

(2022) 11 MP CK 0018

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 4185 Of 2021

Praveen Malpani

APPELLANT

Vs

M/S Vijay Electricals, A Registered Firm And Others

RESPONDENT

Date of Decision : 02-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 227
Code Of Civil Procedure, 1908 — Section 151
Negotiable Instruments Act, 1881 — Section 138
Code Of Criminal Procedure, 1973 — Section 482
Evidence Act, 1872 — Section 31(1), 31(2), 74, 74(1)(iii), 74(2)
Registration Act, 1908 — Section 61(2), 65(e), 65(f)

Citation : (2022) 11 MP CK 0018

Hon'ble Judges : Sanjay Dwivedi, J

Bench : Single Bench

Advocate : R.K. Sanghi, Sanjeev Kumar Mishra

Final Decision : Allowed

Judgement

Sanjay Dwivedi, J

1. With the consent of parties, the petition is finally heard.
2. This petition is under Article 227 of the Constitution of India questioning the legality, validity and propriety of order dated 11.11.2021 (Annexure P/1) whereby the trial Court rejected the application filed by the petitioner under Section 151 of the Code of Civil Procedure for calling the record of the case decided by Judicial Magistrate, First Class, Jabalpur saying that the documents which have been referred in the application can be produced by the plaintiff by getting certified copies of the documents.
3. Learned counsel for the petitioner submits that the trial Court has not considered the legal position that certified copies of the private documents are only secondary evidence and without calling the original, the same cannot be considered to be a proved document. He further submits that by calling the

record of the trial Court containing the original documents which are required to be proved, no prejudice would have caused to the Court or to the party and as such, according to him, the order rejecting application is contrary to law. He relies upon various judgments reported in AIR 2014 Orissa 128, parties being Smt. Baijayanti Nanda Vs. Jagannath Mahaprabhu Marfat Adhikari Mahanta Bansidhar Das Goswami and others, 2011(4) M.P.L.J. 140- Haseena Bi Vs. State of M.P., 2011(3) M.P.L.J. 588- Mamta Awasthy and others Vs. Ajay Kumar Shrivastava, (2021) 4 SCC 786-Deccan Paper Mills Company Limited Vs. Regency Mahavir Properties and Others, AIR 2013 SC 613- V.K. Sasikala Vs. State and submits that the order passed by the trial Court, rejecting the application is not sustainable and, it is liable to be set aside and the application filed by the petitioner/plaintiff under Section 151 of CPC be allowed and record of the trial Court be called.

4. Counsel for the petitioner submits that the plaintiff in his application has contended that there were certain applications and documents though filed in the present case but record is required to prove those documents and merely because certified copies of those documents are obtained, but those documents cannot be proved and as such record is required to be called. However, learned trial Court has rejected the application saying that certified copy would serve the purpose as record of the court is a public document. Learned counsel for the petitioner submits that merely because the certified copies of the documents filed in the Court are obtained but those documents cannot be said to be a public document and contents of the documents cannot be proved unless the original is produced in the Court. He submits that merely because a document is filed and that has become part of record, cannot be considered to be a public document.

5. On the other hand, learned counsel for the respondents has opposed the submission made by learned counsel for the petitioner/plaintiff and submitted that the documents which are part of the record of the Court are the public documents and are not required to be proved with the original one and as such, application filed by the petitioner/plaintiff under Section 151 of CPC has rightly been rejected by the Court. In support of his contention, he has placed reliance upon the judgment of the Supreme Court in the case of Jaswant Singh Vs. Gurdev Singh and Others (2012) 1 SCC 425 and on a decision of this Court reported in 2011(3) M.P.L.J. 100- Jagdish Prasad Vs. Daulatram and Another.

6. Learned counsel for the respondents has also supported the order passed by the trial Court and placed reliance upon judgment of Jaswant Singh (supra) wherein the Supreme Court has observed that the compromise decree passed as per the terms and conditions of the compromise between the parties is a public document in terms of Section 74 and, therefore, if certified copy of the said decree is produced, the same is admissible and is not required to be proved with the original one. Further reliance is placed in the case of Jagdish (supra) wherein this Court has observed that certified copy of the possession receipt is a public document and is admissible in evidence. In the said case, the observation made

by the Court with regard to possession receipt and as to how it is a public document has been made in paragraph 12 of the judgment which reads as under:-

"12. On bare perusal of the possession receipt Exhibit P-7 this Court finds that it is in consequence to the warrant of possession (Exhibit P-6) issued against defendant Baldu, dated 12.1.1972. On the rear side of this document Exhibit P-6, this Court finds that there is an endorsement and report of the Bailiff (Process Server) dated 19.1.1972 that the possession of the disputed house has been delivered to the plaintiff. Hence, according to me, the certified copy of the document of the receipt of possession Exhibit P-7, which is in consequence to Exhibit P-6 is a public document."

