

(1989) 01 GAU CK 0016

In the Gauhati High Court

Case No : Second Appeal No. 42 of 1973

Thatithoi Chiru and Others

APPELLANT

Vs

Ningampao Kabui (deceased by L.Rs.) and Others

RESPONDENT

Date of Decision : 23-01-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 1, Order 13 Rule 4, Order 13 Rule 7, Order 14 Rule 1, Order 41 Rule 27
Evidence Act, 1872 — Section 77

Citation : AIR 1990 Guw 7

Hon'ble Judges : Manisana, J

Bench : Single Bench

Advocate : A. Nilamani Singh, for the Appellant; N. Kerani Singh, for the Respondent

Final Decision : Allowed

Judgement

Manisana, J.—This appeal is hoard along with the application for admitting in evidence, or allowing the appellants to produce as additional evidence, the two documents particulars of which are as follows :

(1) A certified copy of the Standing Order of the President, Manipur State Darbar for the year 1934-35 No. 9/10-12-34; and

(2) A certified copy of the order passed by the President, Manipur State Darbar dt. 23-3-35 as recorded in the Register of Miscellaneous Matters, 1924-25.

2. It appears that the documents were not produced at or before the first hearing of the suit, namely on the date of settlement of the issues. However, the documents were filed after the settlement of issues with the permission of the Court, and have all along been on record of the suit.

3. Mr. A. Nilamani Singh, the learned counsel for the appellants, has submitted that the documents should have been marked as "Exhibits" and then considered. Mr. Nilamani Singh has further submitted that if the documents could not be

exhibited or admitted in evidence, on the facts and circumstances of the case, the appellants may be allowed to produce them as additional evidence under Order 41, Rule 27, CPC.

4. As regards the marking of these documents as "Exhibits", Mr. Kerani Singh, the learned counsel for the respondents, has contended that the documents have never been exhibited in the sense in which the "Exhibits" are spoken of under the High Court Rules and, therefore, these documents cannot be admitted in evidence under Order 13, Rule 4, CPC.

5. Order 13, Rule 1 provides that the parties or their pleaders shall produce at or before the settlement of the issues, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court has ordered to be produced; and that the Court shall receive the documents so produced, provided that they are accompanied by an accurate list thereof prepared in such forms as the High Court directs.

6. Under Order 13, Rule 4, subject to the provisions provided therein, there shall be endorsement on every document which has been "admitted in evidence" in the suit of the number and title of the suit, etc., as provided under Rule 4, Under Order 13, Rule 7, the document which has been admitted in evidence shall form a part of the records of the suit.

7. The next question which arises for consideration is what is the meaning of the expression "admitted in evidence" or ""Exhibit". In *Baldeo Sahai v. Ram Chander* AIR 1931 Lah 546 (at p. 550), it has been held :

"This practice of putting the seal on the documents immediately on their production and thereby exhibiting them prevailed in this province previously, but has been stopped under the orders of this Court. There are two stages relating to documents. One is the stage when all the documents on which the parties rely are filed by them in Court. The next stage is when the documents are proved and formally tendered in evidence; it is at this later stage that the Court has to decide whether they should be admitted or rejected. If they are admitted and proved then the seal of the Court is put on them giving certain details laid down by law, otherwise the documents are returned to the party who produced them with an endorsement thereon to that effect."

8. In *Gordhansingh and Others Vs. Suwalal and Kalyanbux and Others*, (at p. 160), the Rajasthan High Court has held :

"In the case before us, the document has not been formally proved and tendered in evidence as no evidence has yet been recorded. A document can only be said to be admitted in evidence when it is formally proved and tendered in evidence. There are two stages relating to documents filed in court One is the stage when all the documents are filed by the parties in court. The next stage is when the documents are formally proved and tendered in evidence. It is after the

document is formally proved that the endorsement referred in Rule 4 of Order 13 of the C.P.C. is to be made."

9. In *Vinayak Dattatraya Vs. Hasanali Haji Nazarali*, (at p. 7), the Madhya Pradesh High Court has held :

"Admission of documents, like any other judicial function in course of a suit, has necessarily to consist of two stages, the first, being the strictly judicial aspect of it, that is, the weighing of pros and cons, and the second, the mechanical process, giving a palpable and unmistakable shape to that judicial finding. Order 13, Rule 4 deals with the latter and, in fact, begins with the clause "on every document which has been admitted in evidence..... The word "admitted" here means "admitted for judicial purpose", in other words, found, or held to be admissible by the presiding officer after such inquiry as might be called for in that case. Thus, it is not correct to argue that the order of the Court merely declares admissibility, and is not equivalent to admission simply because the officers of the Court take some time to note the particulars and put the mechanical marks."

10. In *H.H. Sir Syed Raza Ali Khan Vs. Dr. Saran Behari Mathur*, (at p. 360), the Allahabad High Court has held :

"In fact there is no need for the passing of any formal order saying that the document is admitted in evidence. As soon as the other party has proved it or admitted it. the document becomes a piece of evidence in the legal sense "admitted in evidence" for being dealt with by the court in determining the question before it. A note to this rule enjoins that no exhibit mark is to be placed on the document unless it is admitted in evidence.

