
(1976) 03 DEL CK 0007
In the Delhi High Court
Case No : Suit No. 210 of 1969

Parkash Rai

APPELLANT

Vs

J.N. Dhar

RESPONDENT

Date of Decision : 05-03-1976

Acts Referred:

Citation : AIR 1977 Delhi 73 : (1976) 12 DLT 321

Hon'ble Judges : F.S. Gill, J

Bench : Single Bench

Advocate : Arun Mohan, for the Appellant; G.L. Sanghi and Harish Chandra, for the Respondent

Judgement

1. The plaintiff has closed his evidence in the affirmative. Now the defendants are required to produce their evidence. At this stage, the defendants have made the present application (I. A. 396 of 1976) under Sections 74 and 76 of the Indian Evidence Act and have appended therewith copies of the following documents:

- (i) Copies of 17 orders passed by the Estate Officer;
- (ii) Copies of affidavits of Jagdish Popli, J. M. Sehgal and K. L. Bansal;
- (iii) Copy of the letter dated 8th January, 1976, sent by Shri Prakash Rai to the Estate Officer intimating his change of address.
- (iv) Copy of the statement of K. L. Barisal made before the Estate Officer on 10th March, 1975 and concluded on 14th November, 1975.

So far as the production of copies of the orders are concerned, there is no dispute. They can be undoubtedly tendered in evidence.

2. As regards the affidavits, copies of such documents cannot be taken in evidence. What "evidence" means and includes is defined in Section 3 of the Indian Evidence Act. Affidavits are not included in its definition. On the contrary,

affidavits have been expressly excluded by virtue, of Section I of the Indian Evidence Act. Therefore, affidavits cannot be taken in evidence under any provision of the statute, This legal position has not been combated by the learned counsel for the defendants. So, copies of the affidavits cannot be allowed to be produced in evidence.

3. As regards the copy of the letter dated 8th January, 1976, sent by Shri Prakash Rai to the Estate Officer, intimating his change of address, it is not a public document It, Therefore, cannot be taken in evidence. This could be proved by Shri Prakesh Rai, when he had come in the witness-box. Permission, Therefore, cannot be granted for the production of this document

4. It is the fourth species of documents, which is the main bone of contention. The same is a copy of a statement of Shri K. L. Bansal made on solemn affirmation before the Estate Officer in the proceedings before him, in the case No. E. O. No. 3/73 (International Airports Authority of India v. Prakash Rai The statement of Shri Bansal was recorded by the Estate Officer on two dates, viz., 10th March and 14th November, 1975. The defendants want that a copy of this document be admitted in evidence without any proof. It is contended that copies of statements recorded by a Court or Tribunal are public documents within the meaning of Section 74 of the Indian Evidence Act and, Therefore, certified copies thereof can be produced in evidence u/s 77 of the same Act. Section 77 reads as under:

"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"

It is the import of this section which is now the subject-matter of controversy. There is no doubt that depositions recorded by a Court or a Tribunal, which can administer oath, are public documents (c.f. Chandreshwar v. Bisheshwar Air 1927 Flat 61. The contention of the learned counsel for the defendants is that a certified Copy of the statement of K. L. Bansal made before the Estate Officer in the proceedings before him is per se admissible and, Therefore, it should be taken in evidence straightway. It may be noted here that the parties in the present case are not the same, as were in the case in which K.L. Bansal had made is statement.

5. The learned counsel for the defendants has further contended that he would simply refer to a part of the statement of Shri Bansal and would not make any comments or submissions about the correctness or otherwise of its contents. Will it mean, that the learned counsel does not want to use this copy of the statement as a substantive piece of evidence?

6. Section 33 of the Indian Evidence Act lays down certain pre-conditions before the truth of the facts recorded in a previous statement can be considered. These conditions do not exist in the instant case. The learned counsel for the defendants has, however, submitted that he does not place any reliance on Section 33. He has tried to make a distinction between Section 33 and Section

77 of the Indian Evidence Act by pointing out that Section 33 relates "to the truth of the facts which the statement of a witness mentions"; whereas Section 77 provides that certain "copies may be produced in proof of the contents of a public document". The learned counsel for the defendants has laid great emphasis and the phrase "in proof of the contents".

7. Definition of 'evidence' has been given in Section 3 of the Indian Evidence Act in the following words:

"Evidence" means and includes:

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence:

(2) all Documents produced for the inspection of the Court;

Such documents are called documentary evidence".

Section 64 relates to, proof of documents by primary evidence; while Section 65 deals, with secondary evidence. Section 74 gives the definition of "Public documents"; whereas Section 76 deals with the issue of certified copies of, public documents. Then comes Sec. 77, which is now the subject-matter of discussion. It relates to proof of documents by production of certified copies.

8. Section 77 seems to, have been enacted to obviate the production of the original public documents for evidentiary purposes. The same public document may be required to be produced at several places by different persons. If the production of the originals is insisted on, it would not only result in great inconvenience to the person concerned, but their continual change of places would also expose them to the risk of being lost. Frequent handling can also damage and sometime even destroy such documents. The production of certified copies thereof certainly ensures the preservation of the originals. This seems to be the object behind this section.

9. Relevancy, admissibility and proof are different aspects which should exist before a document can be taken in evidence. Evidence of a fact and proof of a fact are not synonymous terms. Proof in strictness marks merely the effect of evidence.

10. Mere production of a certified copy of a public document does not prove the same as the question of its admissibility involves that the contents must relate to a fact in issue or a fact relevant under the various sections of the Indian Evidence Act and that if the contents are statements of such facts and are not acts forming such facts, the statement must be relevant under Sections 35 to 38 of the Evidence Act. There may be a self serving statement made before another Tribunal, Mere production of a copy thereof cannot make the same relevant and admissible. The question concerning the admissibility of evidence is also distinct from its value and weight. The former is a matter of law, while the other is a

question of fact. The general conditions of admissibility, as laid down in the Statute have to be accomplished when different kinds of public documents are considered.

11. Thus the provisions relating to relevancy, admissibility and proof have to be fully complied with before gauging the, evidentiary value of a document. More-" over, the contents of a public document are not conclusive. Extrinsic evidence affecting their truth is, Therefore, admissible. It would be difficult to endeavor to lay down any hard and fast rule concerning the various conditions of admissibility, which may have to be satisfied in the case of certain public documents, as each decision is highly dependent on its specific facts. Even the identity of the person who gave the deposition, has to be established, a certified copy of the deposition would not come in by itself.

12. Further, Section 77 of the Indian Evidence Act, cannot be read in isolation. It has to be given harmonious interpretation in the light of the other provisions of the Statute; otherwise it would render those provisions nugatory.

13. After considering the various aspects of the whole matter, I allow the production of the certified copy of the statement of K. L. Bansal u/s 77 of the Indian Evidence Act, but the same shall not be taken in evidence per se. The defendants shall have to produce further evidence to establish relevancy and admissibility of the document, apart from the identity of the deponent.

14. Order accordingly.