

(2016) 03 RAJ CK 0004

In the Rajasthan High Court

Case No : Civil Writ Petition No. 17458/2015 and Civil Misc. Stay Application No. 15476/2015

Gopinath Educational and Welfare Society

APPELLANT

Vs

Rajendra Singh Shekhawat

RESPONDENT

Date of Decision : 04-03-2016

Acts Referred:

Evidence Act, 1872 — Section 62, Section 62, Section 63, Section 63, Section 64, Section 64, Section 65, Section 65, Section 65 (a), Section 65(a), Section 65(e), Section 65(f), Section 74, Section 74(2), Section 75, Section 76, Section 77

Citation : (2016) 167 AIC 516 : (2016) AIR(Raj) 106 : (2017) 1 CivilLJ 5 : (2016) 3 RLW 2376 : (2016) 3 WLC 749

Hon'ble Judges : Mohammad Rafiq, J.

Bench : Single Bench

Advocate : Suruchi Kasliwal, for the Appellant; Ajay Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.—1. This writ petition has been filed by the petitioner-non-applicant against order dated 10.09.2015 passed by Rent Tribunal, Jaipur(for short "the Tribunal") whereby application filed by the petitioner to delete the exhibits marked on certified copies of documents, i.e. Exhibits 7 to 10 has been dismissed.

2. Application was filed by the petitioner on 22.08.2015 that Exhibits 7, 8, 9 and 10 being certified copies are not admissible in evidence inasmuch as Exhibit-9 is not original, but certified copy thereof and Exhibit 7, 8 and 10 are certified copies of lease deed, none of them are admissible in evidence. Exhibit-6 is mere Photostat copy of the original and not admissible in evidence. Prayer was made that aforesaid Exhibit 6 to 10 be ordered to be de-exhibited. It may be noted that the aforesaid application was filed by the respondent-landlord in the petition for eviction and awarding mesne profit filed against the petitioner-society. The respondent contested the application. The trial court vide impugned order dated

10.09.2015 partly allowed the application to the extent of document, Exhibit-6 which was held to be not admissible in evidence, but the respondent-landlord was permitted to produce on record original of the aforesaid document Exhibit-6. The application with regard to documents, i.e. Exhibit 7 to 10 was rejected on the premise that these are certified copies of lease deeds registered with Sub Registrar, Stamp and Registration and therefore, admissible in evidence with reference to Section 74(2) of the Indian Evidence Act, 1872(for short "the Evidence Act").

3. Ms. Suruchi Kasliwal, learned counsel for the petitioner argued that the Tribunal seriously erred in law in not appreciating the provisions contained in Sections 62 to 65 and 74 of the Evidence Act. The Tribunal failed to appreciate that certified copies of registered documents and/or lease deeds are not public documents inasmuch as all such documents are returned in original to the parties, who present them for registration. As per Section 62 of the Evidence Act, primary evidence means the documents itself and not the certified copy of the same. The tribunal failed to appreciate that certified copy of a document falls within the meaning of secondary evidence under Section 63 of the Evidence Act and cannot be admitted in evidence without seeking permission to adduce secondary evidence in terms of Section 65 of the Evidence Act. It is argued that the Tribunal while allowing the application to the extent of Exhibit-6 was wholly unjustified in permitting the landlord to produce original thereof. Learned counsel for the petitioner, in support of her arguments, relied on the judgment of the Madhya Pradesh High Court in Smt. Rekha Rana & Others v. Smt. Ratnashree Jain, AIR 2006 Madhya Pradesh 107, especially para 19(ii) and on that basis submitted that production and marking of a certified copy as secondary evidence of a private document, either a registered document like a sale deed or any unregistered document, is permissible only after laying the foundation for acceptance of secondary evidence under clause (a), (b) or (c) of Section 65 of the Evidence Act.

