

GAHC010230092016



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : RSA/17/2016

SRI SATYENDRA MEDHI
S/O LATE LENGENA MEDHI, R/O VILL. MAJARKURI GOSAIPARA,
MOUZA RAMDIA, DIST. KAMRUP ASSAM

VERSUS

SRI PRAMOD MEDHI
S/O LATE BHOLA RAM MEDHI, R/O VILL. MAJARKURI
GOSAIPARA, MOUZA-RAMDIA, DIST. KAMRUP, ASSAM.

Advocate for the Petitioner : MR. K BARTHAKUR

Advocate for the Respondent : MR. T C DAS

BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA

JUDGMENT

Date : 16-12-2021

Heard Ms. P. Bhattacharya, the learned counsel appearing for the appellant as well as Mr. A. Dhar, the learned counsel representing the respondent.

2. This is a regular second appeal, whereby the judgment dated 30.05.2015, passed by the learned Civil Judge Kamrup, Amingaon, in Title Appeal No. 62/2014,

arising out of the judgment dated 21.05.2013, passed by the learned Munsif No. 2, Kamrup, Guwahati, in Title Suit No. 292/2004 is put to challenge.

3. In the year 1978, the present appellant purchased a plot of land measuring 3 bighas from the father of the present respondent. A Registered sale deed was executed to that effect. The appellant also mutated himself in the land records. Infact the appellant has given one portion of land to his brother Sri Robin Medhi.

4. On 04.07.1996, the respondent illegally dispossess the appellant of one bigha of land, out of the total land of three bighas.

5. Therefore, the appellant filed a suit before the Court of Munsif No. 2, which was registered as Title Suit No. 292/2004, praying for recovery of possession as well as for declaration of his right, title and interest over the said plot of land.

6. The respondent while filing the written statement, denied the fact, that his deceased father had ever sold the three bighas of land to the appellant. The respondent claimed that till his death in the month of April/2004, his deceased father late Bholaram Medhi, was in occupation of the land. The appellant further pleaded that in the year 1976, his father came to know that the appellant has been claiming title over the land on the basis of a sale deed which he never executed in favour of appellant. According to the respondent, on 17.04.1996, his father had filed a complaint before the Deputy Commissioner, against the appellant on that issue.

7. The learned Munsiff finally held that the appellant failed to prove his title over the land and dismissed the suit.

8. The appellant filed the appeal before the learned Civil Judge at Amingaon, Guwahati and the learned first appellate Court dismissed the appeal.

9. This second appeal was admitted for hearing upon the following two substantial question of law:

1. Whether the learned first appellate Court committed error of law in holding Ext. 1 inadmissible in evidence although the same was brought into record without objection?

2. Whether the learned courts below committed error in not declaring the title of the plaintiff over the suit land on th fact of Ext 1?

10. In this case the original sale deed purported to have been executed by the father of the respondent in favour of the appellant was lost from the custody of the Lawyer of the appellant. The concerned Lawyer pasted notice, in the notice board of the Court but the original sale deed was not found. The said Lawyer informed the trial Court at the time of adducing the evidence of the appellant. A certified copy of the sale deed (Ext.1) was exhibited as evidence. The learned first appellate Court agreed with the decision of the trial Court on the ground that the Exhibit 1 i.e the certified copy of the original sale deed is not admissible in evidence, because of the provision of law laid down in section 65 of the evidence Act.

11. The learned counsel Ms. Bhattacharya, has submitted that the act of filing the certified copy of the sale deed by the appellant, falls within section 65 (c) of the Indian Evidence Act. According to Ms. Bhattacharya, the sale deed was not lost because of any default or negligence of the appellant. It was lost from the custody of his Lawyer. The learned counsel has further submitted that the said Lawyer has testified before the Court below, whereby he has explained that the original sale deed was handed over to him by the appellant and the file containing the sale deed was lost somewhere. The learned counsel Ms. Bhattacharya has submitted that the witness from the office of the sub-registrar has already proved the execution of the sale deed.

12. Per contra, the learned counsel Mr. Dhar has submitted that the factum of loss or disappearance of the sale deed has not been properly explained by the appellant. Mr. Dhar has supported the impugned judgment by submitting that section 65 of the Indian Evidence Act, debars production of certified copy of the sale deed under the given circumstances of the case.

13. Mr. Dhar has relied upon two judgments of this Curt and one judgment of the Supreme Court.

14. In paragraph 10 of *Chandra Sakhi Singha and Anr Vs. Bidya Paati Singha*

(Sinha), reported in 2014 SCC OnLine Gau 161, this Court has held as under:

“[Section 65\(c\)](#) of the Evidence Act has several elements. The first condition is that the original must be destroyed or lost or that the parties seeking to produce it cannot do so for any other reason which does not arise from his own default or neglect. It is pertinent to note here that the other reason for which a primary document in existence cannot be produced by a party must not arise from laches or negligence from the side of the party who would get benefit if the document is so produced. This is because if a clever party finds that once original document is produced before the Court then the contesting party would get the chance of cross-examining by pointing out its inherent deficiencies as to execution or otherwise. In such case, he may opt to hide his own document showing that it was lost or not received. Under such circumstances, he will derive the benefit for his own default which cannot be the purpose of law in adversarial form of litigation. This is why, legislature in its wisdom was cautious in coining the provision. [Section 65\(c\)](#), therefore, deliberately mentioned of reasons 'not arising from default or neglect' to produce the document in reasonable time. This is why to get the benefit of [Section 65\(c\)](#) of the Evidence Act, burden lies heavily on a party to show that the documents have been destroyed or lost or cannot be produced for some or other reason and that such reason does not arise from the default or neglect of the party concerned. Merely showing that documents has been lost or destroyed would not be sufficient for a party to get the benefit of [Section 65\(a\)](#) of the Evidence Act. He is also duty bound to show that non availability of document is not due to his default or neglect”.

