

(2013) 02 MP CK 0052

Madhya Pradesh High Court (Gwalior Bench)

Case No: Writ Petition No. 7162 of 2012

Vijendra Singh and Others

APPELLANT

Vs

Deena and Others

RESPONDENT

Date of Decision: Feb. 25, 2013

Acts Referred:

- Constitution of India, 1950 - Article 227
- Evidence Act, 1872 - Section 63, 65
- Transfer of Property Act, 1882 - Section 54

Citation: (2013) 2 MPHT 277 : (2013) 3 MPLJ 242

Hon'ble Judges: Sujoy Paul, J

Bench: Single Bench

Advocate: Mahesh Goyal, for the Appellant; D.D. Bansal, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Sujoy Paul, J.

By filing petition under Article 227 of the Constitution, the petitioners have challenged the order dated 10-9-12 in Civil Suit No. 47-A/11 by Second Civil Judge, Class II, Sabalgarh, Distt. Morena. The plaintiff filed suit for permanent injunction against defendants. During the pendency of the said suit, they filed an application u/s 65 of the Evidence Act on 31-8-2012. The other side opposed the relief claimed in the said application. In the said application, it is stated that the plaintiffs acquired the possession pursuant to sale-deed dated 1-4-2009. The said sale-deed was certified before a Notary namely Rambharosi Sharma. However, original sale-deed is not traceable by the plaintiffs and there is no possibility of availability of the original sale-deed in future. Accordingly, plaintiffs allegedly obtained true copy of the said sale-deed from the office of the said Notary and produced it before the Court below. It was prayed that the said document be taken as secondary evidence. This was opposed on the ground that the photocopy is not admissible in evidence unless the

necessary requirements provided under the Evidence Act are fulfilled. It is further stated that the document is not properly stamped under the provisions of Stamp Act and the Registration Act, and therefore, this document cannot be admitted in evidence for any purpose. Learned Counsel for the petitioners by relying on Chunnilal (since dead) through LRs Puniya Bai and Others Vs. State of M.P. and Others, submits that the document can very well be admitted as secondary evidence and Court below has erred in rejecting the same.

2. Per contra, Shri D.D. Bansal, learned Counsel for the respondents, submits that the aforesaid judgment is no more a good law in view of the subsequent judgment reported in Natthu Khan Vs. Komal and Others, Natthu Khan Vs. Komal and others. He submits that the contention of the petitioners that the sale-deed was not a complete sale, and therefore, the photocopy was permissible in evidence is factually incorrect. By drawing attention of this Court, it is stated that the entire sale consideration was paid and possession was taken, and therefore, sale was totally materialised and it is incorrect submission that sale was not complete. He relied on Section 54 of the Transfer of Property Act. Shri Bansal also relied on Avinash Kumar Chauhan Vs. Vijay Krishna Mishra, and Tukaram S. Dighole Vs. Manikrao Shivaji Kokate,

3. I have heard learned Counsel for the parties and perused the record.

4. Admittedly, the document in question submitted by the petitioners is a true copy/photocopy. There is no material to show that for admitting secondary evidence, the necessary ingredients were fulfilled by the petitioners. In absence of showing the original to the Court, secondary evidence cannot be admitted in view of Sections 63 and 65 of the Evidence Act. In Natthu Khan (supra), the Division Bench of this Court opined as under in Para 7:--

7. In our opinion, if a document is an agreement for sale and is not duly stamped then a Court or an officer who has to receive the document in evidence would have jurisdiction to decide the question of stamp duty payable and thereafter, may require the party producing the document to pay the penalty that too at ten times. If the document is a complete sale and it is in relation to tangible immovable property worth more than Rs. 100/- then a document unless it is registered would not be admissible in evidence irrespective of the fact that it is on proper stamp or not.

5. In the facts and circumstances of this case, in my opinion, the argument of Shri D.D. Bansal, learned Counsel for the respondents, has substantial force. The sale-deed shows that a complete sale took place and in this view of the matter, the judgment of Natthu Khan (supra), will apply and this sale-deed of the property whose worth is admittedly more than Rs. 100/- cannot be taken in evidence unless it is properly stamped. For this reason, there is no flaw in the order passed by the Court below. In Avinash Kumar Chauhan (supra), the Apex Court opined that an unregistered document may be admitted in evidence but a document which is

insufficiently stamped cannot be used even for collateral purpose. In view of the aforesaid legal position, the Court below has not erred in law in rejecting the said application. Petition is bereft of merits and substance and is hereby dismissed.