
(1993) 04 CAL CK 0027
In the Calcutta High Court
Case No : C.O. No. 1995 of 1986

Dibakar Mahato and Others

APPELLANT

Vs

Bhagabat Ch. Mahato and Others

RESPONDENT

Date of Decision : 30-04-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Evidence Act, 1872 — Section 65, 74, 75, 76

Citation : (1993) 2 CALLT 334

Hon'ble Judges : Tarun Kumar Chatterjee, J

Bench : Single Bench

Advocate : P.K. Samanta, for the Appellant; A.K. Jana, for the Respondent

Final Decision : Allowed

Judgement

Tarun Kumar Chatterjee, J.—This revisional application is directed against orders dated 8th of May, 1986, 12th of May, 1986 and 19th of May, 1986 passed by Shri P.G. Dutta, Munsif, 2nd Court at Midnapore in Title Suit No. 246 of 1978.

2. The instant suit has been filed by the opposite parties against the petitioners for declaration of title, permanent injunction and for compensation in respect of the properties mentioned in the Schedule to the plaint (hereinafter referred to as the suit property). In course of hearing of the said suit, the petitioners sought to admit into evidence a certified copy of a registered deed dated 17th of December, 1973 executed by the vendor of the opposite parties in favour of the villagers of Bonekathi entrusting the villagers of village Bonekathi with the administration of the Math standing on the suit property. A notice was served upon the opposite parties requiring them to produce the said original deed. The opposite parties did not produce the said deed. In fact, the opposite party No. 1, in his deposition, stated that the said deed was not in his custody. But he did not deny the existence of the said deed. The defendant No. 2, in his deposition, stated that the said deed was not in their custody. He, however, deposed that he was present at the time of execution of the said deed and proved the execution

of the said deed. It appears from record that the petitioners filed an application on 11th of February, 1982 praying for examination of a person from the office of the Sub-Registrar, Midnapore to prove the certified copy of the deed on production of the original volume. The opposite parties, however, objected to the admissibility of the certified copy of the said deed in evidence on the ground that the relevant volume was not called for from the office of the Sub Registrar. The learned Munsif, 2nd Court at Midnapore, by his order dated 8th of May, 1986, held that the certified copy of the deed in question should be marked as exhibit after production of the relevant Volume from the registry office. By an order dated 12th of May, 1986, the learned Munsif closed the evidence from the side of the defendants and gave liberty to the petitioners to prove the certified copy of the said deed in question by adducing further evidence at the time of argument. By a petition dated 14th of May, 1986, the petitioners prayed that as the original deed not having been traceable or lost and the execution of the relevant deed having been proved by production of the certified copy thereof, the same may be admitted into evidence. The learned Munsif, 2nd Court, Midnapore, after hearing the parties, rejected the said petition holding inter alia that the certified copy of the deed in question could not be admitted into evidence without the production of the original nor there was any foundation laid for such non-production of the original from the registry office.

3. Feeling aggrieved by the aforesaid three orders of the learned Munsif, 2nd Court at Midnapore, the petitioners have come up to this Court in revision.

4. Mr. Samanta, appearing on behalf of the petitioners, submitted at the first instance that as the registered deed in question was a "public document" within the meaning of Section 74 of the Evidence Act, the learned Munsif had acted illegally and with material irregularity in the exercise of his jurisdiction in not admitting the certified copy of the deed in question into evidence. It was next submitted by Mr. Samanta that as the petitioner No. 2 had deposed to the effect that the said deed was not in custody of the petitioners and not traceable, the learned Munsif acted illegally with material irregularity in the exercise of his jurisdiction by not admitting the certified copy of the deed in question into evidence in accordance with Section 65(c) of the Evidence Act. The contentions, so raised by Mr. Samanta, were hotly contested by Mr. Jana, the learned Advocate appearing on behalf of the opposite parties. According to Mr. Jana, the certified copy of the said deed is not admissible in evidence in the absence of production of the original document. Mr. Jana further submitted that as there was no evidence on record from the side of the petitioners that the original document was not traceable or it was lost, the learned Munsif was right in holding that as the original was not produced and there was no foundation laid for such non-production of the original, the certified copy of the deed in question was not admissible in evidence u/s 65(c) of the Evidence Act. It was further submitted by Mr. Jana that the deed in question can be said to be a public document only because it is a registered document.

5. Having heard Mr. Samanta, appearing for the petitioner and Mr. Jana, appearing for the opposite parties and after giving my serious considerations to the aforesaid submissions of the learned Advocates, appearing for the parties, I am of the view that in the facts and circumstances of this case, the certified copy of the deed in question ought to have been admitted into evidence. But before deciding the question as to whether the certified copy of the deed in question could be admitted into evidence without production of the original u/s 65(c) of the Evidence Act, let me take up the first contention of Mr. Samanta for consideration.

