

**HIGH COURT OF TRIPURA  
AGARTALA**

RSA No.52 of 2022

**1. Smti. Rubia Bibi (46)**

W/o Alfat Ali,

**2. Smti. Rukiya Bibi (32)**

D/o Alfat Ali,

**3. Smti. Rasia Bibi (33)**

D/o Alfat Ali,

**4. Md. Kamal Hossen (35)**

S/o Alfat Ali

**5. Md. Mohammad Hossen (30)**

S/o Alfat Ali,

All of Village Hadra, P.S. Kakraban,  
Udaipur, Gomati Tripura

----- Plaintiff Appellants.

**Versus**

**1. Md. Mati Miah**

S/o Late Ali Ashrab, of Village- Hadra,  
P.S. Kakraban, Udaipur, Gomati.

**2. Md. Ajid @ Aziz Miah,**

S/o Lt. Ali Ashrab, of Village- Hadra,  
P.S. Kakraban, Udaipur, Gomati.

**3. (a). Mist. Maleka Bibi,**

W/o Late Akkas Mia, of Village- Hadra,  
P.S. Kakaraban, Udaipur, Gomati.

**(b). Md. Tabir Rahaman,**

S/o Late Akkas Mia, of Village- Hadra,  
P.S. Kakaraban, Udaipur, Gomati.

**(c). Md. Billal Miah**

S/o Late Akkas Mia, of Village-Hadra,  
P.S. Kakaraban, Udaipur, Gomati.

**(d). Mist Sofiya Bibi**

W/o Md. Abu Taher and D/o Late Akkas Mia, of Village- Hadra, P.S. Kakaraban, Udaipur, Gomati.

**(e) Mist. Sakina Khatun,**

W/o Md. Hasem Miah and D/o Late Akkas Mia, of Village- Hadra, P.S. Kakaraban, Udaipur, Gomati.

**(f) Mist. Fatema Bibi**

Minor and represented by 3(a).  
D/o Late Akkas Mia, of Village- Hadra, P.S. Kakaraban, Udaipur, Gomati.

**(g). Mist. Achia Bibi**

D/o Late Akkas Mia, of Village- Karaiyamura, P.S. Kakaraban, Udaipur, Gomati.

**4. Md. Salim Miah**

S/o Late Kadir Miah of Hadra, P.S. Kakraban, Udaipur, Gomati,

**5. Mist. Abidi Bibi,**

W/o Md. Alak Miah and D/o Ali Asrab, of Village- Nidaya, P.S. Jatrapur, Sonamura, Sepahijala.

**6. Mist. Ramuja Bibi**

W/o Md. Jamal Hossen and D/o Ali Asrab, of Village- Nidaya, P.S. Jatrapur, Sonamura, Sepahijala.

**7. Mist. Jarina Bibi**

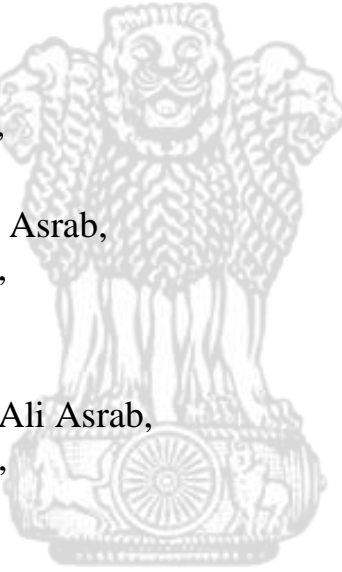
W/o Md. Manu Miah and D/o Ali Asrab, of Village-Hadra, P.S. Kakraban, Udaipur, Gomati.

**8. Mist. Rafia Bibi,**

W/o Md. Ajjan Khan and D/o Ali Asrab, of Village- Hadra, P.S. Kakraban, Udaipur, Gomati.

**9. Mist. Charu Bibi,**

W/o Md. Abdul Sattar and D/o Ali Asrab,



of Village- Hadra, P.S. Kakraban,  
Udaipur, Gomati.

**10. Mist. Jahera Khatun,**

W/o Md. Abdul Mazid and D/o Ali Asrab,  
of Village-Hadra, P.S. Kakraban,  
Udaipur, Gomati.

**11. Mist. Anu Bibi,**

W/o Md. Latif Miah and D/o Ali Asrab,  
of Village-Hadra, P.S. Kakraban,  
Udaipur, Gomati.

---Defendants Respondents.

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For the Appellant(s)	:	Mr. B. Banerjee, Advocate Ms. R. Majumder, Advocate
For Respondent(s)	:	Mr. G.S. Bhattacharjee, Advocate
Date of hearing and delivery of judgment & order	:	<b>08.02.2023</b>
Whether fit for reporting	:	<b>Yes</b>

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**HON'BLE MR. JUSTICE ARINDAM LODH**

**Judgment & Order (Oral)**

Heard Mr. B. Banerjee, learned counsel appearing for the appellants. Also heard Mr. G.S. Bhattacharjee, learned counsel appearing for the respondents.

2. This second appeal has been filed by the appellants against the judgment and order dated 20.09.2022 passed by the learned District

Judge, Gomati Judicial District in Title Appeal No. 09 of 2016 arising out of judgment dated 31.03.2016 and decree dated 05.04.2016 passed by the learned Civil Judge (Jr. Div.), Gomati, Tripura in TS No.12 of 2012.

3. The plaintiffs filed the suit for declaration of right, title, interest and confirmation of possession. In support of their plea of title, the plaintiffs have produced certified copy of the registered sale deed under which they purchased the suit land.