Ordinarily it should mean that a document which bears exhibit marks carries with it the hall mark of its being admitted in evidence..... Of course the necessary endorsement the exhibit mark, or "admitted by the defendant" or "admitted in evidence" or what is required to be made by Rule 4 of Order 13, C.R.C. will be by the office and would be subsequently, signed by the presiding officer of the Court."

11. In (1968) 38 Com Cas 620 (All), it has been held that "admitted in evidence" means that the document has been let in as a part of evidence.

12. In Wharton's Law Lexicon, the term "Exhibit" has been defined to mean "any paper produced in the Court of law or equity".

13. As stated earlier, under R. 1, documents, which are produced at or before the settlement of issues by the parties intending to rely on, are to be received or rejected. Order 14 provides how issues are to be framed. Under Order 14, Rule 1, at the first hearing of the suit the Court shall, after reading the plaint and the written statement, if any, and after examination under Rule 2 of Order 10 and after hearing the parties or their pleaders, ascertain upon what material the propositions of fact or of law the parties are at variance, and shall thereupon

proceed to frame and record the issues on which the right decision of the case appears to depend. Under Order 14, Rule 3, the Court may frame the issues from all or any of the following materials : --

(a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties;

(b) allegations made in the pleadings or in answers to interrogatories delivered in the suit;

(c) the contents of documents produced by either party.

Under Rule 343 of the Civil Rules and Orders of the Gauhati High Court, for short, the "High Court Rules", all the documents produced with the plaint or written statement or filed in the Court by a party or witness at the later stage shall be accompanied by a list in Form No. 5 prescribed in the High Court Rules. Rule 345 of the High Court Rules runs :

"If any document included in the list is referred to in the proceedings or shown to a witness before it is tendered in evidence and formally proved, it should immediately be marked for identification."

The expression "it should immediately be marked for identification" indicates that the documents are to be examined as to their admissibility or otherwise before they are formally proved.

14. The question then is -- what is the mark to be made on the documents which are not required to be proved by calling witnesses? u/s 77 of the Indian Evidence Act it is provided that certified copies may be produced in proof of the contents of the public documents without calling any witness. On reading of the Rules 1, 4 and 7 of the Order 13, Rules 1 and 3 of the Order 14, and Rules 343 of the High Court Rules, it appears to me that these Rules are to be read together to constitute one continuous action of the parties and the Court,

15. In view of the above discussions, there are two stages relating to documents. One stage is when all the documents on which the parties rely are examined at the first hearing of the suit or the settlement of the issues. It is at this stage that the documents which are not required to be proved by calling witness are to be admitted and marked the numbers of the suit, etc. as provided under Order 13, Rule 4. This is in exact conformity with the meaning of the term "Exhibit" as defined in Wharton's Law Lexicon, namely "Exhibit, any paper produced in the Court of law or equity". The next stage is when those documents (other than the documents not required to be proved) which have been marked for identification are proved and formally tendered in evidence. At this later stage, those documents which are required to be proved are admitted in evidence. I, therefore, respectfully disagree with the above referred decisions which are inconsistent with my above conclusion.

16. The next question which arises for consideration is whether the above

principle will be applicable to the documents which are filed with the permission of the Court after the settlement of the issues. Order 13, Rule 2 provides that no documentary evidence in possession or power of any party which should have been but have not been produced in accordance with the requirements of Rule 1 shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Court for the non-production thereof and the Court receiving any such evidence shall record reason for so doing. In view of the provisions under Rule 2, I am of the opinion that the above principle relating to production and receiving of documents at or before the settlement of issues and numbering of Exhibits will be applicable to the case where the documents are filed subsequent to the settlement of issues.

17. In the present case, the documents are on record and have not been returned. The documents are certified copies of the public documents and, therefore, the documents are not required to be proved by calling witness. However, the documents were not considered by the Courts below as the documents were not marked exhibits. Therefore, the documents shall be marked or numbered as Exhibits A/11 and A/12 respectively.

18. As regards the additional evidence under Order 41, Rule 27, CPC, I have heard the learned counsel for the parties. These documents are the certified copies of the public documents which are not required to be proved by calling witness. Rule 118 of the High Court Rules provides that Presiding Judges should be careful to see that steps in connection with Discovery, Inspection and Admission are taken at proper stages of the suit before they call on for hearing. In the present case, a perusal of the records shows that the trial Court has not taken steps in connection with discovery, Inspection and Admission. For these reasons, there is sufficient force in the submission of Mr. Nilamani Singh that even if the documents cannot be admitted, they may be allowed to be adduced as additional evidence.

19. The next question which arises for consideration is whether the appeal shall be remanded to the lower appellate court or shall be disposed of by this Court. Since the Courts below have not considered these two documents, the matter is to be sent back to the lower appellate court. Accordingly, the judgment and decree of the lower appellate Court are set aside and the case is sent back for disposal afresh considering the Exhibits A/11 and A/12. Since the matter has been pending from 1971, I request the learned District Judge to dispose of the matter as early as possible preferably within a period of six (6) months. The parties are directed to appear before the learned District Judge, Manipur at Imphal on 15-2-1989 for the purpose of receiving directions of that Court as to further proceedings in the appeal.

20. With the said directions and observations, the appeal is allowed and disposed of. No costs.