



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 2246 OF 2019

(Archana Satyanarayansingh Sengar and another vs. Bharatsingh s/o Jagdambasingh Sengar and others)

*Office Notes, Office Memorandum of Coram,
appearances, Court's orders of direction,
order
and the Registrar's orders.*

Court's or Judge's

Mr. J.B.Kasat, Advocate for the petitioners.
None for the respondent.

CORAM : ABHAY J. MANTRI J.

DATE : DECEMBER 13, 2024

- 1) Heard the learned Counsel for the petitioners. However, despite the service of notice, none appears for respondents.
- 2) The petitioners/Plaintiffs, being aggrieved by the order dated 26/11/2018 passed by learned Civil Judge Junior Division, Dharni, District Amravati below Exhibit 40, in RCS No.17/2014, thereby rejected the application to grant permission to lead secondary evidence in respect of a copy of the partition deed dated 27/08/2004.
- 3) Learned Counsel for the petitioners vehemently contended that the plaintiffs have categorically stated that based on the partition deed, their ancestor Satyanarayan Singh has the right, title and interest in the property as owner and possessor. After his demise, they, being his legal heirs, are entitled to the same. Hence, the petitioners have filed the suit for declaration and injunction against the respondents.
- 4) He further drew my attention to the copy of the partition deed, the order passed below Exh.37, thereby directing

the respondents to produce the original partition deed dated 27/08/2004 before the Court. He further submitted that as per Section 65 of the Indian Evidence Act, the petitioners are entitled to lead secondary evidence in support of their claim. However, the learned trial Court held that the original partition deed is not registered; therefore, in the absence of the registration, the question of granting permission to lead secondary evidence does not arise. The findings given by the Trial Court are contrary to the settled principle, and therefore, he urged for allowing the petition.

5) I have appreciated the submissions of the learned Counsel for the petitioner and perused the impugned order and the record.

6) At the outset, it appears that petitioners in the suit categorically averred that based on the partition deed dated 27/08/2004 executed between the legal heirs of Jagdamba Singh and petitioners' ancestor Satyanarayan Singh has got field Survey No.99 area admeasuring 5H 40R at Baspani and house described in para no.1 (A) of the plaint. However, the defendants/ respondents have categorically denied the said averment. Therefore, to prove the partition deed, plaintiffs have moved an application below Exh.37 under Order 11 Rule 12 of the Civil Procedure Code to direct the defendants to discover the documents that were or had been in their possession. The said application came to be allowed, and the learned trial Court has directed the defendant Nos.1 and 3 to discover the partition deed dated 27/08/2004. However, by filing the affidavit, defendants No.1 and 2 have stated that they are unable to search and discover the alleged partition deed.

7) Besides the above, the petitioner moved an application to permit them to lead secondary evidence to prove the said partition deed. However, the application was rejected, holding that the partition deed was not registered. Therefore, in the absence of the original document and registration of the same, the question of granting permission to lead secondary evidence does not arise.

8) A short question arises before this Court: Whether the petitioners are entitled to lead secondary evidence based on the said photocopy of the partition deed? For that purpose, I would like to reproduce Section 63 of the Indian Evidence Act of 1872 as under:-

“63. Secondary evidence. — Secondary evidence means and includes —

(1) certified copies given under the provisions hereinafter contained;

(2) copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies;

(3) copies made from or compared with the original;

(4) counterparts of documents as against the parties who did not execute them;

(5) oral accounts of the contents of a document given by some person who has himself seen it.”

9) As per Section 63(2), the parties may lead secondary evidence if copies made from the original were made available or obtained by mechanical process and produced before the Court. In that case, as per Section 65 of the Indian Evidence Act, parties can be permitted to lead the secondary evidence to prove

the said document as the party is unable to produce the original document.

10) It is an undisputed fact that the petitioner had produced a photocopy of the partition deed dated 27/08/2004 on record, which means the petitioners have produced the copies made from the original by mechanical process on record, so also it is a categorical case of the petitioners that the original is in the possession of the defendants. However, the defendants have denied the same and did not produce the original copy. Therefore, the petitioners are unable to produce the original before the Court in a reasonable time.

11) In such circumstances, as per Section 65, the petitioners can be permitted to lead the secondary evidence to prove the original Partition deed, as they cannot produce the same in a reasonable time, but they have produced a photocopy of the said document on record. While passing the impugned order, the learned trial Court erred in holding that "*when the original document is not admissible as evidence in the absence of the registration, therefore, the question of granting permission to lead secondary evidence does not arise.*" However, the said finding appears contrary to the facts on record and settled position of law.

12) As per Sections 62 and 65, in the absence of the original document, the petitioners are entitled to lead secondary evidence if copies made from the original were made available or obtained by mechanical process have been produced on record. Apart from the above, the question of the evidentiary value of the document can be determined at the time of the final decision. Even if the petitioners failed to produce the document,

in that eventuality, it could be used for collateral purposes to support their case. Therefore, in my opinion, the findings given by the learned trial court are improper and contrary to the provisions of the law, and they cannot be sustained in the eyes of the law. Based on the said findings, the order cannot be sustained, and the same is liable to be set aside.

13) Considering the aforesaid discussion and provisions of law, I deem it appropriate to allow the petition. Accordingly, the petition is allowed in terms of prayer clause (A). No order as to costs.

14) Inform the learned Trial Court accordingly.

(ABHAY J. MANTRI, J.)

KOLHE