

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.1651 of 2019**

Abdul Rashid, S/o late Abdul Haque, r/o Shekh mohalla, PO Siwan, PS Siwan town, district- Siwan.

... .. Petitioner/s

Versus

1. Iftakhar Hussain @ Dablu, S/O Md. Raja r/o thana Road Siwan PO Siwan, PS Siwan town, and district Siwan.
2. Vijay kumar Gupta, s/o late Radha Kishun Gupta, r/o village Toli Chitkoli Maleshari chauk, PO Siwan, PS Siwan town, district Siwan.
3. Amitabh kumar Gupta, s/o Vijay Kumar Gupta, r/o village Toli Chitkoli Maleshari chauk, PO Siwan, PS Siwan town, district Siwan.
4. Neeraj Kumar Gupta, s/o Vijay Kumar Gupta, r/o village Toli Chitkoli Maleshari chauk, PO Siwan, PS Siwan town, district Siwan.

... .. Respondent/s

**Appearance :**

For the Petitioner/s	:	Mr. Chandra Kant, Advocate
For the Respondent/s	:	Mr. Surendra Kishore Thakur, Advocate
		Mr. Brajesh Kumar Singh, Advocate
		Mr. Ashutosh Kumar, Advocate

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA**  
**CAV JUDGMENT**

**Date : 21-05-2025**

The present petition is filed for setting aside the order dated 17.10.2019 passed by the learned Sub Judge-1<sup>st</sup>, Siwan in Title Suit No. 510 of 2016, whereby and whereunder the learned trial court marked the certified copy of sale deed as exhibit after taking the same on record.

2. Briefly stated, the facts of the case are that the petitioner is the plaintiff before the learned trial court and has filed Title Suit No. 510 of 2016 for declaration of his right and title over the suit land and also for declaration that the



defendants have no right or title over the suit land on the basis of their sale deed. Further relief of confirmation of possession has also been sought for. Further, declaration has been sought that sale deed dated 26.07.2013 is illegal and void and has been executed without consideration. According to the plaintiff, Khata No. 336 of R.S. Khatian was prepared in the name of Sheikh Hafiz Fakir whose only son died during the lifetime of his father. On 04.07.1945, Sheikh Hafiz Fakir executed a Hiba in the name of his wife Bibi Takdiran and delivered her the possession of the gifted property. Two more deeds were also executed by Sheikh Hafiz Fakir on 01.06.1944 and 04.07.1945. However, dispute arose in the family and Arbitrators were appointed on 24.08.1947 by the agreement of the parties and the Arbitrators settled the matter on 06.05.1948 and gave 2 *anna* share to Bibi Takdiran in the property. Further, share was allotted to other relatives from the Schedule-1 property. One such co-sharer Bibi Hamidan sold her 2 *anna* share to one Abdul Rahman vide registered sale deed dated 06.10.1948 and the purchaser came in possession of his purchased land. This Sheikh Abdul Rahman sold out the disputed plot from his purchased property in favour of one Basir Sah and Sheikh Abdul Aziz vide registered sale deed dated 16.03.1950. The disputed



plot of Kheshra No. 4948 was divided in half between Basir Sah and one Jaubunisha as Sheikh Abdul Aziz was only a name lender. Basir Sah transferred his share of land in the Plot No. 4948 to the plaintiff/petitioner vide registered sale deed dated 09.09.1967 and gave him the possession. The plaintiff got his name mutated in the records of the Government of Bihar and started paying rent to the State Government. Thereafter, the plaintiff purchased 1 katha land of Khata No. 329 Kheshra No. 4949 on 13.04.2011 from one Nuzhat Ara for the convenience of right of way. As the defendant no.1 started interfering in the right, title and possession of the plaintiff, the plaintiff filed the suit with the relief as already noted. The defendants appeared and filed their written statement denying the claim of the plaintiff except that deed of Hiba was executed by Sheikh Hafiz Fakir in favour of his wife Bibi Takdiran with respect to 4 bigha 11 katha 15 dhur of land. Bibi Takdiran executed a sale deed on 05.05.1950 in favour of one Radha Krishna Prasad and Maulivee Aziz Haque. Delivery of possession was also given to them. Defendant no.2 is the son of Radha Krishna Prasad who sold the land to defendant no.1 on 25.07.2013. The matter proceeded and the learned trial court directed the parties to adduce their oral as well as documentary evidence. The plaintiff



