

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1588 of 2019

- 1.1. Seema Afzal Wife of Najmul Hoda Khan, Resident of Dariyapur, P.S. Sangrampur, District- East Champaran.
- 1.2. Noor Afzal @ Noor Matin Wife of Dr. Matinuddin Haidar Resident of Bank Road, P.S. Gandhi Maidan, District- Patna.
- 1.3. Isra Rahima Wife of Sajid Khan Resident of Bank Road, P.S. Gandhi Maidan, District- Patna.
- 1.4. Barkatullah Khan @ Md. Umar Saifullah Khan Son of Late Md. Hedayatullah Khan Resident of Village - Pathanpatti, P.O. - Kariyapur, P.S. Harsidhi, District- East Champaran.
- 1.5. Bushra Khanam @ Bushra Imran Wife of Imran Khan Resident of K. Hat, P.S. K. Hat, District- Purnea.
- 1.6. Md. Nasar Asadullah Khan Son of Late Md. Hedayatullah Kha Resident of Village - Pathanpatti, P.O. Dariyapur, P.S. Harsidhi, District- East Champaran.

... .. Petitioner/s

Versus

Ekbal Khan Son of Muzaffar Imam Khan Alias Babu Khan Resident of Mohalla- Chikpatti, Post Office- Motihari, District- East Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Raghib Ahsan, Sr. Adv. Mr. Wasi Akhtar, Adv.
For the Respondent/s	:	Mr. Arbind Kumar Sharma, Adv.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 22-05-2025

The present petition is filed for setting aside the order dated 04.09.2019 passed by the learned Sub Judge-13, Motihari, East Champaran in Title Suit No. 524 of 2008, whereby and whereunder an application dated 24.04.2019 filed by the plaintiff has been allowed and certain documents have been marked as exhibits as public documents.

2. Briefly stated, the facts of the case are that the



respondent is plaintiff before the learned trial court who has filed Title Suit No. 524 of 2008 for declaration of his title over the suit land and for confirmation of possession thereon as well as a declaration that registered deed of sale dated 21.08.2018 executed by Most. Rojidan in favour of Md. Hedyatullah Khan, original defendant no.1 (since dead), is *void ab initio* and not binding upon the plaintiff. The suit land is situated in Mauza Tarkalwa, P.S.- Motihari Town, District.- East Champaran having area of 1 *bigha* 16 *katha* 2 *dhur*. The plaintiff claims himself to be the *karta* and manager of his family whereas the original defendant was the *karta* and manage of his family. The suit land was *khatiani* land of Most. Rojidan who was the maternal grandmother of the father of the plaintiff. Most. Rojidan had only one daughter Kulsum Bandi who was married to Md. Taqui Khan, grandfather of the plaintiff. From their wedlock, father of the plaintiff was born. Most. Rojidan executed a registered deed of Waqf in respect of the suit land and other properties on 12.02.1916. The beneficiaries of the waqf were Kulsum Bandi and her descendants. After death of Kulsum Bandi, the grandfather of the plaintiff and the father of the plaintiff came in possession of the waqf properties and remained in its possession. Father of the plaintiff died in the



year 1983 and the plaintiff came into possession of the waqf properties. The grandmother of the plaintiff executed registered deed dated 16.06.1972 in favour of her grandsons. The suit land was a ditch (*Gaddha*) and as it was not a productive land, no steps were taken for its mutation by the grandfather or the father of the plaintiff but they remained in its peaceful possession. On 15.12.2007, the plaintiff filed an application for mutation of his name in the Anchal Office and he came to know that *jamabandi* of the suit land has been running in the name of Md. Hedayatullah Khan. Since neither the father of the plaintiff nor the plaintiff had knowledge about the aforesaid fact, no claim on spot was made by anyone. In March, 2008, the plaintiff filed an application for cancellation of the *jamabandi* in the name of defendant no.1. Subsequently, on 06.05.2008, the plaintiff filed an appeal before the DCLR, Motihari. In this proceeding, the plaintiff came to know that a report has been submitted that Most. Rojidan had executed a sale deed dated 21.08.1948 in the name of defendant no.1. The plaintiff obtained certified copy of the sale deed on 19.10.2008 and told the defendant not to make any claim of right on the basis of the said sale deed as it was forged and fraudulent. But as the defendant did not pay any heed to the request of the plaintiff, the plaintiff was compelled to file



