

AD-05
Ct No.10
25.09.2025
TN

CO 469 of 2024

Madhumita Chakraborty Rana
Vs.
Smt. Anjana Tarafdar and others

Mr. Partha Pratim Roy,
Mr. Samrat Chakraborty

....for the petitioner

Mr. Chitta Ranjan Chakraborty,
Ms. Puspa Rani Jaiswara

....for the opposite parties

1. The present revisional application has been filed by the defendant no.3 in a suit for declaration that the suit passage is exclusively owned by the plaintiff/opposite party no.1.
2. In such suit, after the evidence of the parties was over, an application was taken out by the defendant no.3/revisionist petitioner for being permitted to adduce evidence of one of the attesting witnesses to a purported agreement which apparently shows that the parties agreed to the suit passage being used as a common passage.
3. Learned counsel for the petitioner argues that the said document is of vital importance for adjudication of the suit, since the crux of the dispute in the suit revolves around whether the passage-in-question is a common

passage or an exclusive passage owned by the plaintiff.

4. As such, it is argued that the learned Trial Judge refused to exercise jurisdiction vested in him by law in rejecting the application. It is submitted that although the agreement was produced during evidence, the same was marked as 'X' for identification and not exhibited, since the authors of the document did not come forward to adduce evidence to prove the same.
5. However, it is submitted that since the attesting witness can collaterally prove the execution of the document, the prayer of the petitioner ought to have been permitted.
6. Learned counsel appearing for the plaintiff/opposite party no.1 controverts the contentions of the petitioner and submits that the defendant nos. 1 and 2, who are the executants of the purported agreement, have not come forward to prove the same. As such, the same was marked as 'X' for identification. In any event, it is submitted that an attesting witness cannot prove the contents of a document.
7. Upon hearing learned counsel, it is clear that the importance of the purported agreement cannot be overlooked. However, we cannot lose sight of the fact that the defendant nos. 1 and 2, one of whom is contesting the suit along with the defendant

no.3/petitioner by filing a joint written statement, did not come forward to prove the said agreement, despite allegedly being the executants of the said agreement, for which the agreement was marked as 'X' for identification and was not admitted in evidence or marked as an exhibit.

8. The learned Trial Judge was justified in observing that the contents of a document can only be proved by its executants, who have not come forward to prove the same.
9. It is also well-settled that the attesting witness can only prove, at best, that the document-in-question was signed by its executants in presence of the said attesting witness. The contents of the document are not necessarily to be known by the attesting witness.
10. Thus, the premise on which the application of the petitioner was dismissed cannot be faulted.
11. Also, the application for bringing the evidence of the attesting witness on record does not disclose the ingredients of Order XVIII Rule 17 of the Code of Civil Procedure, which is required to be read in the context of the previously existing Order XVIII Rule 17A of the Code which mandated the parties seeking to adduce evidence belatedly to satisfy the Court as to what prevented them from adducing such evidence during the deposition of the parties, befitting the due

diligence expected of a prudent man. In the absence of such pleading or proof, the learned Trial Judge could not be faulted for dismissing the application.

12. Accordingly, no interference is called for.
13. CO 469 of 2024 is dismissed on contest, thereby affirming Order No. 75 dated January 17, 2024 passed by the learned Civil Judge (Junior Division), Second Court, Serampore, Hooghly in Title Suit No. 408 of 2016.
14. There will be no order as to costs.
15. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)