

Sk. Rafid UddIn and anr. Vs. Sk. Korbar UddIn and ors.

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Court : Kolkata

Decided On : Jul-07-2006

Reported in : (2006)3CALLT658(HC)

Judge : Arun Kumar Bhattacharya, J.

Acts : Evidence Act - Sections 63, 65, 79 and 90;; Registration Act - Sections 57(5), 60 and 60(2);; [Constitution of India](#) - Article 227

Appeal No. : C.O. No. 3289 of 2005

Appellant : Sk. Rafid UddIn and anr.

Respondent : Sk. Korbar UddIn and ors.

Advocate for Def. : Soumen Dutta, Adv. for Opposite Parties Nos. 1 and 6 and; Amit Baran Dash, Adv. for Opposite Parties Nos. 2 to 5

Advocate for Pet/Ap. : Rabin Mahato, Adv.

Disposition : Application allowed

Judgement :

Arun Kumar Bhattacharya, J.

1. In this application under Article 227 of the [Constitution of India](#) the petitioner has sought for revision of the order being No. 96 dated 09.08.2005 passed by the

learned Civil Judge (Sr. Div.), Second Court, Contai. Midnapore (East) in T.S. 23/2002 refusing to mark exhibits some certified copies of registered deeds of sale, gift and exchange, all said to be of more than 30 years old documents, on the basis of volumes produced from the office of concerned Registrars.

2. Mr. Mahato, learned Counsel for the plaintiff/petitioner, on referring the cases of Kalyan Singh v. Smt. Chhoti reported in : AIR 1990 SC396 and S. Mahimaidoss v. Vanathayya reported in : AIR2000 Mad288 contended that there is a presumption under Section 79 of the Evidence Act regarding correctness of certified copy referred to in Clause (1) of Section 63 of the said Act and a certified copy of a registered deed may be produced as secondary evidence in the absence of the original, and revision is maintainable against an order refusing to accept documents for marking exhibits. Mr. Dutta and Mr. Dash, learned Counsel for the O.Ps., on the other hand, relying upon the case of Dr. Gurmukh Ram Madan v. Bhagwan Das Madan reported in : AIR 1998 SC2776 contended that the documents could be marked exhibits under Clause (f) of Section 65 of the Evidence Act only after offering explanation as to the non availability of the original documents in an appropriate manner, and since such procedure was not complied with by the petitioners, the prayer of the petitioners was rightly rejected by the learned Court below.

3. Section 65 of the Evidence Act mentions seven cases in which secondary evidence of a document is admissible, of which Clause (f) applies when the original is one of which a certified copy is permitted by the Evidence Act or by any other law in force. It would appear that all the Clauses (a) to (g) of the said Section 65 are separate and distinct. Exceptions (d), (e) and (f) are based on considerations of convenience. The party producing the secondary evidence is not relieved of his obligation to prove the execution just as if the original document had been produced, unless the case is covered by Section 90 of the Act. Though raising of presumption in regard to the due execution and proof of a document under Section 90 of the Act is discretionary, it was held in the case of Lakhi Baruah v. Padma Kanta Kalita reported in : [1996]2SCR1043 that the presumption under Section 90 does not apply to a certified copy though thirty years old, but if a foundation is laid for the admission of secondary evidence under Section 65 of the

Evidence Act by proof of loss or destruction of the original and the copy which is thirty years old is produced from proper custody, then only the signature authenticating the copy may under Section 90 be presumed to be genuine. In this case the present case may be distinguished from the above decision in that here production of copy is not involved. Nevertheless, in a later case it was observed that where a case for admission of secondary evidence is made out, a registration certified copy of a particular deed is admissible without any further proof, and in the case of registration copies what is applicable is not Section 90 but Section 57(5) of the Registration Act. In the case of a certified copy of a registered document, whether ancient or not, it would be competent to the Court to hold under Section 60(2) Registration Act that the execution of the document had been admitted and the other things were in order. In this connection, reference may be made to the cases of Abdul M. Chhaganlal v. Municipal Corporation, Surat reported in : AIR1978 Guj193 and Irudayam Ammal v. S. Mary reported in : AIR1973 Mad421 which stand for the proposition that where a document is registered, then although its mere registration may not by itself constitute sufficient proof of the execution of the document, in view of Sections 57 and 60 of the Registration Act, the certified copy and the certificate issued by the Registrar would constitute sufficient evidence to prove the contents of the document and also to some extent an evidence of the execution of the document.

4. Here, non production of the original documents has been duly explained by the petitioners in their petition (annexure P-1). That apart, volumes were called for from the registration office, and so there cannot be any valid objection to their not marking as exhibits.

5. The facts and circumstances of the decisions so referred to by the learned Counsel for both the parties being different, the said decisions *stricto sensu* cannot be said to have much bearing in this case.

6. Accordingly, the present revisional application be allowed. The impugned order be set aside.

7. Let a copy of this order be sent down at once to the learned Court below with a direction to admit the documents by marking it exhibits, and to dispose of the case

as expeditiously as possible preferably within a period of six months from the date of communication of the order without granting unnecessary adjournment to either of the parties.

Urgent xerox certified copy of this order, if applied for, be supplied to the parties as expeditiously as possible.

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