

MHAU060003612017



ORDER BELOW EXH.70 IN RCS NO.35/2017

1. The plaintiff has filed this application for exhibition of will deed dated 31.03.1982 filed by him along with Exh.25. It is contended that the will deed is registered and more than thirty years old, therefore, it is necessary to exhibit the same and read in evidence as per provision of section 90 of the Indian Evidence Act. Moreover, the plaintiff also contended that he has filed original rent agreement dated 19.09.1980 along with Exh.25/3 which also more than thirty years document, hence needs to be exhibited under section 90 of the Indian Evidence Act. Moreover, the plaintiff has filed the computerised copy of the judgement of RCS No.174/2012 which is downloaded from the web portal of the Court. Hence, prayed to allow the application.

2. The defendants have filed their say below Exh.73 and strongly objected the application. They contended that, the plaintiff has filed original Will Deed dated 31.03.1982 at Art. A. The said will deed is a private document. Therefore, section 68 of the Indian Evidence Act is not applicable to the said document. Though the will deed is more than 30 years document, but it is mandatory for the plaintiff to examine at least one witness on the said document. The will deed produced by the plaintiff is bogus and illegal and denied by the defendants. Therefore, mere exhibition of the Will Deed is not enough rather it is necessary to prove the contents of the document. It is further contended that the plaintiff has filed original rent agreement dated 19.09.1980 at Art. B. The defendant has filed the RCS No.174/2012 (Shivaji Vs. A. Javed & ors). In the said

suit the plaintiff has filed written statement below Exh.12. In the said written statement the plaintiff has made contrary statement about the rent, possession, and rent receipts. Therefore, the rent agreement is suspicious. Therefore, it is the duty of the plaintiff to prove the same. Therefore, said rent agreement cannot be exhibited. Furthermore, the plaintiff can file the certified copy of the judgement of RCS No.174/2012. Hence, prayed to reject the application.

3. Perused the application, say and record. Heard learned advocate for both sides.

4. The suit is filed for possession, rent and damages. The plaintiff has filed his affidavit of examination in chief below Exh.23. The plaintiff contended that the suit property has been given to him and Urmilabai @ Umabai Laxmandas Pirthani by his grandfather by registered Will deed dated 31.03.1982. therefore, they become the owner of the suit property by virtue of said Will Deed. The plaintiff has filed the original Will deed on record along with Exh.25. After gone through the said Will deed it appears that the Will deed was executed on 31.03.1982. Therefore, defendants seeking permission to exhibit the said document as per section 90 of the IEA.

Let us go through the provision of section 90 of the Evidence Act. Section 90 states that :-

Presumption as to documents thirty years old.

Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it

purports to be executed and attested.

Explanation - Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

5. In the case in hand the document filed along with exh.25/1 is appears to be executed on 31.03.1982 on two rupees stamp paper. It was executed by Shri. Babulal Kisanlal Pirthani in favour of plaintiff and Umabai. The plaintiff is the grandson of Shri. Babulal Pirthani. The document is produced from the custody of the plaintiff. Therefore, the document is appears to be produced from proper custody. Moreover, the document is a registered document.

6. The learned advocate for the defendants submitted that the Will deed is required to be proved by examining at least one attesting witness. Therefore, it cannot be exhibited.

7. Per contra learned advocate for the defendants submitted that the presumption under section 90 of the Act is applicable to the document which is thirty years old, and it also includes the Will deed.

8. I have gone through the above submission. In the section 90 cited supra it is nowhere mentioned that the presumption is not applicable to will. However, the word “any document” in the section itself shows that the provision is applicable to Will.

9. It is pertinent to note that the relief under section 90 is discretionary relief and the Court may ask for the evidence if the

document appears to be suspicious. In the case in hand the Will deed is a registered document and produced from the proper custody. Therefore, prima facie it does not appear to be suspicious. However, the defendants may produce the evidence against the said document. There is no hurdle to exhibit the document subjected to the provision of the section 90 of the Act. At this stage it prima facie appears that the document is produced from proper custody. Further, section 90 makes it clear that the presumption which is to be raised relates only to the signature, execution or attestation of a document and does not involve a presumption that the contents of the document are true or that it had been acted upon or that it has the legal effects it purports to have. Therefore, though the presumption is applicable but it is applicable only to its execution or attestation, the question of admissibility of document would be decided at the time of final hearing.

10. Moving ahead, the plaintiff has filed one rent agreement dated 19.09.1980. I have gone through the said document. The said rent agreement is an unregistered document. The rent agreement is executed by Shri. Shivaji Gopinath Aghade in favour of Shri. Babulal Kishanlal Pirthani dated 19.09.1980. The document contains the signature of Shivaji Aghade and two witnesses. It does not contain the signature of the Babulal Pirthani. By way of the said agreement Shri. Babulal Pirthani has rented his property to Shri. Shivaji Aghade, however, the property number is not mentioned in the agreement, but only four boundaries are mentioned. As discussed above Shri. Babulal was the grandfather of the plaintiff. Therefore, the document appears to be produced from the proper custody. However, in the pleading as well as evidence affidavit nothing has been contended by the plaintiff in respect of the said rent agreement. Therefore, in as the document is produced from the proper custody and original copy is produced on record, it may be exhibited only for identification purpose

subjugated to the provision of the section 90 of the Act. The question of admissibility of document would be decided at the time of final hearing.

11. Moving ahead, the plaintiff also contended to exhibit the computerised copy of the judgement of RCS No.174/2012 filed along with Exh.25/7. I have gone through the copy of said judgement. It is a computerised copy downloaded from the web portal or App of the eCourt services. The judgement also contains the certificate of the concerned Court. I have verified the said judgement from the CIS and found correct. Hence, there is no hurdle to exhibit the same.

12. In the light of above discussion the will deed and rent agreement needs be exhibited subjugated to the provision of section 90 of the Evidence Act. The computerised copy of judgement of RCS No.174/2012 is document of court and also verified from CIS hence needs to be exhibited. Hence, I passed following order.

ORDER

1. The Will deed dated 31.03.1982 filed at Exh.25/1 and Rent agreement filed at Exh.25/3 be exhibited subjugated to the provision of section 90.
2. The computerised copy of the judgement of RCS No. 174/2012 be exhibited as per rules.

(Pronounce in open Court)

Place : Kannad
Date : 20.04.2023

(P. M. Kolse)
Civil Judge. J. D., Kannad.

CERTIFICATE

I affirm that, the contents of this P.D.F. file order are same, word to word as per the original order.

Name of the Stenographer : Yogesh Suresh Mali.
Court : Shri. P.M.Kolse.
C.J.J.D. & J.M.F.C, Kannad.
Date : 20.04.2023
Order signed by the
presiding officer on : 20.04.2023
Order uploaded on : 21.04.2023