

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1824 of 2018

1. Ram Briksha Singh
2. Ramanuj Singh
3. Vijay Kumar Singh, all sons of Late Deo Narain Singh, All resident of Village- Safapur, P.O. Safapur, P.S. Nayagaon, District- Begusarai.

... .. Petitioner/s

Versus

1. Ramashray Singh, S/o Late Ramdeo Singh,
2. Krishna Mohan Singh, minor S/o Ramashray Singh, minor under the guardianship of his father Ramashray Singh.
3. Balram Singh, S/o Ramashray Singh, All resident of Village- Safapur, P.O. Safapur, P.S. Nayagaon, District- Begusarai.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Bhupendra Narain Sinha, Advocate Mr. Shailendra Kumar, Advocate Mr. Saket Kumar, Advocate
For the Respondent/s	:	Mr. Daya Shankar Prasad Sinha, Advocate Mr. Anand Saran, Advocate Mr. Shyameshwar Dayal, Advocate Mr. Gaurav Kumar Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 11-07-2024

The instant petition has been filed by the defendants/petitioners under Article 227 of the Constitution of India for quashing the order dated 02.08.2018 passed by the learned Munsif, Begusarai in Title Suit No. 69 of 1996 whereby and whereunder the prayer made by the plaintiffs to accept and mark as an exhibit a certified copy of sale deed was allowed.

2. Briefly stated, the facts, as it emerges from the record, are that the respondents as plaintiffs filed have Title Suit



No. 69 of 1996 before the learned trial court seeking following reliefs:-

“(i) A decree of redemption with respect to the suit land be passed in favour of the plaintiffs treating the alleged sale-deed document dated 10.10.1984 a mortgage deed in favour of defendants with a finding that the plaintiffs have already paid the mortgaged money to the defendants.

(ii) An order or temporary injunction be passed in favour of the plaintiffs and defendants.

(iii) A decree of xxxxx cost be passed in favour of the plaintiffs and defendants.

(iv) A decree of any other relief or reliefs be passed in favour of plaintiffs as the court think fit and proper.”

The father of plaintiff no.1 and grandfather of plaintiff nos. 2 and 3 Ramdeo Singh took a loan of Rs. 7,000/- from the father of defendants/petitioners, Deo Narain Singh, in the year 1984 and executed a registered deed of mortgage dated 10.10.1984 for his land in favour of Deo Narain Singh as a security. Ramdeo Singh and Deo Narain Singh agreed before the villagers that on payment of Rs. 7,000/- to Deo Narain Singh, he would re-convey the land measuring 15 *kathas* of Survey Plot No. 159 to Ramdeo Singh. Deo Narain Singh was paid in installments the money borrowed by Ramdeo Singh and after death of Ramdeo Singh, plaintiff no.1 went to the defendants in the year 1991 and asked them to receive the balance amount and



return their land but defendants/respondents refused the request on 15.03.1995. It further transpires that on getting notice, the defendants/respondents appeared and filed their written statement stating *inter alia* that the plaintiff no.1 along with his father had executed a sale deed in favour of the father of the defendants on 10.10.1984 with respect to the subject matter of the present suit and the deed was registered before the Registrar, Begusarai. For this reason, the plaintiffs/respondents could not make out a case against the recital of the sale deed executed by them. The defendants further claimed that they acquired right and title and interest by virtue of sale deed dated 10.10.1984 and came in exclusive possession of the land transferred through the said sale deed. The defendants also got their names mutated in the revenue records and started paying rent and were issued rent receipts. During pendency of the suit, the plaintiffs/respondents filed an application on 16.05.2018 in the trial court with prayer to admit certified copy of sale deed dated 21.05.1990 executed by Ram Briksha Singh, defendant/petitioner no.1, in favour of Ajay Kumar Singh treating the said document as a public document. A rejoinder was filed challenging the maintainability of the application and also on the ground that it has no relevance in the present suit. The learned trial court, however, admitted the



aforesaid document and marked it exhibit and thus, allowed the application dated 16.05.2018 vide impugned order dated 02.08.2018.

