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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) 726/2014**

GYAN PRAKASH GUPTA

..... Plaintiff

Through: **Mr. Pawan Sharma, Advocate.**

versus

VIJAY PRAKASH & ORS

..... Defendants

Through: **Ms. Rashmi Jain and Ms. Archana Gupta, Advocates for D-2 to D-11.
Mr. Shashank Khurana, Advocate for D-18.**

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

% **05.08.2022**

I.A. 18246/2019(of the defendant no.18 u/O-XVIII R-17 of CPC)

1. The present application has been filed on behalf of the defendant no.18 under Order XVIII rule 17 of the Code of Civil Procedure, 1908 (CPC) to recall the witnesses of the defendant no.18, DW-3 and DW-5 simultaneously, for leading evidence in respect of the partition deed dated 10th March, 2000, and to place on record the certified copy of the partition deed dated 10th March, 2000.
2. DW-3, Rajesh Gupta was cross-examined by the counsel for the plaintiff and the remaining defendants on 23rd May, 2019, 29th May, 2019 and 3rd August, 2019. Subsequently, DW-5, being the official witness, the Record Keeper from Tis Hazari Court, was cross examined by the plaintiff



and the remaining defendants on 18th November, 2019. He had brought the file of case no. 306/10/2002 to prove the partition deed dated 10th March, 2000, of which a photocopy had been filed on behalf of the defendant no. 18. On the said date, following objections were raised on behalf of the counsel for the plaintiff:

- i. The certified copy of the said partition deed has not been placed on record.
 - ii. The original partition deed, which was the part of the record of the file in CS(OS) 306/10/2002, was not shown to the witness, Rajesh Gupta, DW-3, for identification of the signatures.
 - iii. The partition deed can be proved only by the executants thereof and not by Rajesh Gupta, DW-3.
3. Reply has been filed on behalf of the plaintiff, opposing the said application primarily on the ground that by way of the present application, the defendant no. 18 is seeking to fill the lacuna in the evidence led by him, which is not permissible by law.
4. Counsel for the defendant no.2 to 11 support the counsel for the plaintiff.
5. I have heard the counsels for the parties.
6. As regards the objection with regard to non-filing of certified copy of the said partition deed, the counsel for the defendant no. 18 has correctly relied upon the judgment of this Court in **AktiebolagetVolvo & Ors. v. R. Venkatachalam & Anr.**, ILR (2009) 6 Del 233. After analysing various provisions of the CPC, this Court had observed as under:-

“19. From all the aforesaid definitions of document found by me, a photocopy or a copy would also be a document. Thus it



cannot be said that the provisions of the CPC for filing of documents necessarily relate to original documents. The legislature has used the word original only in Order, 13 Rule 1 of CPC.

20. The next questions which arise are, as to whether under Order, 13 Rule 1 of the CPC the original document has to be placed on the file of the court or to be merely given inspection of for admission/denial of documents; whether the Evidence Act while providing for proof of documents by primary evidence requires filing/placing of the original document on the record of the court.

21. There can be no manner of doubt that the Evidence Act providing in Section 64 thereof of proof of documents by primary evidence only means proof of the original document. Even though Section 62 defining the primary evidence as meaning the document itself, does not state original document but since Section 63 while defining secondary evidence includes “copies from the original” and “copies made from and compared with the original” it necessarily follows that only the original is primary evidence.

22. However, most importantly, Section 62 is as under:—

“62. Primary Evidence-Primary evidence means the document itself produced for the inspection of the court.”
Thus even at the stage of proof, the requirement is only for production of the original for inspection of the court and not of filing of the original in the court. It cannot be argued that production for inspection of the court has to be necessarily by placing it on the file of the court. It can also be by producing it as and when directed by the court for inspection thereof.

23. When at the stage of proof of documents, the requirement under Section 62 of the Evidence Act is only of production of original for inspection of the court, Order 13 Rule 1 of the CPC requiring production of originals has to be necessarily meant as



production of original for inspection of the court and not as filing of the original. Significantly, Order 13 Rule 1 also uses both expressions “produce” in connection with original and “filed” in connection with the copies. The different expression used, together with definition/meaning of produce cited by counsel for plaintiffs also lend me to hold that the original documents are only intended to be produced i.e. to be given inspection of while the copies are to be filed.

24. I, therefore, find that the scheme of the aforesaid legislative provisions also permits production of originals for inspection only and filing of copies only.

25. However, Order 13 Rule 4 CPC and the practise directions in the trial of suits issued by this court, also provide for making of endorsement on documents admitted in evidence. The document which is admitted in evidence is the primary document i.e. the original. Is the endorsement of exhibit mark to be made on original only which would again mean placing it on court record? In my view no. **These provisions are procedural. When the substantive law permits only production for inspection of original, once that has been done, the endorsement/exhibit mark can be put on copy on court record also.**”

7. In the present case, the original partition deed was duly summoned by the counsel for the defendant no. 18, and it has been recorded in the order dated 18th November, 2019 of the Local Commissioner that the original has been seen and returned. On that basis, the photocopy of the partition deed has been marked as exhibit DW-5/A.

8. In light of the dicta of the judgment in ***AktiebolagetVolvo*** (supra), there is no merit in the objection raised by the plaintiff that the certified copy of the partition deed has to be filed. By summoning the record of the trial court, the partition deed has been validly exhibited by the defendant no.



18.

9. Counsel for the defendant no. 18 has also relied on the judgment of the Supreme Court in **Dayamathi Bai v. K.M. Shaffi**, (2004) 7 SCC 107, to submit that the objections with regard to mode of proof of a document can be cured by giving an opportunity to the party to cure the said defects. In the said judgment, the Supreme Court has observed that if objection with regard to mode of proof of a document is taken, the party tendering the said document in evidence should be given an opportunity to cure such a defect, as the same is based on principles of fairplay.

10. Counsel for the plaintiff has relied upon the judgment of the Supreme Court in **M/S Bagai Construction vs. M/S Gupta Building Material Store**, S.L.P. (C) 35268/2011, wherein it has been stated that the Court should follow a time schedule for recording and completion of recording of evidence and the party cannot be allowed to recall the evidence to overcome the lacuna in the plaint.

11. In the present case, the recall of witnesses has been sought by the defendant no. 18 only to overcome the technical objection raised by the counsel for the plaintiff on 18th November, 2019 with regard to mode of proof of the said partition deed, viz that the DW-3 was not shown the original partition deed but was only shown the photocopy thereof, for the purposes of identification of signatures.

12. In terms of the ratio of the judgment of the Supreme Court in **Dayamathi Bai** (supra), if such an objection is taken by a party, the other party should be given an opportunity to cure this kind of a defect with regard to mode of proof of the document. Therefore, the defendant no. 18 was entitled to an opportunity to summon DW-3 and DW-5 together, so that



DW-3 could identify the signatures of his father and grandfather in the original partition deed.

13. List the matter before the local commissioner, who has recorded evidence in the matter, on 26th September, 2022.

14. Counsel for the defendant no. 18 to take steps for summoning DW-3 and DW-5 together on the said date, for the limited purpose of confronting DW-3 with the original partition deed for identification of the signatures in the said partition deed.

15. Counsel for the plaintiff objects that even if DW-3 is confronted with the said partition deed, that still cannot be a proof of the said document, as the same can be proved by the executants thereof. This aspect is left open and will be considered at the stage of final hearing of the suit.

16. The application stands disposed of.

17. List before Joint registrar on 18th October, 2022.

AMIT BANSAL, J

AUGUST 5, 2022

sr.