4. Learned counsel further argued that the trial court erred in allowing applicant-respondent to directly place on record a document which is in the nature of a secondary evidence without following the due procedure prescribed. It is settled position of law that secondary evidence, as a general rule is admissible only in the absence of primary evidence. In order to enable a party to produce secondary evidence, it is necessary for the party to prove existence and execution of the original document. Furthermore, it is only when the party satisfies the conditions prescribed under Section 65 of the Evidence Act that the document can be admitted as secondary evidence. In this connection, learned counsel for the petitioner has placed reliance on decision of the Supreme Court in J. Yashoda v. K. Shobha Rani, , (2007) 5 SCC 730. It is submitted that the Tribunal erred in overlooking the requirement for the applicant to first show cause as to why the original documents have not been placed on record and thereby seek permission to lead secondary evidence. Reliance has been placed on judgment of the Supreme Court in Dr. Gurmukh Ram Madan v. Bhagwan Das

Madan, , (1998) 7 SCC 367 wherein it has been held that certified copies of a registered deed is not a public document and it could not have been let in evidence except after explanation as to the non-availability of the original in an appropriate manner. It is argued that the Tribunal erred in holding that certified copy obtained from the office of Sub Registrar's office is a public document under Section 74(2) and is covered under Section 65(e) whereas the present matter is actually covered under the provisions of Section 65(f) of the Evidence Act.

5. Per contra, Mr. Ajay Agarwal, learned counsel for the respondent submitted that once a lease deed or sale deed etc. is registered and entered in Book-I by the Registering Officer under Section 51 of the Registration Act, 1908(for short "the Registration Act"), the records thereof maintained by such Registering Officer is a public document as defined by Section 74 of the Evidence Act and, therefore, a certified copy of the same can be given as secondary evidence of the existence, condition or contents of the same. Such document is admissible without being proved by calling a witness. In support of his arguments, learned counsel for the respondent has placed reliance upon judgments of the Supreme Court in *Madamanchi Ramappa and Another v. Muthaluru Bojjappa*, , AIR 1963 SC 1633; *Tukaram S. Dighole v. Manikrao Shivaji Kokate*, , AIR 2010 SC 965(1); Judgment of Madhya Pradesh High Court in *Jamuna Prasad & Others v. Shivnandan & Others*, Second Appeal No. 469/1994 decided on 29.07.2011; *Smt. Rekha Rana and Others* (supra) and; judgment of Gauhati High Court in *Md. Saimuddin Sheikh v. Abejuddin Sheikh*, AIR 1979 Gauhati 14.

6. I have given my anxious consideration to the rival submissions and carefully examined the material on record as well as judgments cited by learned counsel for the parties.

7. Judgment of Madhya Pradesh High Court in *Smt. Rekha Rana & Others* (supra), on which learned counsel for the petitioner has placed reliance, in fact, supports case of the respondent because Clause (a), (b) and (c) of Section 65 of the Evidence Act are not attracted in the present situation and Clause (e) of Section 65 of the Act would be applicable to the present case which inter alia provides that secondary evidence may be given of the existence, condition and contents of a document when the original is a public document within the meaning of Section 74 of the Evidence Act. Section 74 of the Evidence Act includes the 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, (of any part of India or of the Commonwealth), or of a foreign country. Sub-section (2) of Section 74 of the Evidence Act provides for public records kept in any State of private documents.

8. In *Smt. Rekha Rana & Others* (supra), the questions that were referred to the Division Bench for answer were whether certified copy of a registered sale deed obtained from the office of Sub Registrar is a public document and whether the same may be received in evidence as a public document without any proof of

document by primary evidence, as required under Section 64 of the Evidence Act. The Division Bench of Madhya Pradesh High Court made the following observations:

"15. We have already held that a certified copy of a registered instrument/document issued by the Registering Officer, by copying from Book I, is a certified copy of a public document. It can therefore 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 (entries in Book I), under Section 65(e) read with Section 77 of the Act without anything more. No foundation need be laid for production of certified copy of secondary evidence under Section 65(e) or (f). But then it will only prove the contents of the original document, and not be proof of execution of the original document. (Vide Section 57(5) of Registration Act read with Section 77 of Evidence Act.). This is because registration of a document is proof that someone purporting to be "X" the executant admitted execution, but is not proof that "X" executed the document. We will elaborate on this aspect when dealing with Point No. (iv).