3. Learned counsel appearing on behalf of the defendants/petitioners submitted that the learned trial court was not justified in accepting the sale deed executed by petitioner no.1 in favour of Ajay Kumar Singh treating it to be a public document. Learned counsel further submitted that certified copy of the sale deed could not be said to be a public document. Learned trial court did not consider the fact that the said document has no relevance in deciding the present case and the land mentioned in the certified copy of sale deed is different from the plots mentioned in the plaint as suit property. Learned counsel further submitted that the certified copy of the sale deed is not a primary evidence and would fall under the category of secondary evidence as provided under Section 63 of the Indian Evidence Act (hereinafter referred to as 'the Evidence Act'). The plaintiffs/respondents failed to satisfy the conditions as laid down under Section 65 of the Evidence Act in order to give the secondary evidence as Section 64 of the Evidence Act provides that the documents must be proved by primary evidence. Only exceptions are the conditions mentioned under Section 65 of the



Evidence Act. Learned counsel further submitted that learned trial court committed further error when without considering the relevance of the said document, it illegally admitted the said document as public document without requiring its formal proof. Thus, the learned counsel submitted that the impugned order is not sustainable and the same is fit to be set aside.

4. *Per contra*, learned counsel appearing on behalf of the plaintiffs/respondents submitted that there is no illegality in the impugned order. The document in question was filed prior to the settlement of issues and considering its relevance, the learned trial court rightly admitted it and marked it as exhibit. The learned counsel further submitted that the document which has been exhibited is certified copy of a sale deed and it would be covered under the definition of the public document under Section 74 (2) of the Evidence Act. Since it is a public record of private document. The learned counsel referred to a decision of the Guwahati High Court in the case of ***Md. Saimuddin Sheikh Vs. Abejuddin Sheikh***, reported in ***AIR 1979 GAUHATI 14***, in which the learned Single Judge has held that a sale deed is a private document but the record of the sale deed kept in the Office of the Sub Registrar is a public record of that private document and, hence, it falls within the category of public



document. It has further been held that to prove the document, certified copy of the deed is admissible. Thus, the learned counsel submitted that there is no infirmity in the impugned order and the same needs to be sustained and affirmed.

5. I have given my anxious consideration to the issue in hand. Admittedly, the document in question was filed before the settlement of issue and, therefore, it was available at the time of admission-denial of the documents. Merely marking a document exhibit does not mean it has become an admissible piece of evidence. An objection to its admissibility does not get excluded when the document is marked as exhibit. Reference could be made to the Hon'ble Supreme Court decision in the case of *Roman Catholic Mission Vs. State of Madras & Anr.*, reported in *AIR 1966 SC 1457*. Therefore, the Court could always look into such document considering its relevance and other aspects to test its admissibility. Hence, the impugned order could not be faulted on the aforesaid count.

6. Now the question remains whether certified copy of a sale deed could be considered a public document so as to allow it to be marked as an exhibit waiving the formal proof? Section 74 of the Evidence Act describes public document which 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.”

7. Section 75 of the Evidence Act provides that all other documents are private. Now a sale deed is no doubt a private document but whether its certified copy would come under the category of public records kept in any state of private document? The Division Bench of Madhya Pradesh High Court in the case of ***Smt. Rekha Rana & Ors. Vs. Smt. Ratneshree Jain***, reported in ***AIR 2006 MP 107*** has held the proposition that a certified copy of a sale deed is a public document or a registered sale deed is a public document are erroneous. It has further been held that a registered document (deed of sale etc.) is not a public document. It is a private document. Further, a certified copy of a registered document, copied from Book and issued by the Registering Officer, is neither a public document, nor a certified copy of a private document, but is a certified copy of a public document. In other words, a certified copy of a registered document is a certified



copy of public document. The basis for saying so lies in the fact that when a sale deed is registered before the Registering Authority, necessary entries are maintained in the book kept at the Registration Office and, thus, it is a record 'kept in a state of private documents' and, therefore, a public document. When a person applies for the certified copy of document registered in the office which is entered/filed in Book 1, a certified copy of document as copies/filed in Book 1 is furnished to the applicant. Such certified copy of any entries in Book 1 is a certified copy of a public document. But such certified copy of registered document extracted from Book 1 is not itself a public document. It is really a true copy of a copy (copy of original deed entered in Book 1). The discussion has been made by the Division Bench of the Madhya Pradesh High Court considering the provisions of the Registration Act, 1908, specially Sections 51 and 57. Thus, it has been concluded 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 in paragraph



