

**(1990) 12 GAU CK 0011**

**Gauhati High Court**

**Case No:** Second Appeal No. 61 of 1982

Narattam Das

APPELLANT

Vs

MD.Masadar Ali Barbhuiya

RESPONDENT

**Date of Decision:** Dec. 21, 1990

**Acts Referred:**

- Evidence Act, 1872 - Section 74(2), 74(2), 77, 77

**Citation:** (1991) 1 GLJ 113 : (1991) 1 GLR 197

**Hon'ble Judges:** R.K.Manisana Singh, J and J.M.Srivastava, J

**Bench:** Division Bench

**Advocate:** S.K.Senapati, S.Dutta, B.L.Singh, K.K.Dey, Advocates appearing for Parties

### **Judgement**

1. In this appeal the only question which arises for consideration is whether a private deed of sale which has been registered is a public document within the meaning of section 74(2) of the Evidence Act in order to attract section 77 of the Evidence Act.

2. There is a decision of Single Bench of this Court reported as AIR 1979 Gauhati 14, Md. Saimuddin vs. Abeznndin, in which it has been held that a private sale deed registered under the Indian Registration Act is public record of a private document under section 74(2) and, therefore, the certified copy of it is admissible in evidence under section 77. As a Single Bench of this Court being unable to agree with the view taken in Saimuddin's Case (supra), the appeal has been referred to a larger Bench. Hence, before us.

3. Section 74 reads :

"Public documents, The following documents are public documents :

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public records kept in any state of private documents."

4. With regard to the "public records", "public records" are those records which a Government unit is required by law to keep or which is necessary to keep in discharge of duties imposed by law (See Black's Law Dictionary. A. "public record", is one required by law to be kept, or necessary to be kept in the discharge of a duty imposed by law, or directed by law to serve as a memorial and evidence of something written, said, or done (See Words and Phrases, Vol. 35). The records means written account of facts, etc designed or intended to remain as a memorial or permanent evidence of the matters to which it relates. Therefore, a private document would be a "public record" within the meaning of section 74(2), if the private document is filed, the public official is required to keep it for a memorial or permanent evidence of something written, said, or done.

5. In so far as the original sale deed is concerned, after it is registered under, the Registration Act, it is not kept in the office of the SubRegistrar. Under section 61 (2) of the Registration Act, as soon as the registration is complete as is provided under the Registration Act, the original sale deed shall be returned to the person who presented the same for registration or his nominee. Therefore, the SubRegistrar is not required or is called upon to keep the sale deed, at all for any purpose under the law, and as such, the question of a public record of a private document does not arise. For these reasons, a private sale deed which has been registered shall not be public document within the meaning of section 74 (2) of the Evidence Act and, therefore, the provision under section 77 is not attracted. This view of ours finds support from a decision of the Privy Council in Gopal Das vs. Thakurji, AIR 1943 PC 83. In that case, the Privy Council has held that the original receipt executed by an individual and registered under the Registration Act is not "a public record of a private document" within section 74(2) as the original has to be returned to the party under section 61 (2) of the Registration Act. We are, therefore, unable to agree with the view expressed in the decision in Saimuddin vs. Abezuddio, AIR 1979 Gau 14.

6. For the reasons stated above, we overrule the decision of this Court reported as AIR 1979 Gau 14, Md Saimuddin vs. Abezuddin.

7. The Courts below have held that the original sale deed has not been produced at any time and no foundation has been laid by the plaintiff/appellants for admission of secondary evidence and, therefore, the certified copy of the sale deed is not admissible in evidence. In that view of the matter, the appeal is dismissed. No costs.