Title Suit No. 524 of 2008. The defendant appeared and contested the suit by filing written statement submitting that deed of waqf dated 12.02.1916 executed by Most. Rojidan was not acted upon and she never treated the suit land as waqf land and on 21.08.1948 sold the suit land to Md. Hedayatullah Khan, original plaintiff no.1 who got his name mutated in revenue records and used to pay rent. The defendant further submitted that the deed of waqf dated 12.02.2016 does not relate to the suit land as Mauza was different. In the aforesaid proceeding on 24.04.2019, the plaintiff filed an application for taking into evidence the documents mentioned therein which includes certified copies of the deed of gift dated 20.02.1972, the waqfnama dated 12.02.2016 and the sale deed dated 21.08.1948 as public documents. On 04.09.2019, the defendants filed a rejoinder to the said application of the plaintiff objecting to the prayer of the plaintiff. However, vide impugned order dated 04.09.2019, learned Sub Judge allowed the application and marked the documents as exhibits considering the documents to be public documents.

3. Learned senior counsel appearing on behalf of defendant/petitioner submitted that the learned trial court erred in marking certified copies of deed of gift dated 20.02.1972,



deed of waqf dated 12.02.2016 and the sale deed dated 21.08.1948 as exhibits treating the same as public documents. The impugned order is erroneous as without being satisfied about the non-availability of the original documents, the learned trial court marked the documents exhibit as public documents. Learned senior counsel further submitted that the impugned order is illegal and arbitrary. The documents marked exhibits are not public documents and the learned trial court fell into error. Under Section 65 of the Evidence Act, the aforesaid documents could not be taken into evidence as secondary evidence without satisfying the grounds mentioned therein but the learned trial court committed error of jurisdiction in allowing the application dated 24.04.2019. Learned senior counsel further submitted that the documents can be taken into secondary evidence when it can be shown that original has been destroyed or lost or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time. Learned senior counsel further submitted that the original of the documents are not public documents within the meaning of Section 74 of the Evidence Act. Therefore, the learned trial court has passed the orders without having regard to the legal position and the impugned order is



not sustainable.

4. Learned counsel appearing on behalf of the respondent vehemently contended that there is no infirmity in the impugned order and the same does not need any interference by this Court. Learned counsel submitted that even though the documents are private documents but record kept in the office of Sub-Registrar is a public record of said private document, certified copies of the same are admissible documents. Learned counsel further submitted that under Section 74 of the Evidence Act, it has been clearly specified that where a document, a part thereof is a public document within the meaning of the Section, it does not require any further proof. It is also settled principle of law that when documents are tendered in evidence and marked as exhibits, three types of objections could be taken, viz, (i) Objection to the document purely on ground of absence/insufficiency of stamp duty. (ii) Where a document is by itself admissible in evidence but the objection is directed towards the mode of proof alleging the same to be irregular or insufficient. (iii) Objection that document sought to be produced in evidence is *ab initio* inadmissible in evidence in terms of the relevant statutory provisions, for instance under the provisions of Registration Act, 1908 or the Transfer of Property Act, 1882.



The objections taken by the defendant/petitioner does not fall within any of the three categories. Learned counsel further submitted that Section 65 of the Evidence Act has no relevance so far as applicability of Section 74 of the Evidence Act is concerned. The learned counsel relied on the decision of *Appaiya Vs. Andimuthu @ Thangapandi & Ors.*, reported in *AIR 2023 SC 4810* in support of his contention that in similar manner objection was taken that the document produced i.e., Exhibit-A1 was only certified copy of the sale deed and its original was not produced in evidence, the Hon'ble Supreme Court held that the document in question was certified copy of 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 document as admissible in evidence for the purpose of proving the contents of the original documents and answered the question relying on Section 57(5) of the Registration Act that provides certified copy given under Section 57 of the Registration Act shall be admissible for the purpose of proving the contents of its original document. The Hon'ble Supreme Court further noted that certified copy issued thereunder is not a copy of original document but is a copy of registration entry which is itself a copy of the original and is a



public document under Section 74(2) of the Evidence Act. Thus, learned counsel submitted that present petition is devoid of any merit and the same be dismissed.