15. In paragraph 12 of Afajuddin Vs. Abdur Rahman, this Court has held as under :

“Therefore, from the above, it is clear that as per Illustration (b) to [Section 104](#), if one wishes to prove, by secondary evidence, the

contents of a lost document, he must first prove that the document is lost. Moreover, as per Illustration (b) to [Section 136](#) that the fact that the document is lost must be proved by the person proposing to produce the copy, before the copy is produced. Other circumstances for allowing secondary evidence are under [Section 65](#) of the Evidence Act, 1872”.

16. In paragraph 12 of H. Siddiqui (dead) by LRS Vs. A. Ramalingam, reported in (2011) 4 SCC 240 the Supreme Court has held as under :

“Provisions of [Section 65](#) of the Act 1872 provide for permitting the parties to adduce secondary evidence. However, such a course is subject to a large number of limitations. In a case where original documents are not produced at any time, nor, any factual foundation has been led for giving secondary evidence, it is not permissible for the court to allow a party to adduce secondary evidence. Thus, secondary evidence relating to the contents of a document is inadmissible, until the non production of the original is accounted for, so as to bring it within one or other of the cases provided for in the section. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. Mere admission of a document in evidence does not amount to its proof. Therefore, the documentary evidence is required to be proved in accordance with law. The court has an obligation to decide the question of admissibility of a document in secondary evidence before making endorsement thereon”.

17. I have bestowed my anxious considerations to the submission made by the learned counsel of both sides.

18. Now, it is clear that the only question that is to be decided in this appeal is as to whether the Exhibit 1 is admissible in Evidence u/s 65 of the Indian Evidence Act.

19. Section 65 of the Indian Evidence Act reads as under:

“65. Cases in which secondary evidence relating to documents may be given.
—Secondary evidence may be given of the existence, condition, or contents of a

document in the following cases:—

(a) When the original is shown or appears to be in the possession or power— of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in 1 [India] to be given in evidence2; 1 [India] to be given in evidence2;"

(g) when the originals consists of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection. In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible. In case (b), the written admission is admissible. In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible. In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents".

20. In order to attract section 65 (c) of the Indian Evidence Act, the first criteria is that the original document must be destroyed or lost or that the party seeking to produce that document cannot do so for any other reason which does not arise from his own default or negligence. The burden heavily lies upon the party concerned to show that the document was destroyed or lost and cannot be produce for some reasons but such reasons must not arise from default or negligence of the party concerned. The burden to prove the loss of a document has to be exercised in the yardstick of "beyond reasonable doubt".

21. Reverting to the case in hand, the Lawyer (PW5), has stated in his evidence that the appellant had given him the original sale deed in connection with T.S. No.

292/2004, as he was representing the appellant in the trial Court. PW5 has further stated in his evidence that at that time, when parties were required to file documents, the appellant had filed a photo state copy of the sale deed. PW5 has exhibited the notice which he had pasted in the notice board as exhibit 7. PW5 was cross-examined by the respondent but his evidence remained unimpeached on all the points.

22. The witness i.e PW4 was a Junior Assistant in the Office of the Sub-Registrar, Guwahati. By producing the volume book, the PW4 has stated in his evidence that the father of the present respondent had executed a registered sale deed infavor of the appellant. He also stated that the number of the sale deed is 1296/78 and the certified copy of the said sale deed (ext1) is a true copy of the original sale deed.

23. After going through the evidences of PW4 and PW5, this Court is of the opinion that their evidences inspired confidence. They adduce reliable evidence. Therefore, it is proved beyond all reasonable doubt that the original sale deed executed by the father of the respondent in favor of the present appellant in respect of the entire 3 bighas of land, was lost without the fault or negligence of the appellant. Therefore, the Ext. 1 is admissible in evidence u/s 65 (C) of the Indian Evidence Act.

24. Under the aforesaid premised reason, this Court is of the opinion that the learned first appellate Court committed error by holding that the Exhibit 1 is not admissible in evidence.

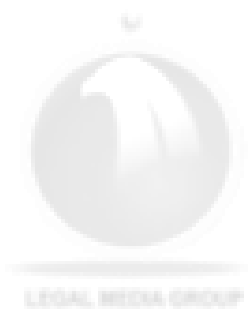
25. Thus, both the substantial question of law are answered accordingly.

26. The appeal is allowed. The judgment passed by the first appellate Court on 30.05.2015, in Title appeal no. 6/2014, is set aside. The case is remanded to the Court of leaned Civil Judge, Kamrup, Amingaon for passing a fresh judgment on all issues in the light of the observation made herein above. Parties shall have liberty to submit oral arguments, if they desire.

Send back the LCR.

JUDGE

Comparing Assistant



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