7. Considering the submissions made by learned counsel for the parties and on perusal of record, this Court is of the opinion that the application filed by the petitioner/plaintiff under Section 151 of CPC for calling the record of the case i.e. SCNIA 2228/2006 (M/s. Vijay Electricals and Others Vs. Central Investment and Industries Ltd. decided on 30.11.2015 by Judicial Magistrate, First Class, Jabalpur should be allowed for the reason that it was a case of complaint made under Section 138 of Negotiable Instrument Act, but in a proceeding initiated by the present petitioner under Section 482 of Cr.P.C. for quashing the complaint in his respect, this Court in M.Cr.C. No. 13447/2011 vide order dated 25.08.2015 quashed the same. However, considering the facts and circumstances of the case, I am not convinced with the submission made by learned counsel for the respondents and also the view taken by the trial Court in rejecting the application of the plaintiff filed under Section 151 of CPC.

8. As per the submission made by learned counsel for the petitioner and on perusal of record, it is clear that in a complaint made under Section 138 of the Negotiable Instrument Act against the present petitioner, certain applications and documents were filed although certified copies of the same have been taken but those cannot be considered to be a public document in view of Section 74(1)(iii) of the Indian Evidence Act, 1872 (for short, the Act of 1872).

9. This Court dealing with the similar situation in the case of Mamta Awasthy (supra) has observed as under:-

"8. Section 74 of the 1872 Act which deals with the public document reads as under:—

"74. Public documents. — The following documents are public documents:—

(1) Document forming the acts, or records of the acts—

(i) of the sovereign authority,

(ii) of official bodies and Tribunals, and

(iii) of public officers, legislative, judicial and executive, of any part of India or of the Commonwealth, or of a foreign country;

(2) Public records kept in any State of private documents.”

Perusal of section 74 reveals that the documents which are record of the acts of the Court are public documents within the meaning of section 74(1)(iii) of the 1872 Act. There is distinction between the records of the acts of the Court and record of the Court. A private document does not become public document because it is filed in the Court. To be a public document it should be record of act of the Court. In the instant case, admittedly, the partition deed was marked as exhibit. Marking of an exhibit on the document is an act of the Court. Thus, the partition deed is record of the act of the Court and is thus a public document within the meaning of section 74(1)(iii) of the 1872 Act. Thus, for the aforementioned reasons, it is held that partition deed dated 2-11-1985 is a public document within the meaning of section 74(1)(iii) of the Indian Evidence Act, 1872. Accordingly, the second issue is answered.”

10. Similar view has also been taken by the High Court of Orissa in case of Smt. Baijayanti Nanda (supra) wherein it has observed that plaint is not a public document and cannot be admitted into evidence and unmarked as exhibit without proving contents thereof.

11. The Supreme Court in case of Deccan Paper Mills (supra) has also dealt with the situation and after considering Section 74 of the Act of 1872 has observed as to which document can be considered to be a public document and described as under:-

“22. Let us see whether Section 31(2) makes any difference to this position in law. According to the judgment in Aliens Developers [Aliens Developers (P) Ltd. v. Janardhan Reddy, 2015 SCC OnLine Hyd 370 : (2016) 1 ALT 194 (DB)] , the moment a registered instrument is cancelled, the effect being to remove it from a public register, the adjudicatory effect of the court would make it a judgment in rem. Further, only a competent court is empowered to send the cancellation decree to the officer concerned, to effect such cancellation and “note on the copy of the instrument contained in his books the fact of its cancellation”. Both reasons are incorrect. An action that is started under Section 31(1) cannot be said to be in personam when an unregistered instrument is cancelled and in rem when a registered instrument is cancelled. The suit that is filed for cancellation cannot be in personam only for unregistered instruments by virtue of the fact that the decree for cancellation does not involve its being sent to the registration office — a ministerial action which is subsequent to the decree being passed. In fact, in Gopal Das v. Sri Thakurji [Gopal Das v. Sri Thakurji, 1943 SCC OnLine PC 2 : AIR 1943 PC 83] , a certified copy of a registered instrument, being a receipt dated 29-3-1881 signed by the owner, was held not to be a public record of a private document under Section 74(2) of the Evidence Act, 1872 for the reason that the original has to be returned to the party under Section 61(2) of the Registration Act, 1908 (see p. 87). This judgment has been followed in Rekha v. Ratnashree [Rekha v. Ratnashree, 2005 SCC OnLine MP 364 : (2006) 1 MP LJ 103] by a Division Bench of the Madhya Pradesh High Court, in which it was