adduced his evidence and after closure of the evidence of the plaintiff, the evidence of the defendants was started. When the evidence of defendants was about to be closed, the defendants filed a petition on 27.09.2019 stating therein that they have got certified copy of sale deed 05.05.1950 executed by Bibi Takdiran to Babu Radha Krishna & others. As the document could not be traced earlier, hence, it was not filed. The defendants prayed for taking the document on record being a public document and prayed for marking it exhibit. The rejoinder was filed by the plaintiff. Learned trial court, after hearing the parties, allowed the petition filed by the defendants/respondents and ordered it to be marked exhibit. The said order is under challenge before this Court.

3. Learned counsel for the petitioner submitted that the learned trial court did not consider the facts and the law and passed the orders without recording any reasons. The learned trial court did not consider that after commencement of trial, no document can be received in evidence as after closure of evidence of the plaintiff, the plaintiff has no occasion to rebut the same. The learned counsel further submitted that custody of the document was essential to be proved before getting the document marked as an exhibit and in absence of custody,



document cannot be received in evidence. The learned trial court did not consider the specific provision of the Code of Civil Procedure that all documents are required to be filed by the parties before settlement of issue and only in exceptional circumstance, leave should be granted for taking a document on record after settlement of issues. But the learned trial court failed to consider that the petition for taking the document on record has been filed at very belated stage.

4. Learned counsel next submitted that the certified copy of sale deed is not a public document in terms of provisions of Indian Evidence Act. It is only for the purpose of land acquisition proceedings that there is provision that certified copy of sale deed is a public document otherwise in civil cases, certified copy of sale deed cannot be marked as an exhibit on the ground of it being a public document. Learned counsel further submitted that it is the observation of the learned trial court that the document dated 05.05.1950 filed by the defendant comes under the category of public document and such public document could be marked exhibit any time prior to the decision. But the said document is not a public document. Learned counsel referred to a Three Judges Bench decision of the Hon'ble Supreme Court in the case of *Deccan Paper Mills*



***Company Limited vs. Regency Mahavir Properties & Ors.*** reported in ***(2021) 4 SCC 786*** wherein the Three Judges Bench of the Hon'ble Supreme Court referred to the decision of ***Gopal Das vs. Sri Thakurji***, reported in ***AIR 1943 PC 83***, wherein it has been held that a certified copy of a registered instrument was not a public record of a private document under section 74(2) of the Indian Evidence Act, 1872 for the reason that the original has to be returned to the party under section 61(2) of the Registration Act, 1908. Distinguishing the judgment of ***Appaiya Vs. Andimuthu @ Thangapandi & Ors.***, [***Civil Appeal No. 14630 of 2015*** {***@ SLP (C) No. 10013 of 2015***}], wherein a Division Bench of the Hon'ble Supreme Court has observed that the certified copy of the private document is not a copy of original document but on being recorded in the records of Registrar would be considered as a public document under Section 74(2) of the Evidence Act, therefore, the certified copy of sale deeds becomes admissible under Section 57(5) of the Registration Act; the learned counsel submitted that the view taken by the Three Judges Bench of the Hon'ble Supreme Court in the case of ***Deccan Paper Mills Company Limited*** (supra) was not brought to the notice of the Hon'ble Division Bench which decided the ***Appaiya*** (supra) and the decision in ***Appaiya***



(supra) could be considered *per incurium*. Learned counsel also referred to the decision of Madhya Pradesh High Court in the case of **Smt. Rekha Rana & Ors. vs. Smt. Ratnashree Jain**, reported in **AIR 2006 MP 107** authored by Justice R.V. Raveendran (as His Lordship then was) and paragraph no.8 of which was referred in the case of **Deccan Paper Mills Company Limited** (supra). Learned counsel, on being referred to the Constitution Bench decision of the Hon'ble Supreme Court in the case of **N.N. Global Mercantile (P) Ltd. vs. Indo Unique Flame Ltd.**, reported in **(2023) 7 SCC 1**, submitted that it is the decision *sub silentio* and cannot be cited as the precedent on the issue as to whether the certified copy of registered document would be considered as a public document. Thus, the learned counsel submitted that the learned trial court misconstrued the law and wrongly held that the certified copy of the registered sale deed dated 05.05.1950 is a public document and wrongly marked it as an exhibit. Therefore, the impugned order is not sustainable and the same be set aside.

