
(1996) 11 RAJ CK 0029

In the Rajasthan High Court

Case No : Civil Revision Petition No"s. 235 of 1992 and 866 of 1993

Smt. Ratan Sharma

APPELLANT

Vs

Ambesedar Drycleaners and Others

RESPONDENT

Date of Decision : 20-11-1996

Acts Referred:

Evidence Act, 1872 — Section 63(2)

Citation : AIR 1997 Raj 75 : (1997) 1 RLW 214 : (1997) 1 WLC 300

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Advocate : V.B. Sharma and M.M. Ranjan, for the Appellant; B.L. Agrawal, for the Respondent

Final Decision : Allowed

Judgement

Shiv Kumar Sharma, J.—In both the revisions, question of admissibility of photostat copy of a rent note is involved, as such both are being decided by a common order.

2. Revision No. 235 of 1992 arises from the order dated 16-11-1991 passed by the Additional Civil Judge No. 5 Jaipur City in Civil Suit No. 16/85 whereby application of the petitioner filed u/s 65 of the Evidence Act for permission to lead in evidence the photostat copy of rent note, was rejected.

3. Revision No. 866 of 1993 arises from the order dated 24-7-1993 of the Additional Civil Judge No. 6 Jaipur City, in Civil Suit No. 57 of 1988 whereby the application for leading in evidence the photostat copy of the rent note u/s 65 of the Evidence Act, was dismissed.

4. FACTUAL MATRIX:

(i) Civil Suit No. 16/85 for eviction was instituted by the petitioner against Gulab Rai, with regard to a shop. In the plaint it was contended that Gulab Rai had taken the shop on rent from the husband of the petitioner, late Shri Rajendra

Kishore Sharma and Anand Kishore Sharma, who were the joint owners of the said shop. A rent note was executed on 16-4-1980 by the tenant Gulab Rai which was in the possession of Anand Kishore Sharma. Tenant Gulab Rai admitted the execution of the rent note. The original rent note had been in the possession of Anand Kishore Sharma and photostat copy of the same was kept by the husband of the petitioner. Since a dispute was raised about the tenancy the petitioner wanted to prove the rent note, as original rent note was not in possession of the petitioner so she has filed an application u/s 65 of the Evidence Act after serving a notice to produce the original rent note. It was contended that tenant Gulab Rai himself had filed an affidavit Ex. 1/1 in which he admitted that he had executed a rent note on 16-4-1980 in favour of Rajendra Kishore and Anand Kishore and the original rent note was with Anand Kishore. He had given the photostat copy of the rent note to the petitioner.

(ii) When the petitioner intended to exhibit photostat copy of the rent note on 16-4-1980, the trial Court declined to mark exhibit on the photostat copy of the rent note on the ground that photostat copy of a document cannot be substituted by way of secondary evidence. The order dated 16-11-1991 has been assailed by the petitioner in Revision Petition No, 235/ 92.

(iii) Civil Suit No. 57 of 1988 was instituted by the petitioner for permanent injunction against Ambesedar Drycleaners with regard to the property in dispute in which the above contained facts were pleaded. In that case the petitioner submitted application u/s 65(a)(2)(b) of the Evidence Act for exhibiting the photostat copy of the rent note dated 16-4-1980 by leading it as secondary evidence. In the application it was contended that that the defendant non-petitioner Gulab Rai admitted execution of the rent note in his affidavit, in temporary injunction application No. 823/1984, The trial Court vide order dated 24-7-1993; dismissed the application on the ground that it was not a compared photostat copy. The said order has been assailed in Revision Petition No. 866/93.

5. I have heard the learned counsel for the parties and carefully perused the impugned orders as well as the relevant record. Tenant Gulab Rai had filed an affidavit on 9-11-1984 in the Court of Additional Munsif and Judicial Magistrate No. 2 Jaipur City Jaipur in which he admitted that he executed rent note on 16-4-1980 in favour of the landlord Rajendra Kishore Sharma and Anand Kishore Sharma and he handed over the original rent note to Anand Kishore Sharma. He received photostat copy of the rent note from Anand Kishore Sharma which was handed over to the plaintiff-petitioner. This affidavit had been marked as Ex, 1. In the said case an application was filed by the plaintiff petitioner on 9-11-1994 for directing Anand Kishore defendant No. 3 to produce original rent note in the Court but Anand Kishore did not produce the original rent note. Facts as pleaded in the revision reveal that there is no dispute about the genuineness of rent note dated 16-4-1980 and the said document is essential for deciding the real controversy between the parties. The execution of the document was admitted by the tenant GuJab Rai in his affidavit and it was also admitted by him that he

handed over the photostat copy of the said rent note to the plaintiff petitioner. Illustration (a) appended to Section 63 of the Evidence Act goes to show that a photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original. Sub-section (2) of Section 63 of the Evidence Act also provides that copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies, can be termed as secondary evidence. In this case the photostat copy of the rent note dated 16-4-1980 can also be termed as secondary evidence as defined in Sub-section (2) of Section 63 of the Evidence Act and the said photostat copy is also secondary evidence in terms of illustration (a) appended to Section 63 of the Evidence Act. By the affidavit of tenant Gulab Rai it has been proved that photostat copy of the rent note was the copy of the original rent note and though two have not been compared still the said photostat copy of the same can be led as secondary evidence. Section 65 of the Evidence Act provides that the secondary evidence may be given of the existence, condition, or contents of a document in the following cases:

- (a) when the original is shown or appears to be in the possession, or of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when after the notice mentioned in Section 66, such person does not produce it;
- (b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;
- (c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;
- (d) when the original is of such a nature as not to be easily movable;
- (e) when the original is a public document within the meaning of Section 74;
- (f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force, in India to be given in evidence;
- (g) when the original consist of numerous accounts or other documents which cannot conveniently be examined in Court and the fact to be proved is the general result of the whole collection."

6. The trial Court while passing the order dated 24-7-1993 observed that as the photo- " stat copy was not compared from the original it could not be led in the evidence. This observation is illegal in view of the illustration (a) appended with

Section 63 of the Evidence Act.

7. So far as order dated 16-11-1991 is concerned, it is also illegal on the ground that in the said order also the trial Court observed that the photostat copy was not compared with the original.

8. The case of Mukhtiar Singh v. Bant Singh (1991) 1 P LR 15 is not applicable in the facts of this case.

9. Similarly, the case of Mst. Chandanbai Vs. Jagjiwanlal, is also not applicable, because in that case the Illustration (a) appended with Section 63 was not considered by this Court.

10. The upshot of the above discussion is that the Courts below have committed illegality in the exercise of jurisdiction vested in them by dismissing the applications submitted u/s 65 of the Evidence Act and if the impugned orders are not set aside it would occasion failure of justice.

11. In the result, I allow both the revision petitions and set aside the impugned orders. While allowing the applications submitted by the petitioner u/s 65 of the Evidence Act, I direct that the photostat copy of the rent note dated 16-4-1980 be permitted to lead as secondary evidence. No costs. The record of the case be sent forthwith to the Court below.