courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 17/09/2026

(2010) 10 MP CK 0051

In the Madhya Pradesh High Court

Case No : Writ Petition No. 14874 of 2010

Shambhu Prasad Sharma and Others — APPELLANT

Vs

Smt. Pushpa Badonya and Another — RESPONDENT

Date of Decision : 22-10-2010

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 11 Rule 12
Constitution of India, 1950 — Article 227
Evidence Act, 1872 — Section 65

Citation : (2011) ILR (MP) 144 : (2011) 4 MPHT 455

Hon'ble Judges : Sanjay Yadav, J;Ajit Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ajit Singh, J.

Heard on admission.

1. This petition, under Article 227 of the Constitution, is directed against the order dated 5.10.2010, Annexure P7, passed in Civil Suit No. 46-A/2010 by the Second Additional District Judge to the Court of Seventh Additional District Judge (Fast Track Court), Sagar, whereby he has permitted the Respondents to give secondary evidence relating to document will dated 30.10.1991.

2. The Petitioners have filed a civil suit for declaration and permanent injunction against the Respondents in respect of suit property marked in the plaint map with blue colour. The suit property is situated at Gandhi Chowk Ward, Sagar. According to the Petitioners, the suit property belonged to their father Pandit Purushottam Lal Sharma which they inherited after his death on 14.11.1991. The Respondents in their written statement have denied the claim of Petitioners over the suit property. The Respondents have also pleaded that Pandit Purushottam Lal Sharma had executed a will dated 30.10.1991 by which he bequeathed the suit property to his daughter Meera Sharma (sister of Petitioners) and on the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/shambhu-prasad-sharma-and-others…

basis of that will the name of Meera Sharma has also been mutated in the record of Municipal Corporation.

3. On 7.9.2010 the Respondents filed an application under Order 11 Rule 12 of the Code of Civil Procedure, 1908 seeking direction against the Petitioners to produce the will dated 30.10.1991 contending that it is in their possession and the document is necessary for the just and proper decision of the suit. The Petitioners, in reply on affidavit, admitted that Pandit Purushottam Lal Sharma did execute a will dated 30.10.1991 in their favour and Meera Sharma but it has been misplaced and they are not in possession of the same. On this reply the Respondents filed an application u/s 65 of the Indian Evidence Act, 1872 seeking permission to give secondary evidence relating to will dated 30.10.1991. The Respondents have obtained a copy of will dated 30.10.1991 which was produced by Meera Sharma before the Municipal Corporation for mutation of her name under the provisions of Right to Information Act, 2005. The Petitioners objected to the prayer on the ground that in the absence of original will, a copy issued to them allegedly from the copy of will cannot be accepted as secondary evidence. The trial court, by the impugned order, has permitted the Respondents to give secondary evidence of the existence of will dated 30.10.1991.

4. The Learned Counsel for Petitioners, relying upon the decision of Supreme Court in Smt. J. Yashoda Vs. Smt. K. Shobha Rani, has argued that the impugned order deserves to be quashed as conditions enumerated in Section 65 of the Evidence Act for giving secondary evidence are not satisfied.

5. We disagree with the submission made by the Learned Counsel for Petitioners. Once the Petitioners have admitted that there was a will and also a mutation proceeding in the Municipal Corporation on the basis of the copy of will, it is just and proper to allow the Respondents to produce the secondary evidence of the original will. The best secondary evidence will be a copy of will kept in the record of Municipal Corporation which may be called by the trial court. In the fact situation of the case, there will be a presumption that the copy of will kept in the municipal record was made from the original by mechanical process or made from or compared with the original. Further, the copy of will supplied to the Respondents by the Municipal Corporation from its record may be retained to prove the will as secondary evidence. Our this view also finds support from the decision of Privy Council in Rai Bhaiya v. Beni Mahto AIR 1917 P.C. 197 wherein Lord Parker writing the order for the Bench has held that where the original document is lost another document consisting of an official register, is admissible as evidence of the contents.

6. The decision of Supreme Court in Smt. J. Yashoda (Supra) does not help the Petitioners because in that case permission to give secondary evidence was refused as conditions in Section 65(a) of the Evidence Act were held to be not satisfied whereas in the present case the Petitioners after notice have declined to produce the will on the ground that it has been lost.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/shambhu-prasad-sharma-and-others…

7. We find no merit in the petition. It is accordingly dismissed summarily.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/shambhu-prasad-sharma-and-others…