held : (Rekha case [Rekha v. Ratnashree, 2005 SCC OnLine MP 364 : (2006) 1 MP LJ 103] , SCC OnLine MP paras 8 and 9)

"8. A deed of sale is a conveyance. A deed of conveyance or other document executed by any person is not an act nor record of an act of any sovereign authority or of any official body or tribunal, or of any public officer, legislative, judicial and executive. Nor is it a public record kept in a State of any private documents. A sale deed (or any other deed of conveyance) when presented for registration under the Registration Act, is not retained or kept in any public office of a State after registration, but is returned to the person who presented such document for registration, on completion of the process of registration. An original registered document is not therefore a public record kept by a State of a private document. Consequently, a deed of sale or other registered document will not fall under either of the two classes of documents described in Section 74, as "public documents". Any document which is not a public document is a private document. We therefore have no hesitation in holding that a registered sale deed (or any other registered document) is not a public document but a private document.

9. This position is made abundantly clear in Gopal Das v. Sri Thakurji [Gopal Das v. Sri Thakurji, 1943 SCC OnLine PC 2 : AIR 1943 PC 83] , wherein the Privy Council considering the question whether a registered receipt is a public document observed thus : (SCC OnLine PC)

'... It was contended by Sir Thomas Strangman for the respondents that the receipt comes within para 2 of Section 74, Evidence Act, and was a "public document"; hence under Section 65(e) no such foundation is required as in cases coming within clauses (a), (b) and (c) of that section. Their Lordships cannot accept this argument since the original receipt of 1881 is not "a public record of a private document". The original has to be returned to the party.... A similar argument would appear at one time to have had some acceptance in India but it involves a misconstruction of the Evidence Act and the Registration Act and later decisions have abandoned it.'

We may also refer to the following passage from Ratanlal's Law of Evidence (19th Edn., p. 237):

'Public document [Clause (e)] — This clause is intended to protect the originals of public records from the danger to which they would be exposed by constant production in evidence.

Secondary evidence is admissible in the case of public documents mentioned in Section 74. What Section 74 provides is that public records kept in any State of private documents are public documents, but private documents of which public records are kept are not in themselves public documents. A registered document, therefore, does not fall under either clause (e) or (f) [of Section 65 of the Evidence Act, 1872]. The entry in the register book is a public document, but the original is a private document.'"

(emphasis in original)

Thus, the factum of registration of what is otherwise a private document inter partes does not clothe the document with any higher legal status by virtue of its registration.”

12. In view of above enunciation of law, it is clear that merely because documents have been filed in the Court and those are part of record, it does not mean that those documents can be treated to be public documents unless exhibited or it is an act of the Court. There is a distinction between record of the Court and the record of the acts of the Court as per Section 74(1)(iii) of the Act of 1872. From the submissions made by learned counsel for the parties and perusal of record, nowhere it is mentioned that the applications and documents which are part of record is a record of act of the Court and merely because certified copies of those documents obtained and filed in the Court which are admissible, the contents of the same can be proved by the petitioner/plaintiff on the basis of those certified copies.

13. Thus, in my opinion, the view taken by the trial Court is contrary to the legal position and therefore, is not sustainable in the eyes of law. Accordingly, the order dated 11.11.2021 (Annexure P/1) is hereby set aside. The application submitted by the petitioner/plaintiff under Section 151 CPC for calling the record of the Court of case i.e. SCNIA 2228/2006 (M/s. Vijay Electricals and Others Vs. Central Investment and Industries Ltd. decided on 30.11.2015 by Judicial Magistrate, First Class, Jabalpur is hereby allowed.

14. Petition is accordingly allowed. No order as to costs.