5. Learned counsel appearing on behalf of the respondents vehemently contended that there is no jurisdictional error in the impugned order and, hence, the same does not need any interference. Learned counsel at the outset submitted that



even if the learned trial court has passed a wrong order, it could not be said that the order suffers from jurisdictional error. Learned counsel further submitted that the certified copy of the registered sale deed is a public document as has been held in the case of *Smt. Rekha Rana & Ors.* (supra) and subsequently in the case of *Appaiya* (supra). Learned counsel referred to the decision of this Court in the case of *Ram Briksha Singh & Ors. vs. Ramashray Singh & Ors. (Civil Misc. No.1824 of 2018)*, wherein it has been held that certified copy of the sale deed kept in public record would be considered a public document and becomes admissible in evidence and can be produced in proof of the contents of the public document or part of public document of which it purports to be a copy. This Court further held that it can be produced as secondary evidence of the public document without laying any foundation. However, a word of caution was added that it will only prove the contents of the original document and not be a proof of execution of the original document in the light of various provisions of Indian Evidence Act and Registration Act. In support of his contention, on similar proposition, learned counsel also relied on the decision of a Co-ordinate Bench of this Court in the case of *Umashankar Singh & Anr. vs. Keshwa Singh & Ors.*, reported





in **(2014) 3 PLJR 121**. Thus, on the strength of these decisions, learned counsel submitted that the certified copy of a registered document being a public document was rightly exhibited by the learned trial court and, hence, the impugned order is proper and valid.

6. I have given my thoughtful consideration to the rival submissions of the parties and perused the record.

7. The main issue before this Court is whether in terms of provisions of Indian Evidence Act a certified copy of registered sale deed is a public document or not? Another issue is whether the document was taken on record at a very belated stage and whether custody of the document was essential to be proved before getting the document marked an exhibit and being received in evidence. Here it is worth taking note of that law provides for taking of a document on record with the leave of the court as Order 8 Rule 1A(3) of the Code provides that a document which ought to be produced in court by the defendant under this rule, but, is not so produced shall not, without the leave of the court, be received in evidence on his behalf at the hearing of the suit. Therefore, even after settlement of issues, document could be taken on record. However, merely marking a document exhibit would not be construed as it has become an



admissible evidence because objection to admissibility does not get excluded when the document is marked as exhibit. The court needs to look into such document considering its relevance and other aspects to test its admissibility. In this background, the issues are required to be considered.

8. Section 74 of the Indian Evidence Act defines a public document and it reads as under:-

*“74. Public documents.— 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] of private documents.”*

9. Similar issue came before this Court in the case of **Ram Briksha Singh** (supra) and paragraph nos. 7, 8, 9 & 10 are quire apposite for consideration of the issues raised in the present matter and the same are extracted for ready reference.

Paragraph nos. 7, 8, 9 & 10 of the same read as under:-

*“7. Section 75 of the Evidence Act provides that all other documents are private. Now a sale deed is no doubt a private document but whether its certified copy would come under the category of public records kept in any state of private document? The Division Bench of Madhaya Pradesh High Court in*



*the case of **Smt. Rekha Rana & Ors. Vs. Smt. Ratneshree Jain**, reported in **AIR 2006 MP 107** has held the proposition that a certified copy of a sale deed is a public document or a registered sale deed is a public document are erroneous. It has further been held that a registered document (deed of sale etc.) is not a public document. It is a private document. Further, a certified copy of a registered document, copied from Book and issued by the Registering Officer, is neither a public document, nor a certified copy of a private document, but is a certified copy of a public document. In other words, a certified copy of a registered document is a certified copy of public document. The basis for saying so lies in the fact that when a sale deed is registered before the Registering Authority, necessary entries are maintained in the book kept at the Registration Office and, thus, it is a record 'kept in a state of private documents' and, therefore, a public document. When a person applies for the certified copy of document registered in the office which is entered/filed in Book 1, a certified copy of document as copies/filed in Book 1 is furnished to the applicant. Such certified copy of any entries in Book 1 is a certified copy of a public document. But such certified copy of registered document extracted from Book 1 is not itself a public document. It is really a true copy of a copy (copy of original deed entered in Book 1). The discussion has been made by the Division Bench of the Madhya Pradesh High Court considering the provisions of the Registration Act, 1908, specially Sections 51 and 57. Thus, it has been concluded that a certified copy of a registered document issued by Registering Officer, by copying from Book 1, is a certified copy of a public document. Similar question came up before the Hon'ble Supreme Court in the case of **Appaiya Vs. Andimuthu @ Thangapandi & Ors.**, [Civil Appeal No. 14630 of 2015 {@ SLP (C) No. 10013 of 2015}], wherein the Hon'ble Supreme Court has observed in paragraph no. 29, which reads as under:-*