17. The position therefore is that a certified copy of a sale deed issued by the Registering officer under the Registration Act can be produced and marked as secondary evidence of a public document (that is Entries in Book I maintained under Section 51 of the Registration Act containing the copy of the registered document). Such certified copy issued by the Registration officer in view of the certificates copies therein and the certificate made while issuing the certified copy will prove (i) that a document has been presented before the Registration Officer for registration; (ii) that execution had been admitted by the person who claimed to be the executant of the document and (iii) that the document was thereafter registered in the Registration Office and entered (copied) in Book I. It is not however proof of the fact that original sale deed was duly executed by the actual person described as Executant. Production of a certified copy of a public document under Section 65(e) or production of a certified copy under Section 65(f) is completely different from production of a certified copy as secondary evidence of a private document (for e.g. a sale deed under clauses (a), (b) and (c) of Section 65."

9. It is in this context that while answering the first question, the Division Bench in aforementioned case held that production and marking of a certified copy as secondary evidence of a public document under Section 65(e) of the Evidence Act need not be preceded by laying of any foundation for acceptance of secondary evidence. This is the position even in regard to certified copies of entries in Book I under Registration Act relation to a private document copied therein. Single Bench of Madhya Pradesh High Court in Jamna Prasad & Others (supra) repeated the same view by taking note of Sections 51, 52, 55 and 57 of the Registration Act. Section 57(5) of the Registration Act in particular is worthy to mention which inter alia provide that 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. The Single Bench of Madhya Pradesh High Court in the aforesaid case in para 20, 24 and 25 observed as under:

"20. It is, therefore, clear that a person proposing to give secondary evidence by invoking clauses (a), (b) and (c) of Section 65 of the Evidence Act, has to first lay a foundation to the effect that the document is not in his possession and has not been produced inspite of a notice by the person who is in possession of the same; that the existence, condition or contents of the original have been proved to be admitted in writing or that the original has been destroyed, lost or cannot be produced, respectively. It is further clear from a perusal of Section 65(e) and (f) that the aforesaid requirement, which are prescribed in Section 65 (a), (b) and (c), are not required to be established when the person seeks to give secondary evidence by producing a certified copy of a document alone and no other kind of secondary evidence of a document which is a public document within the meaning of Section 65(e) of the Evidence Act or by giving a certified copy of a document alone and no other kind of secondary evidence of a document which is a certified copy of an original permitted by the Evidence Act or by any other law to be given in evidence under Section 65(f) of the Evidence Act as the preconditions mentioned in Section 65(a), (b) and (c) of the Evidence Act cannot be read into Section 65(e) or (f) by any stretch of statutory interpretation.

24. In view of the aforesaid analysis I am of the considered opinion that while a sale deed per se is a private document but once it is registered and entered in Book-I by the Registering Officer under Section 51 of the Registration Act, the records thereof maintained by such Registering Officer is a public document as defined by Section 74 of the Evidence Act and, therefore, a certified copy of the same can be given as secondary evidence of the existence, condition or contents of the same.

25. Quite apart from the above, it is also clear from a perusal of the provisions of Section 57 of the Registration Act, that books and indexes maintained under the provisions of the Registration Act are open to inspection by any person at all times and copies of entries in such books and indexes shall be given to all persons applying for such copies with the sign and seal of the registering officer and that all such certified copies bearing the sign and seal of the registering officer shall be admissible for the purpose of proving the contents of the original documents. On a conjoint reading of the provisions of Section 57(5) of the Registration Act alongwith the provisions of Sections 65(f) and 76 of the Evidence Act, it becomes clear that a certified copy of the sale deed which is compulsorily required to be registered and entered in the books and indexes maintained under the Registration Act, issued under the sign and seal of the registering officer, is permitted by the aforesaid section i.e. Section 57(5) of the Registration Act and Section 65(f) of the Evidence Act, to be given in evidence of the content of the document apart from and in addition to the fact that certified

copies of public documents can also be given in evidence under Section 65(e) of the Evidence Act."