6. According to Mr. Samanta, as the certified copy of the said deed is a public document, the certified copy of the same can be admitted into evidence as a secondary evidence u/s 65(c) of the Evidence Act (hereinafter referred to as the Act). In support of this contention, Mr. Samanta relied on a decision of the Supreme Court reported in Gurnam Singh and Others Vs. Surjit Singh and Others,

7. Before dealing with Section 74 of the Act, which defines "Public Document", it is necessary to refer to some more sections of the Act. Section 63 of the Act reads as follows :

"Secondary evidence means and includes--

(1) certified copies given under the provisions hereafter contained ;"

(Sub-sections (2) to (5) are omitted because they are not relevant for our purpose). Section 76 of the Act deals with the power of a Public Officer, having the custody of a public document to supply a certified copy of the same to any person who has a right to inspect such public document. Section 65(e) of the Act says that secondary evidence may be given of the existence, condition or contents of a document when the original is a "public document" within the meaning of Section 74 of the Act. Therefore, on a bare reference to the aforesaid provisions of the Act, certified copies of a public document can be said to be a secondary evidence and can be admitted into evidence as such u/s 65(e) of the Act.

8. If it can be held that the deed in question is a "public document" within the meaning of Section 74 of the Act, then there cannot be any doubt in one's mind that the certified copy of the same is admissible in evidence as a secondary evidence u/s 65(c) of the Act. Let me, therefore, consider whether the deed in question is a "public document" within the meaning of Section 74 of the Act. Let me now turn to Section 74 of the Act which reads as follows :

"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 the tribunals, and

(iii) of public officers, legislative, judicial and executive.

(2) public records kept (in any State) of private documents."

9. On a bare reference to Section 74(1) of the Act, it is impossible to hold that Section 74(1) of the Act has any relevance so far as the deed in question is concerned. Section 74(2) of the Act, however, says that "public records kept (in any State) of private documents."

10. In a Single Bench decision of this Court reported in *Rabindra N. Das Vs. Santosh Kumar Mitra and Others*, Sabyasachi Mukharji, J. (as His Lordship then was), relying on the observations of the Judicial Committee, held as follows :

"On behalf of the plaintiff a certified copy of the said document has been tendered in evidence and marked as Ext. H. The said document was a registered document and this is a certified copy of the said registered document duly certified by the Registrar of Assurance. The said document is also P.D.1. The question, therefore, arises, whether this certified copy can be relied upon or can be admitted in evidence. My attention was to Section 74 Sub-section (2) of the Evidence Act. Sub-section (2) of Section 74 provides what are the public documents and Section 76 permits certified copies of public documents to be admissible in evidence. The question, therefore, is whether the deed of trust in the instant case could be described as a private document of which public records are kept. In view of the observations of the judicial committee in the decision in the cases of AIR 1943 83 (Privy Council) and in view of the decision in the case of *Krishna Kishori Chowdharani v. Kishori Lal Roy* (1886) 14 Ind App 71 (PC)) in my opinion, it cannot be said that the Ext. H, a private deed of trust which has been registered, is a private document of which public record is required to be kept and, therefore, as such it cannot be admissible u/s 76 of the Evidence Act."

11. In view of the aforesaid observations of Sabyasachi Mukherjee J. (as His Lordship then was) and in view of the discussions made hereinabove, it cannot be held that the document in question (i.e. the deed in question) is a public document within the meaning of Section 74 of the Evidence Act. Apart from that only because the deed in question is a registered one, it cannot be said that the same is a public document. Furthermore, Judicial Committee in AIR 1943 83 (Privy Council) held that it cannot be said that any registered document is a public document only because public record is required to be kept. The same view was reiterated in 22 Weekly Reporter 355 (*Huree Hur Mojoomdar and Ors. v. Churn Majee and Ors.*)

12. In my view, the Supreme Court decision, as referred to above and relied on behalf of the petitioners, has no relevance to the issue in hand. While deciding the question as to whether adverse inference can be inferred against a party for non-production of a registered deed of sale in a preemption suit, the Supreme Court has observed in that context that a sale deed is a public document and the same could have been easily looked into if they would have asked for it to be

admitted at the appellate stage. The observation of the Supreme Court, in that decision, in my view, was made in the context of the issue namely whether adverse inference can be inferred against a party for non-production of a registered deed of sale in a preemption suit, and the Supreme Court in that decision never decided that a certified copy of a registered deed of sale can be admitted into evidence, as the sale deed was a "public document" within the meaning of Section 74 of the Evidence Act. Only because the Supreme Court has said in that decision that the sale deed is a public document, which is, in my view, an insignificant statement, it cannot be said that the Supreme Court has held that the sale deed is a public document within the meaning of Section 74 of the Evidence Act. Therefore, the contention of Mr. Samanta that the deed in question is a public document cannot be accepted. As I have held that the deed in question is not a public document within the meaning of Section 74 of the Evidence Act, such a document must be taken as a private document within the meaning of Section 75 of the Evidence Act and since it is a private document, the certified copy of the same cannot be admitted into evidence u/s 65(c) of the Act.