*“29. Having regard to all the aforesaid*



*circumstances and in the light of the various provisions of the Evidence Act mentioned hereinbefore we will firstly consider the question whether the appellant/plaintiff had succeeded in proving the contents of Ext.A1. Going by Section 65(e) when the original of a document is a public document within the meaning of Section 74, secondary evidence relating its original viz., as to its existence, condition or contents may be given by producing its certified copy. Ext.A1, indisputably is the certified copy of sale deed No. 1209/1928 dated 27.08.1928 of SRO Andipatti. In terms of Section 74(2) of the Evidence Act, its original falls within the definition of public document and there is no case that it is not certified in the manner provided under the Evidence Act. As noticed hereinbefore, the sole objection is that what was produced as Ext.A1 is only a certified copy of the sale deed and its original was not produced in evidence. The hollowness and unsustainability of the said objection would be revealed on application of the relevant provisions under the Evidence Act and the Registration Act, 1908. It is in this regard that Section 77 and 79 of the Evidence Act, as extracted earlier, assume relevance. Section 77 provides for the production of certified copy of a public document as secondary evidence in proof of contents of its original. Section 79 is the provision for presumption as to the genuineness of certified copies provided the existence of a law declaring certified copy of a document of such nature to be admissible as evidence. When that be the position under the aforesaid provisions, taking note of the fact that the document in question is a registered sale deed, falling within the definition of a public document, the question is whether there exists any law declaring such certified copy of a document as admissible in evidence for the purpose of proving the contents of its original document. Sub-section (5) of Section 57 of the Registration Act is the relevant*



*provision that provides that certified copy given under Section 57 of the Registration Act shall be admissible for the purpose of proving the contents of its original document. In this context it is to be noted that certified copy issued thereunder is not a copy of the original document, but is a copy of the registration entry which is itself a copy of the original and is a public document under Section 74(2) of the Evidence Act and Sub-section (5) thereof, makes it admissible in evidence for proving the contents of its original .....*

*..... ”*  
*(Underlined for emphasis)*

**8.** Now coming back to the dispute in the present case, in the light of discussion made hereinbefore, it could be safely concluded that the certified copy of a registered sale deed would fall under the category of public document under Section 74 (2) of the Evidence Act.

**9.** Last question which remains is whether this document could be marked an exhibit waiving the requirement of formal proof. Section 76 of the Evidence Act empowers an officer having the custody of a public document to give a certified copy at the Registrar's Office keeps a public record of all sale deeds registered in that office. The definition of public document under Section 74 of the Evidence Act takes in public records kept in any state of private document. A certified copy is therefore admissible in evidence both under Section 65 (e) and 65 (f) of the Evidence Act. The certified copy is, therefore, secondary evidence of public record of sale deed kept in the office of the Registrar. Invoking Section 57(5) of the Registration Act, the said copy becomes admissible for the purpose of proving the contents of the original document itself. Therefore, the certified copy becomes admissible in evidence but proof of execution could not be dispensed with.

