

(2023) 10 CAL CK 0054
In the Calcutta High Court
Case No : C.O. No. 1883 Of 2019

Shanti Sinha & Ors.

APPELLANT

Vs

Sanjay Kumar Show & Ors.

RESPONDENT

Date of Decision : 13-10-2023

Acts Referred:

Constitution Of India, 1950 — Article 227
Code Of Civil Procedure, 1908 — Section 151, Order 18 Rule 4
Evidence Act, 1872 — Section 64, 65, 65(a), 65(b), 65(c), 65(f), 67, 74, 74(2), 76, 77
Registration Act, 1908 — Section 51(2), 52(1)(c), 57, 57(5)

Citation : (2023) 10 CAL CK 0054

Hon'ble Judges : Ajoy Kumar Mukherjee, J

Bench : Single Bench

Advocate : Asit Baran Raut, Subham Gupta, Anup Kumar Singha, Raunak Shaw

Final Decision : Disposed Of

Judgement

Ajoy Kumar Mukherjee, J

1. This application under Article 227 of the constitution of India has been assailed against order no. 32 dated 06.10.2018 passed by learned Judge 8th Bench, City Civil Court, Calcutta in Title Suit no. 692 of 2014. Petitioners case in a nutshell is that petitioners as plaintiffs have instituted aforesaid suit against the defendants/opposite parties herein with a prayer for declaration, injunction and for other consequential relief. On receipt of summon of the said suit, the defendants/opposite parties entered appearance and filed their written statements denying material allegations made in the plaint which includes the statement that the defendant no. 2 to 3 and defendant no. 6 on suppression of material facts or by practicing fraud upon the registering authority, somehow have managed to get impugned deeds of conveyance dated 20.12.2008 without complying with any of the requisite formalities.

2. On the date of peremptory hearing, the plaintiffs tendered their examination-in-chief on affidavit under the provision of order XVIII Rule 4 of the code of the

Civil Procedure (in short "code") and at the same time duly tendered certain documents for admitting in evidence and prayed for marking those documents as exhibit. Out of those documents three documents namely the certified copies of the deed of conveyance although were tendered but learned court below did not mark said documents as exhibit but marked with the letter "Y" "XX" "YY" for identification. The plaintiffs/petitioners herein took out an application under section 151 of the code seeking an order for admitting the certified copy of the said deeds into evidence by marking the said deeds as exhibit on the ground that the certified copy of registered deeds are certified to be true by a public officer under section 76 of the Indian Evidence Act, 1872 (in short Act of 1872) and in that view of the matter, the certified copies of deed of conveyance are public documents within the meaning of section 74 of the Act of 1872 and as such certified copies of the deeds are very much admissible in evidence without calling the registrar as witness. It was further contended in the said application that it is well settled position of law that the certified copy of the public documents prepared under Section 76 of the Act of 1872 is admissible under Section 77 of the said act.

3. Learned court below had taken up said application for hearing but by the impugned order rejected the same.

4. Mr Routh learned counsel appearing on behalf of the petitioners submits that the court below rejected the said application on some erroneous observations and failed to appreciate and consider that the certified copy of a deed of conveyance which is copied from original document and compared and attested by responsible authorized officer of the Government office is actually the true copy of the original document which is always admissible in evidence. Accordingly the court below ought to have admitted such documents and marked those documents as exhibit in view of Section 76 read with Section 77 of the Act of 1872. The finding of the court below that the "mere fact that the document is forthcoming from a government department and bear its seal will not dispense with the necessity of formalities proving those documents" is perverse and not justified. In this context petitioner has relied upon following judgments

(i) State of Haryana Vs. Ram Singh reported in AIR 2001 SC 2532.

(ii) Md. Saimuddin Sheikh appellants Vs. Abejuddin Sheikh, reported in AIR 1979 Guwahati 14.

(iii) Appaiya Vs. Andimuthu @ Thangapandi & others reported in 2023 SCC Online SC 1183

5. Mr. Gupta learned Counsel appearing on behalf of the opposite party no. 1 contended that the certified copy of the deed of conveyance is not a public document and as such cannot be admitted in evidence without further proof. He further contended that under Section 67 of the Evidence Act, the signature of the executant must be proved before such a document is to be admitted in evidence. Mere registration of a document is not by itself sufficient proof of its execution.

Since no attempt was made on behalf of the plaintiff for formal proof of the certified copy of the deeds of conveyance, the court below rightly excluded the deeds in question from evidence. In this context he strongly relied upon section 65(f) of the Act of 1872. He further argued that the document in question is not a public document, it could not have been laid in evidence except after explanation as to the non-availability of the original in an appropriate manner. In fact production and marking of a certified copy as secondary evidence of a private document like a sale deed is permissible only after laying the foundation for acceptance of secondary evidence under clause (a), (b) or (c) of Section 65. In this context opposite party relied upon

(i) Smt. Rekha wd/o Vijay Singh Rana and others Vs. Smt. Ratnashree w/o Rajendra Kumar Jain, reported in AIR 2006 MP, 107.

(ii) Dr. Gurmukh Ram Madan Vs. Bhagwan Das Madan, reported in (1998) 7 SCC 367.

(iii) Naresh Chandra Bose Vs. State of West Bengal and others, reported in AIR 1955 Cal 398.

6. The moot question to be adjudicated in the present context is whether the court below was justified in not marking as exhibit, the certified copy of the deeds of conveyance which were filed by the plaintiff and tendered along with his affidavit-in-chief.

7. It is not in dispute in the present context that the deeds which are marked "Y" "XX" "YY" for identification are certified copy of the deeds of conveyance issued from the concerned registry office and certified by the registering authority as true copy.

