

## Hussaini Mahto and Others Vs Hulash Mahto and Others

**Court:** Jharkhand High Court

**Date of Decision:** April 6, 2005

**Acts Referred:** Evidence Act, 1872 â€” Section 74, 74(2), 77

**Citation:** AIR 2006 Jhar 87 : (2006) 2 JLJR 114 : (2006) 2 JCR 330 : (2006) 43 AllIndCaS 871 : (2006) 2 AIRJharR 454

**Hon'ble Judges:** Narendra Nath Tiwari, J

**Bench:** Single Bench

**Advocate:** G.M. Chandra, for the Appellant; A.N. Deo, for the Respondent

### Judgement

@JUDGMENTTAG-ORDER

N.N. Tiwari, J.

I.A. No. 2308 of 2004

1. In this application the appellants have prayed for admitting the certified copy of sale-deed dated 10.4.1935 by way of additional evidence,

dispensing with its formal proof. By order dated 13.5.2005 this Court had allowed the appellants' prayer for admitting the said sale-deed as

additional evidence subject to proving the same in accordance with law. According to the appellants, the respondents had filed SLP before the

Supreme Court against the said order, which has been dismissed. No counter-affidavit has been filed in opposition of the said petition.

2. Mr. G.M. Chandra, learned counsel appearing on behalf of the appellants, submitted that after registration of the sale deed, the Registering

Authorities keeps its record in discharge of their official duty. According to Mr. Chandra, therefore, the same assumes character of a public

document under the provisions of Section 74(2) of the Indian Evidence Act. According to Mr. Chandra, certified copies of public documents are

issued by the public officers and u/s 77 of the Evidence Act such certified copies may be produced in proof the contents of the public documents

or parts of the public documents of which they purport to be copies and no formal proof is required for admitting a certified copy of the document.

Production of the certified copy of the registered deed is one of the prescribed modes for proving such documents, in view of the provision of

Section 77 of the Evidence Act.

3. Mr. Jitendra Kumar, learned counsel appearing on behalf of the respondents, on the other hand submitted that the sale-deed is the private

document and the same cannot be proved by production of certified copy. According to him the procedure for-proving such document is

prescribed in the Evidence Act and unless the said prescribed formalities are observed, the document cannot be proved in evidence. Sale-deed

can be only proved by calling for the record before the Court below its original or the record of the Registry Office.

4. Section 74 of the Indian Evidence Act defines public documents, as thus:

74. The following documents are public documents.-

(1) Documents forming the acts or records of the acts-

(i) of the sovereign authority,

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive of any part of India or of the commonwealth or of a foreign country;

(2) Public records kept in any State or private documents.

5. Section 77 of the Evidence Act provides that certified copies may be produced in proof of the contents of the public documents or part of the

public document of which they purport to be copies. In view of the said provision of the Evidence Act, I find substance in the submissions of Mr.

Chandra. The said submissions of learned counsel for the appellants are fortified by a decision of Gauhati High Court in Md. Saimuddin Sheikh v.

Abejuddin Sheikh reported in AIR 1979 Gau 14. It has been held in that case that a sale-deed is a private document but the record of the sale-

deed is kept in the office of the Sub-Registrar as a public record, hence, it falls within the category of public document and certified copy of the

deed is admissible in evidence. I respectfully subscribe to the said view of the Guahati High Court. Accordingly, I hold that the certified copy of the

sale-deed dated 1.4.1935 produced by the appellants by way of additional evidence is admissible in evidence without further proof by calling for

the original and formality proving its execution on behalf of the respondent. No counter-affidavit has been filed in opposition nor execution of the

sale-deed has been denied by them and in that view also no further proof of execution of the said sale-deed is required in this case. The suit out of

which this appeal arose is of the year 1982 and is more than 22 years old. It is also not in the interest of justice to send back the records or

summon the witness in this Court formality for the formal proof of the sale-deed. This interlocutory application is thus allowed and the certified

copy of the sale-deed dated 10.4.1935, which has been produced by the appellants as an additional evidence is admitted in evidence forming part

of the evidence of the appellants.

I.A. No. 109 of 2005

6. In this application the appellants have prayed for modification of the order dated 13.5.2004 passed by this Court whereby the appellants"

prayer for allowing them to adduce additional evidence was allowed and the sale-deed dated 10.4.1935 has been ordered to be admitted in

evidence subject to mode of its proof in accordance with law. This Court while disposing of LA. No. 2308/2004 has already admitted the certified

copy of the said sale-deed in evidence. No further order is required to be passed in this I.A.

Accordingly, LA. No. 109 of 2005 is disposed of.