no. 29, which reads as under:-

“29. Having regard to all the aforesaid circumstances and in the light of the various provisions of the Evidence Act mentioned hereinbefore we will firstly consider the question whether the appellant/plaintiff had succeeded in proving the contents of Ext.A1. Going by Section 65(e) when the original of a document is a public document within the meaning of Section 74, secondary evidence relating its original viz., as to its existence, condition or contents may be given by producing its certified copy. Ext.A1, indisputably is the certified copy of sale deed No. 1209/1928 dated 27.08.1928 of SRO Andipatti. In terms of Section 74(2) of the Evidence Act, its original falls within the definition of public document and there is no case that it is not certified in the manner provided under the Evidence Act. As noticed hereinbefore, the sole objection is that what was produced as Ext.A1 is only a certified copy of the sale deed and its original was not produced in evidence. The hollowness and unsustainability of the said objection would be revealed on application of the relevant provisions under the Evidence Act and the Registration Act, 1908. It is in this regard that Section 77 and 79 of the Evidence Act, as extracted earlier, assume relevance. Section 77 provides for the production of certified copy of a public document as secondary evidence in proof of contents of its original. Section 79 is the provision for presumption as to the genuineness



of certified copies provided the existence of a law declaring certified copy of a document of such nature to be admissible as evidence. When that be the position under the aforesaid provisions, taking note of the fact that the document in question is a registered sale deed, falling within the definition of a public document, the question is whether there exists any law declaring such certified copy of a document as admissible in evidence for the purpose of proving the contents of its original document. Sub-section (5) of Section 57 of the Registration Act is the relevant provision that provides that certified copy given under Section 57 of the Registration Act shall be admissible for the purpose of proving the contents of its original document. In this context it is to be noted that certified copy issued thereunder is not a copy of the original document, but is a copy of the registration entry which is itself a copy of the original and is a public document under Section 74(2) of the Evidence Act and Sub-section (5) thereof, makes it admissible in evidence for proving the contents of its original

..... ”

(Underlined for emphasis)

8. Now coming back to the dispute in the present case, in the light of discussion made hereinbefore, it could be safely concluded that the certified copy of a registered sale deed would fall under the category of public document under Section 74 (2)



of the Evidence Act.

9. Last question which remains is whether this document could be marked an exhibit waiving the requirement of formal proof. Section 76 of the Evidence Act empowers an officer having the custody of a public document to give a certified copy at the Registrar's Office keeps a public record of all sale deeds registered in that office. The definition of public document under Section 74 of the Evidence Act takes in public records kept in any state of private document. A certified copy is therefore admissible in evidence both under Section 65 (e) and 65 (f) of the Evidence Act. The certified copy is, therefore, secondary evidence of public record of sale deed kept in the office of the Registrar. Invoking Section 57(5) of the Registration Act, the said copy becomes admissible for the purpose of proving the contents of the original document itself. Therefore, the certified copy becomes admissible in evidence but proof of execution could not be dispensed with.

10. Section 65 (e) and Section 77 of the Evidence Act read as under:-

“(a).....

(b).....

(c).....

(d).....

(e) *when the original is a public document within*



the meaning of section 74;

(f).....

(g).....

77. Proof of documents by production of certified copies.—Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.”

At the same time, Section 57 (5) of the Registration

Act reads as under:-

“57 (5) All copies given under this section shall be signed and sealed by the registering officer, and shall be admissible for the purpose of proving the contents of the original documents.”

11. Now conjoint reading of all these provisions make it amply clear that the certified copy of sale deed 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. It can be produced as secondary evidence of the public document without laying any foundation. However, a word of caution may be added that it will only prove the contents of the original document and not be a proof of execution of the original document.

12. Therefore, I have no hesitation in holding that the impugned order dated 02.08.2018 passed by the learned Munsif, Begusarai in Title Suit No. 69 of 1996



does not suffer from any infirmity and, hence, the same is affirmed.

13. Accordingly, the instant civil miscellaneous petition stands dismissed.

(Arun Kumar Jha, J)

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