8. It is not the law that certified copy of registered deed of conveyance is inadmissible in evidence unless the registering authority are examined to prove it. In fact the certified copy obtained from the registrar's office can be admitted in evidence under section 57 (5) of the Registration Act, 1908 and shall be admissible for the purpose for proving the contents of the original document.

9. In Karuppanna gounder and others vs. Kolandaswami gounder and others reported in AIR 1954 Madras 486 it was specifically held that the certified copy obtained from a Registrar's office shall be admissible under Section 57(5) of the Registration Act for the purpose of proving the contents of the original documents and the mere production of such copy without any further oral evidence to support it, would be enough to show what the original document contained.

10. The same view has also been expressed by the Orissa High Court when it has dealt with the similar issue in a judgment reported in AIR 1989 Orissa 27 (Rama Chandra Majhi Vs. Hambai Majhi) it was held para 8:-

"8. Under S. 64 of the Evidence Act, 1872, documents are to be proved by

primary evidence. Section 65, however, permits secondary evidence to be given of the existence, condition or contents of a document under the circumstances mentioned. Under S. 65(c) secondary evidence of the contents of the documents is admissible where the original is lost. Under S. 65(f) secondary evidence is also admissible where the original of a public document within the meaning of S. 74 which provides amongst others that public records kept in any State of private documents are public documents. S. 52(1)(c) of the Registration Act, 1908 requires every document admitted to Registration shall be copied in the book appropriated therefor. Section 51(2) thereof provides for sale deed to be entered in Book I. Thus, the Book in the registration office where copies of sale deeds admitted to registration are made is a public document. Under S. 57 of the said Act, authority is given to give certified copy of an entry in the register. When the original sale deed whose copy is maintained in the registration office is lost, secondary evidence can be given in respect of the contents thereof by proving the entry in the Register in the registration office. Instead of proving the entry in the register in original, certified copy of entry of the sale deed in such register can be proved. Therefore, no objection can be taken for admitting certified copy of entry in a Book maintained in the registration office as secondary evidence of the contents of a sale deed in case ground for admitting secondary evidence is made out."

11. The Jharkhand High Court in Santosh Kumar Vs. Purnima Kumari & others, reported in AIR 2011 Jhar 76 had also occasioned to consider as to whether the certified copy of a registered sale deed is admissible in evidence or not. The court reciting it's earlier judgment considered the relevant provisions of law and held that sale deed kept in the office of Registrar is a public record and certified copy of such documents can be proved in evidence. It further held, if the certified copy of registered document is brought before the court, no further proof of execution of the said document is required.

12. The decision of the Apex Court in State of Haryana Vs. Ram Singh reported in AIR 2001 SC 2532 is also very clear. It has been held that it is open to the court to accept the certified copy as reliable evidence without examining parties to the documents. This does not however preclude the court from rejecting the transaction itself as being malafide or sham provided such a challenge is laid before the court.

13. In the judgment which was delivered by the Supreme Court few days back on 20th September, 2023 in Appaiya Vs. Andimuthu @ Thangapandi & others reported in 2023 SCC Online SC 1183 the Court in paragraph 30 held as follows:-

".....Subsection (5) of Section 57 of the Registration Act is the relevant provision that provides that certified copy given under Section 57 of the Registration Act shall be admissible for the purpose of proving the contents of its original document. In this context it is to be noted that certified copy issued thereunder is not a copy of the original document, but is a copy of the registration entry which is itself a copy of the original and is a public document

under Section 74(2) of the Evidence Act and Sub-section (5) thereof, makes it admissible in evidence for proving the contents of its original."

14. In *Md. Saimuddin Sheikh's Case vs. Abejuddin Sheikh* reported in AIR 1979 Guwahati 14, the Guwahati High Court held that a sale deed is a private document but the record of the sale deed is kept in the office of Sub-Registrar is a public record of that private document and hence it falls within the category of "public document". Therefore to prove the document, certified copy of the deed is admissible.

15. Finally I must remind the directions given by Apex Court to deal with such incidents in a salutary judgment in *Bipin Shantilal Panchal Vs. State of Gujrat* & another reported in AIR (2001) SC 1158 / (2001) 3 SCC 01.

"13. It is an archaic practice that during the evidence-collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. But the fallout of the above practice is this: Suppose the trial court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the appellate or the revisional court, when the same question is recanvassed, could take a different view on the admissibility of that material in such cases the appellate court would be deprived of the benefit of that evidence, because that was not put on record by the trial court. In such a situation the higher court may have to send the case back to the trial court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or remoulded to give way for better substitutes which would help acceleration of trial proceedings.

14. When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence-taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.)" (emphasis added)

16. Relying upon aforesaid judicial pronouncements I am of the view that the court below was not justified in marking the said documents as "Y" "XX" "YY" for identification with the observation that defendants have challenged the deed of

gift, so court cannot presume genuineness of the deed such observation is perverse in view of the fact that court below has confused admissibility of a document in evidence with that of presuming genuineness of a document. Question raised by plaintiff herein is about admissibility of the documents in evidence and not for presuming those deeds by the court below as genuine. After admitting the document in evidence with objection question of it's genuineness and/or it's probative value can always be kept open for final adjudication of the dispute.

17. In such view of the matter the order impugned dated 06.10.2018 is hereby set aside. Following the guidelines laid down by the Apex Court in Bipin Shantilal Panchali's cases (supra) the court below is directed to mark the said certified copies of conveyances as exhibit tentatively with a note of objection raised by the defendants, keeping open the evidentiary value of the said deeds, for final adjudication of the suit .

18. C.O. 1883 of 2019 is accordingly disposed of. There will be no order as to costs.

Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.