**10.** Section 65 (e) and Section 77 of the Evidence



*Act read as under:-*

*“(a).....*

*(b).....*

*(c).....*

*(d).....*

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

*(f).....*

*(g).....*

*77. Proof of documents by production of certified copies.—Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.”*

*At the same time, Section 57 (5) of the Registration Act reads as under:-*

*“57 (5) All copies given under this section shall be signed and sealed by the registering officer, and shall be admissible for the purpose of proving the contents of the original documents.””*

10. Thus relying on the decisions of **Smt. Rekha Rana & ors.** (supra) and **Appaiya** (supra), the discussion in the case of **Ram Briksha Singh** (supra) makes it amply clear that certified copy of the sale deed would be deemed as public document under Section 74(2) of the Indian Evidence Act and read with Section 57(5) of the Registration Act makes its admissible in evidence for proving the contents of its original.

11. However, learned counsel for the petitioner has referred to the decision of a Three Judges Bench of the Hon’ble Supreme Court in the case of **Deccan Paper Mills Company Limited** (supra) wherein the Hon’ble Supreme Court while



considering the arbitrability of disputes in the absence of arbitration agreement when there were allegations of fraud and the plaintiff sought cancellation of the written instrument under Section 31 of the Specific Relief Act, 1963 incidentally considered this issue. The Hon'ble Bench relying on the decision of **Gopal Das** (supra) observed that a certified copy of a registered instrument was not a public record of a private document under Section 74(2) of the Evidence Act, 1872. While doing so the Hon'ble Supreme Court also referred to the case of **Smt. Rekha Rana & ors.** (supra) and its paragraph nos. 8 & 9 with approval which read as under:-

*“8 A deed of sale is a conveyance. A deed of conveyance or other document executed by any person is not an act nor record of an act of any sovereign authority or of any official body or tribunal, or of any public officer, legislative, judicial and executive. Nor is it a public record kept in a State of any private documents. A sale deed (or any other deed of conveyance) when presented for registration under the Registration Act, is not retained or kept in any public office of a State after registration, but is returned to the person who presented such document for registration, on completion of the process of registration, An original registered document Is not therefore a public record kept in a state of a private document, Consequently, a deed of sale or other registered document will not fall under either of the*



*two classes of documents described in Section 74, as 'public documents'. Any document which is not a public document is a private document. We therefore have no hesitation in holding that a registered sale deed (or any other registered document) is not a public document but a private document.*

*9. This position is made abundantly clear in Gopal Das v. Shri Thakurji AIR 1943 Privy Council 83, wherein the Privy Council considering the question whether a registered receipt is a public document observed thus:*

*It was contended by Sir Thomas Strongman for the respondents that the receipt comes within para 2 of Section 74, Evidence Act, and was a "public document"; hence under Section 65(e) no such foundation is required as in cases coming within Clauses (a), (b) and (c) of that section. Their Lordships cannot accept this argument since the original receipt, of 1881 is not "a public record of a private document". The original has to be returned to the party..... A similar argument would appear at one time to have had some acceptance in India but it involves a misconstruction of the Evidence Act and Registration Act and later decisions have abandoned it.*

*We may also refer to the following passage from Ratanlal's Law of Evidence (19th Edition page 237):*

*Public document, (clause (e)] - This clause is intended to protect the originals of public*





*records from the danger to which they would be exposed by constant production in evidence. Secondary evidence is admissible in the case of public documents mentioned in Section 74. What Section 74 provides is that public records kept in any state of private documents are public documents, but private documents of which public records are kept are not in themselves public documents. A registered document, therefore, does not fall under either Clause (e) or (f). The entry in the register book is a public document, but the original is a private document.*

*(Emphasis supplied)*

12. Thus, the Hon'ble Bench held that the factum of registration of what is otherwise a private document inter partes does not clothe the document with any higher legal status by virtue of its registration. However, the Hon'ble Division Bench of the Madhya Pradesh High Court in the case of **Smt. Rekha Rana & Ors.** (supra) further considered the matter and paragraph nos. 10 and 12 of the said decision are quite relevant and are extracted for reference:-

*"10. What then is a "public record, kept in any state of private documents" referred to in Clause (2) of Section 74? The answer may be found in the Registration Act, 1908, 10.1 When a document is presented for registration and the person executing it appears and admits execution, Section 35 of the Registration Act, requires the Registering Officer to register the document as directed in Sections 58 to 61 of the said Act.*

*10.2 Section 51 relates to Register Books to be kept in*



*the registration offices. Relevant portions thereof extracted below:*

*51. Register-books to be kept in the several offices:*

*(1) The following books shall be kept in the several offices hereinafter named, namely:*