5. Having considered the rival submission and on perusal of record, it appears that the issues before this Court are whether certified copies of the documents are public documents and whether the documents are admissible as secondary evidence without laying any foundation. The same issue came before this Court in the case of ***Ram Briksha Singh & Ors. vs. Ramashray Singh & Ors. (Civil Misc. No.1824 of 2018)*** and paragraph nos. 7, 8, 9 & 10 are quire apposite for consideration of the issues raised in the present matter and the same are extracted for ready reference. Paragraph nos. 7, 8, 9 & 10 of the same read as under:-

*“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 Madhaya 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.””

6. Similar question came up before the Hon’ble Supreme Court in the case of **Appaiya** (supra) 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)

7. Thereafter, a Constitution Bench of the Hon’ble Supreme Court in the case of **N.N. Global Mercantile (P) Ltd. vs. Indo Unique Flame Ltd.**, reported in **(2023) 7 SCC 1** wherein paragraph no. 141.2, the Hon’ble Supreme Court recorded as under:-

“141.2. What Section 74 read with Section 76 of the Evidence Act provides for is, the issuance of certified copies. Certified copies can be issued only in respect of public documents. Section 62 inter alia of the Evidence Act defines primary evidence as the document itself produced for the inspection of the court. Section 63 of the Evidence Act defines ‘secondary evidence’ as meaning and including, inter alia, ‘certified copies under the provisions hereinafter contained’. The provisions ‘hereinafter contained’ referred to in Section 63 must be understood as Section 74 read with Section 76. A certified copy can be given, no doubt, of ‘public records kept in any State of private documents’. Thus, if a sale deed between two private parties comes to be registered, instead of producing the original document, a certified copy of the sale deed, may qualify as secondary evidence and a certified copy can be sought for and issued under Section 76 of the Evidence Act. The expression ‘public records kept in any State of a private



document' in Section 74 is not confined to documents, which are registered under the Registration Act. A private document, which is kept as a public record, may qualify as a public document. What is important is, to bear in mind that in view of Section 33 of the Stamp Act, an instrument, which is not duly stamped, if it is produced before any Public Office, it would become liable to be impounded and dealt with as provided in the Stamp Act."

8. Recently, this Court in the case of ***Abdul Rashid vs. Iftakhar Hussain @ Dablu & Ors., (Civil Misc. No. 1651 of 2019)***, considered the aforesaid decisions as well as the decision of Hon'ble Supreme Court in the case of ***Deccan Paper Mills Company Limited vs. Regency Mahavir Properties & Ors.*** reported in ***(2021) 4 SCC 786*** and came to a finding that certified copy of a registered document would be deemed to be considered as public document under Section 74(2) of the Evidence Act and read with Section 57(5) of the Registration Act, it would be admissible in evidence. It has further been held that certified copy of sale deed can be produced in proof of contents of the public document or part of public document which purports to be a copy and can be produced as secondary evidence of the public document without laying any foundation. At the same time, it has also been observed that it will only prove the contents of the original document and not be a proof of execution of the original document. The facts of the present



case are squarely covered by the decision of *Abdul Rashid* (supra).

9. Moreover, it is to be reminded that 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.

10. In the light of aforesaid discussion, I have no hesitation in holding that though the impugned order is completely a cryptic order but for the reasons discussed as aforesaid by this Court, the impugned order could not be said to be suffering from any infirmity and, hence, the impugned order dated 04.09.2019 passed by learned Sub Judge-13, Motihari, East Champaran in Title Suit No. 524 of 2008 is sustained.

11. Accordingly, the present petition stands dismissed.

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
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