13. So far as the contention of Mr. Samanta that the certified copy of the deed in question can be admitted into evidence as a secondary evidence u/s 65(c) of the Act is concerned, I am of the view that the learned Munsif has acted illegally and with material irregularity in the exercise of the jurisdiction in holding that the certified copy of the deed in question cannot be admitted into evidence u/s 65(c) of the Act. Section 65(c) of the Act reads as follows :-

"Secondary evidence may be given of the existence, condition or contents of a document when the 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".

14. On a plain reading of the aforesaid section, it appears to me that the said Section 65(c) of the Act consists of two clauses. The first clause is independent of the second. In case a party, seeking to tender secondary evidence, is unable to tender the original document, the same having been lost or destroyed, the said party is governed by the first clause. The second clause "not arising from his own default or neglect" is applicable when a party offering evidence is unable to produce the original document within a reasonable time for any other reason. If the case comes within the purview of the first clause i.e. if the original document is proved to have been lost or destroyed, the Court may admit the certified copy of the original deed as secondary evidence u/s 65(c) of the Act. When, on the other hand, the case comes within the second clause i.e., when the party offering the secondary evidence is unable to produce the original document within a reasonable time for any other reason, the Court can allow the certified copy of the original document to be admitted into evidence on being satisfied that the conduct of the party, seeking to admit the certified copy of the original document, is impeccable.

15. In my view, in the instant case, both the clauses have been satisfied. So far

as the first clause is concerned, the defendant No. 2, in his deposition, clearly stated that the deed in question was not in their custody as it was lost and also the opposite party No. 1 in his deposition stated that the said deed was not in his custody. But, at the same time he did not deny the existence of the deed in question. By filing an application dated 14th of May, 1986 the petitioners prayed that the original deed not having been traceable or lost and the execution of the deed in question having been proved by production of the certified copy thereof, the same may be admitted into evidence. Such being the position and in view of the evidence adduced on behalf of the defendants that the original deed has been lost, I have no hesitation to hold that the learned Munsif, in the facts and circumstances of this case ought to have admitted the certified copy of the deed in question into evidence.

16. So far as the second clause of Section 65(c) of the Evidence Act is concerned, I am of the view that the petitioners have also satisfied the second clause. The certified copy of the deed in question could be admitted into evidence as secondary evidence in view of the fact that the petitioners, offering evidence of the contents of the deed in question, could not, for any other reason not arising from their own default or neglect, produce it in reasonable time. It appears from the record and as already stated hereinabove that the petitioners filed an application on the 11th of February, 1982 praying for examination of an authorised person from the office of the Sub-Register, Midnapore to prove the contents of deed in question on production of the original volume. Every step was taken by the petitioners to prove the certified copy of the deed in question on production of the original volume from the office of the Sub-Registrar, Midnapore.

17. The Supreme Case in Nanni Bai and Others Vs. Gita Bai, observed as follows :

"Those sale deeds themselves were the primary evidence of the interest sold. If those sale-deeds which are said to be registered documents, were not available for any reasons, certified copies thereof could be adduced as secondary evidence, but no foundation has been laid in the pleadings for the reception of other evidence which must always be of a very weak character in place of registered documents evidencing those transactions".

18. It is established in evidence that the deed in question was not in the custody of the petitioners. Every effort was taken from the side of the petitioners for production of the original deed. Therefore, in such a situation, I do not find any reason to refuse to admit the certified copy of the deed in question as I am of the view that there was no default or neglect for production of the original volume, so far as the petitioners are concerned. They could not produce the original in reasonable time although they had tried.

19. That being the position and in view of the discussions made herein-above, it must be held that in the facts and circumstances of this case, the certified copy of the deed in question ought to have been admitted into evidence by the

learned Munsif as secondary evidence u/s 65(c) of the Act. Accordingly, the impugned orders are set aside. The learned Munsif is directed to admit the certified copy of the deed dated 17th of December, 1973 into evidence. The revisional application, therefore, stands allowed.

20. Since the suit is pending from 1978, the learned Munsif is directed to dispose of the suit as early as possible preferably within six months from the date of communication of this order.

There will be no order as to costs.

21. The office is directed to communicate this order to the Court below at once.