*A. In all registration offices -*

*Book 1, "Register of non-testamentary documents relating to immovable property".*

*Book 2, "Record of reasons for refusal to register".*

*Book 3, "Register of wills and authorities to adopt", and Book 4, "Miscellaneous Register".*

*B. In the offices of Registrars -*

*Book 5, "Register of deposits of wills".*

*(2) In Book 1 shall be entered or filed all documents or memoranda registered under Sections 17, 18 and 89 which relate to immovable property, and are not wills.*

*XX XX XX XX It is clear from Section 51 that all deeds relating to immovable property of which registration is compulsory under Section 17 or of which registration is optional under Section 18 (and the orders/certificates/instruments enumerated in Section 89) are entered or filed in Book 1 kept by the Registering Officers. The word "entered or filed" in Book 1 means the verbatim copying of the deed in the book or filing of a complete copy of the deed, with all endorsements and certificates in, Book 1. In fact, Section 52 requires that every document admitted to registration shall be copied in the Book appropriated therefor.*

*10.3 Section 57 requires the Registering Officers to allow inspection of Books No, 1 and 2 and indexes relating to Book No. 1 and to give certified copies thereof. The relevant*



*portion of the said Section is extracted below:*

*(1) Subject to the previous payment of the fees payable in that behalf, the Books Nos. 1 and 2 and the Indexes relating to Book No. 1 shall be at all time open to inspection by any person applying to inspect the same; and, subject to the provisions of Section 62, copies of entries in such books shall be given to all persons applying for such copies.*

*XXX XXX XXX (5) All copies given under this section shall be signed and sealed by the registering-Officer, and shall be admissible for the purpose of proving the contents of the original documents.*

*(Emphasis supplied)*

*10.4 Section 60 requires the Registering Officer to endorse on the document presented for registration, on completion of the formalities of registration, a certificate containing the word 'registered'. Sub-section (2) of Section 60 provides thus:*

*60(2) Such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsement, referred to in Section 59 have occurred as therein mentioned.*

*(Emphasis supplied) 10.5 Section 61 deals with copying of endorsements and certificate and return of document. It is extracted below:*

*(1) The endorsements and certificate referred to and mentioned in Sections 59 and 60 shall thereupon be copied into the margin of the Register Book, and the copy of the map or plan (if any) mentioned in Section 21 shall be filed in Book No. 1.*

*(2) The registration of the documents shall thereupon be deemed complete, and the document shall then be returned to the*



*person who presented the same for registration, or to such other person (if any) as he has nominated in writing in that behalf on the receipt mentioned in Section 52.*

*(Emphasis supplied)*

**12.** *We therefore answer points (i) and (ii) as follows:*

*(i) A Registered document (Deed of sale etc.) is not a public document. It is a private document.*

*(ii) Book 1 kept in the Registration Offices under the Registration Act, where the Registered documents (private documents) are copied, entered or filed, is a public document.*

*(iii) A certified copy of a registered document, copied from Book 1 and issued by the Registering Officer, is neither a public document, nor a certified copy of a private document, but is a certified copy of a public document.”*

Thus, the Hon’ble Division Bench of the Madhya Pradesh High Court came to a finding that a certified copy of the registered document is a certified copy of a public document. At the same time, a registered sale deed is not a public document but a private document.

13. This issue also received attention of a Constitution Bench of the Hon’ble Supreme Court in the case of ***N.N. Global Mercantile (P) Ltd.*** (supra) where in paragraph no. 141.2, the



Hon'ble Supreme Court recorded as under:-

*“141.2. What Section 74 read with Section 76 of the Evidence Act provides for is, the issuance of certified copies. Certified copies can be issued only in respect of public documents. Section 62 inter alia of the Evidence Act defines primary evidence as the document itself produced for the inspection of the court. Section 63 of the Evidence Act defines ‘secondary evidence’ as meaning and including, inter alia, ‘certified copies under the provisions hereinafter contained’. The provisions ‘hereinafter contained’ referred to in Section 63 must be understood as Section 74 read with Section 76. A certified copy can be given, no doubt, of ‘public records kept in any State of private documents’. Thus, if a sale deed between two private parties comes to be registered, instead of producing the original document, a certified copy of the sale deed, may qualify as secondary evidence and a certified copy can be sought for and issued under Section 76 of the Evidence Act. The expression ‘public records kept in any State of a private document’ in Section 74 is not confined to documents, which are registered under the Registration Act. A private document, which is kept as a public record, may qualify as a public document. What is important is, to bear in mind that in view of Section 33 of the Stamp Act, an instrument, which is not duly stamped, if it is produced before any Public Office, it would*