10. The Supreme Court in *Madamanchi Ramappa* and another (*supra*) also held that if the document is certified copy of public document it need not be proved by calling a witness. Gauhati High Court in *Md. Saimuddin Sheikh* (*supra*) held that certified copy of sale deed maintained in Sub-Registrar's office is admissible in evidence. On this very issue, the Supreme Court in *Tukaram S. Dighole* (*supra*) in para 17 of the judgment made following observations:

"17. ...However, clause (e) of Section 65, which enumerates the cases in which secondary evidence relating to documents may be given, carves out an exception to the extent that when the original document is a "public document" secondary evidence is admissible even though the original document is still in existence and available. Section 74 of the Evidence Act defines what are known as "public documents". As per Section 75 of the Evidence Act, all documents other than those stated in Section 74 are private documents. There is no dispute that certified copy of a document issued by the Election Commission would be a public document."

11. In view of above, it is very evidently clear from the provisions of Section 57 of the Registration Act that the books and indexes maintained under the said Act are open to inspection by any other person applying to inspect the same and copies of entries in such books shall be given to all persons applying for such copies which shall be signed and sealed by the registering officer and all such certified copies containing signatures and seal of registering officer would be admissible for the purpose of proving the contents of the original documents. If Section 57(5) of the Registration Act is read with Section 65(f) and 76 of the Evidence Act it becomes clear that a certified copy of the sale deed or lease deed which is compulsorily required to be registered and entered in the books and indexes maintained under the Registration Act, issued under the sign and seal of the registering officer, is permitted by the aforesaid section, i.e. Section 57(5) of the Registration Act and Section 65(f) of the Evidence Act, to be given in evidence of the contents of the document apart from and in addition to the fact that certified copies of public documents can also be given in evidence under Section 65(e) of the Evidence Act. No doubt, a sale deed or lease deed is a private document, but once it is registered and entered in Book-I by the Registering Officer under Section 51 of the Registration Act, the records thereof maintained by such Registering Officer becomes a public document as defined by Section 74 of the Evidence Act and therefore, a certified copy of the same can be given as secondary evidence of the existence, condition or contents of the same.

12. Relied judgment of the Supreme Court in *J. Yashoda* (*supra*) arise out of a case where the High Court found that the photocopies cannot be received as secondary evidence in terms of Section 63 of the Evidence Act. Original was alleged to be with a third party. The Supreme Court held that secondary evidence, as a general rule, is admissible only in the absence of primary

evidence. If the original itself is found to be inadmissible through failure of the party, who files it to prove it to be valid, the same party is not entitled to introduce secondary evidence of its contents. Essentially, secondary evidence is an evidence, which may be given in the absence of that better evidence, which law requires to be given first, when a proper explanation of its absence is given. Section 65 of the Evidence Act permits secondary evidence to be given of the existence, condition or contents of documents under the circumstances mentioned. The conditions laid down in the said section must be fulfilled before secondary evidence can be admitted. Secondary evidence of the contents of a document cannot be admitted without non-production of the original being first accounted for in such a manner as to bring it within one or other of the cases provided for in that section.

13. Judgment of the Supreme Court in Dr. Gurmukh Ram Madan (*supra*) is also distinguishable on the facts of the present case because therein certified copy of a registered deed produced by the plaintiff-appellant in support of his claim was not admitted by the trial court in evidence on the ground that absence of the original document had not been duly accounted for. The Supreme Court held that the document not a public document and it could not have been let in evidence except after explanation as to the non-availability of the original in an appropriate manner. The explanation offered by the appellant therein that the original document had been withdrawn by the respondent from the office of the Sub Registrar concerned, on facts, was not found to be convincing. It was further held that in the ordinary course of probabilities, the original document should have been in custody of the appellant in whose favour it had been executed. The plaintiff in that case was denied benefit of Section 65(f) of the Evidence Act. That observation of the Supreme Court was based on the evidence of one of the witnesses D.W. Sadanand, who stated before the court that original was torn out and this was disclosed to him by the appellant himself. The aforesaid observation was thus rendered by the Supreme Court in the facts of that case where the original document was shown to be in custody of the appellant and the evidence also proved that the original document was torn out by him. None of the other judgments of the Supreme Court on the scope of Section 65(e), (f) and 74 of the Evidence Act viz-?-viz Sections 51 and 57 of the Registration Act has been considered by the Supreme Court in the aforesaid two judgments.

14. In view of above discussion, this Court does not find any infirmity in the impugned order passed by the Tribunal and the same is upheld. The writ petition, being devoid of merits, is hereby dismissed.

15. Stay application also stands dismissed.