contents of a document in the following cases—

(a)

(b)

(c)

(d)

(e) *when the original is a public document within the meaning of Section 74;*

(f) *when the original is a document of which a certified copy is permitted by this Act, or by any other law in force, to be given in evidence;*

(g)

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.



In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents”.

13. The aforesaid provision makes it crystal clear that certified copy of such documents are admissible in evidence and no foundation is required to be laid.

14. Further, Sections 79 and 90 of the Act makes the law more clear which read as under :

“79. Presumption as to genuineness of certified copies.—*The Court shall presume to be genuine every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer of the Central Government or of a State Government, or by any officer in the State of Jammu and Kashmir who is duly authorised thereto by the Central Government:*

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

The Court shall also presume that any



officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

90. Presumption as to documents thirty years old.—*Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.*

Explanation.—*Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.*

This explanation applies also to Section 81.

Illustrations

(a) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land showing his titles to it. The custody is proper.

(b) A produces deed relating to landed property of which he is the mortgagee. The



mortgagor is in possession. The custody is proper.

(c) A, a connection of B, produces deeds relating to lands in B's possession which were deposited with him by B for safe custody. The custody is proper”.

15. The Division Bench of Madhaya Pradesh High Court in the case of ***Smt. Rekha Rana & Ors. Vs. Smt. Ratneshree Jain***, reported in ***AIR 2006 MP 107*** has held that a certified copy of a registered document issued by Registering Officer, by copying from Book 1, is a certified copy of a public document. Similar question came up before the Hon'ble Supreme Court in the case of ***Appaiya Vs. Andimuthu @ Thangapandi & Ors.***, [***Civil Appeal No. 14630 of 2015 { @ SLP (C) No. 10013 of 2015 }***], wherein the Hon'ble Supreme Court has observed that the certified copy of the private document being recorded in the records of Registrar would be considered as a public document. Therefore, the certified copy of sale deeds would also be covered under public documents under Section 74 (2) of the Act.

16. This Court, while dealing with similar issue in the case of ***Ram Briksha Singh & Ors. vs. Ramashray Singh & Ors.*** (***Civil Appeal No.1824 of 2018***), has held that certified copy of the sale deed kept in public record would be considered a public document and becomes admissible in evidence and can



be produced in proof of the contents of the public document or part of public document of which it purports to be a copy. This Court further held that it can be produced as secondary evidence of the public document without laying any foundation. However, a word of caution was added that it will only prove the contents of the original document and not be a proof of execution of the original document in the light of various provisions of Indian Evidence Act and Registration Act.

17. Apparently, the learned trial court recorded its finding only about three documents and did not consider at all the other documents. Further, the learned trial court even failed to consider true nature and import of those three documents and thus recorded an erroneous finding. Therefore, in the light of discussion made so far, I am of the considered opinion that the learned trial court committed an error of jurisdiction while rejecting the application of the plaintiffs. Hence, the order dated 04.09.2017 is set aside and the application dated 06.07.2017 is allowed. However, the defendants/respondents would be given ample opportunity to rebut the documents sought to be entered as exhibits by the plaintiffs. The learned trial court would proceed in the matter showing urgency and try to dispose of the suit within three months since it is a suit of 1996.



18. With the aforesaid observations/directions, the instant
petition stands allowed.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	AFR
CAV DATE	05.09.204
Uploading Date	01.10.2024
Transmission Date	NA