*become liable to be impounded and dealt with  
as provided in the Stamp Act.”*

14. The aforesaid observation leaves no doubt in mind that a certified copy of a sale deed may qualify as secondary evidence and the certified copy can be sought for and issued under Section 76 of the Evidence Act. If the sale deed is registered, a certified copy can be given since it pertains to public records kept in any state of private documents and a private document which is kept as a public record may qualify as a public document. Hence, the decision in ***N.N. Global Mercantile (P) Ltd.*** (supra) cannot be said to be *sub silentio* on this aspect of matter about the nature of the certified copy of a registered document. It cannot be said that the Hon’ble Supreme Court did not consider this particular point of law. If the same is taken to be *sub silentio*, the same logic could also be adopted about the decision in the case of ***Deccan Paper Mills Company Limited*** (supra) relied on by the learned counsel for the petitioner as in the said matter, the Hon’ble Supreme Court has incidentally discussed the nature of registered/certified copy of registered document. On the other hand, in the case of ***Appaiya*** (supra), the core issue for consideration before the Hon’ble Division Bench revolved around proving of Exhibit-A-1 which was a certified copy of sale deed. However, the insistence of the



learned counsel for the petitioner on *Deccan Paper Mills Company Limited* (supra) not being considered by the *Appaiya* (supra) is not of much significance as proposition of law enunciated in two decisions are not different. What has been held in the case of *Deccan Paper Mills Company Limited* (supra) is that certified copy of a registered instrument was not a public record of private document but a private document. Quoting *Smt. Rekha Rana & Ors.* (supra) it has been further observed that a registered sale deed (or any other registered document) is not a public document. At the same time, it has also been referred that what Section 74 of the Evidence Act provides is that public records kept in any state of private documents are public documents, but private documents of which public records are kept are not in themselves public documents. The entry in register book is a public document, but the original is a private document. Similarly, in the case of *Appaiya* (supra) it has been held that certified copy issued under the provisions of Section 57 of the Registration Act is not a copy of the original document but is a copy of registration entry which itself a copy of the original and is a public document under Section 74(2) of the Evidence Act and therefore it was held to be admissible under Section 57(5) of the Registration



Act for proving the contents of the original.

15. Another aspect of the matter is that the document is more than 30 years old and Section 90 of the Evidence Act presumes it to be duly executed and attested if it has been produced from proper custody. At the same time, Section 79 of the Evidence Act provides that the court shall presume genuineness of certified copies of documents. Further, as held in the case of *Appaiya* (supra) that Section 77 of the Evidence Act provides for the production of a certified copy of a public document as secondary evidence in proof of contents of its original. It has been further held that Section 79 of the Evidence Act is the provision for presumption as to the genuineness of certified copies provided the existence of a law declaring certified copy of a document of such nature to be admissible as evidence.

16. In the light of the specific provisions of law as well as authorities cited hereinbefore, the certified copy of sale deed could be produced as secondary evidence of the public document and could be produced in proof of contents of the public document or part of public document which it purports to be a copy. A certified copy is, therefore, admissible in evidence both under Sections 65(e) and 65(f) of the Evidence Act. It goes





without saying that such document would prove only the contents of the original document and it would not be a proof of execution of the original document.

17. Therefore, in the light of discussion made hereinbefore, I am unable to agree with the contention of the learned counsel for the petitioner that the impugned order is not sustainable. Hence, the impugned order dated 17.10.2019 passed by the learned Sub Judge-1<sup>st</sup>, Siwan in Title Suit No. 510 of 2016 is affirmed.

18. Accordingly, the present petition stands dismissed.

**(Arun Kumar Jha, J)**

balmukund/-

AFR/NAFR	AFR
CAV DATE	05.03.2025
Uploading Date	22.05.2025
Transmission Date	NA