4. Issues were framed after perusal of the pleadings exchanged between the plaintiffs and the defendants. Both the parties adduced evidence.

5. Having heard the arguments of the counsel appearing on behalf of the parties, the learned trial Judge dismissed the suit of the plaintiffs with the following findings:

*“ISSUE NO.II: According to the plaintiffs, they, being the legal heirs of Alfat Ali, became the owner-in-possession of the suit lands described in Schedule A(i) and Schedule A(ii) of the plaint. Originally, Alfat Ali jointly owned with Ali Ashrab 0.49 acres of land described in Schedule A(i) and he purchased the portion of land owned by Ali Ashrab from him and also purchased land described in Schedule A(ii) from Ali Ashrab by a common registered deed of sale and got delivery of possession. In support of their claim, plaintiffs adduced in evidence death certificate of Alfat*

*Ali (Ext.1), survival certificate of Alfat Ali (Ext.2), certified copy of registered sale deed vide no. 1-1934 between Alfat Ali and Ali Ashrab (Ext.3 series), certified copy of khatian no.130 and 116 of Mouja Amtali (Ext.4 & 5 respectively), and certified copy of Map of Mouja Amtali (Ext.6). From Ext.2 it is made clear that the plaintiffs are the legal heir of Alfat Ali. But Ext.3 is the certified copy of sale deed. Plaintiffs have not adduced in evidence the original deed of sale and there is no explanation as to why the original sale deed is not produced. It is settled law of evidence as provided in section 64 of the Evidence Act that document must be proved by primary evidence except in cases mentioned in the said Act. As per section 67 of the Evidence Act: the signature and handwriting must be proved when a document is produced. Plaintiffs examined the Moharar of Sub-Registrar Khokan Debnath as PW.3 who during his cross-examination admitted that he did not know Asrab Ali or his hand writing or signature and he also could not say whether original Asrab Ali executed the sale deed before the Sub-Registrar. The exception as indicated in section 64 is well found in section 77 of the Evidence Act which provides that certified copies may be produced in proof of the contents of public documents. But a deed of sale is not a public document. Therefore, the document i.e., the deed of sale is not proved in view of the Evidence Act. Thus, it is also not proved that Alfat Ali purchased the land described in Schedule A(i) and Schedule A(ii) of the plaint from Ali Ashrab. Moreover, from the plaint it is apparent that land in Schedule A(i) is recorded in Khatian no. 130 (Ext.4) and land in Schedule A(ii) is recorded in Khatian no. 116 (Ext.5). Ext.4 shows*

that both the Alfat Ali and Ali Ashrab are the owners and possessors of 0.49 acres of land situated in Mouja Amtali and Ext.5 shows that Ali Ashrab is the owner and possessor of 0.38 acres of land under Mouja Amtali. Thus, Ext.4 and Ext.5 do not support the plaintiffs' claim that Alfat Ali had become the owner-in-possession of the entire lands mentioned in Schedule A(i) and Schedule A(ii) of the plaint.

From the foregoing discussion, it is found that purchase of portion of land of Schedule A(i) and entire land of Schedule A(ii) by Alfat Ali from Ali Ashrab is not proved and therefore, right, title and interest of plaintiffs over the suit lands are not proved. Hence, the issue has been answered in negative and decided against the plaintiffs and in favour of the defendants.

ISSUE NO. III: In view of my findings arrived at the Issue No.II, I find and hold that the plaintiff is not entitled to recover the vacant possession over the A(iii) schedule land from the defendants. Therefore, the issue is answered in negative and decided against the plaintiffs and in favour of the defendants.

ISSUE NO. IV: In view of my findings arrived at the foregoing issues, the plaintiff is not entitled to get any other relief or reliefs.

#### ORDER

7. On the basis of the decisions on various issues, it is found that plaintiffs failed to prove their right, title and interest over the entire A(i), A(ii) and A(iii) schedule land and therefore, they are not entitled to recover the vacant possession over the A(iii) schedule land from the defendants. Thus, the suit of the plaintiff fails and is hereby dismissed on contest."

6. Being aggrieved by and dissatisfied with the said judgment and decree, the plaintiffs, appellants herein preferred first appeal before the Court of learned District Judge, Udaipur, Gomati District. On hearing the appeal the learned District Judge had affirmed the judgment and decree passed by the learned trial Judge.

Hence, the second appeal before this Court.

7. Mr. Banerjee, learned counsel appearing for the appellants has urged this Court to formulate substantial question of law on the ground that the findings of the Court's below as regards the admissibility of the certified copy of the sale deed (Ext.3 series) are perverse and bad in law. Mr. Banerjee, learned counsel has strenuously tried to persuade this Court that even a certified copy, if exhibited without any objection by the opposite party, then, such certified copy is deemed to have been proved. No other ground is pressed. Mr. Banerjee, learned counsel has relied upon a judgment of the Hon'ble Supreme Court passed in the case of *Dayamathi Bai (Smt) vs. K.M. Shaffi*, (2004) 7 SCC 107.

8. I have perused the findings of both the learned Courts below. I have also taken into consideration the judgment relied upon by the learned counsel for the appellants.

9. Certified copy of any document is treated as secondary evidence as contemplated under Section 63 of the Evidence Act. Admitted fact is that the plaintiffs/appellants have produced certified copy of the sale deed and not the original copy of the sale deed.

Section 63 of Evidence Act reads as under:

*“63.Secondary evidence.—Secondary evidence means and includes—*

- (1)certified copies given under the provisions hereinafter contained;*
- (2)copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;*
- (3)copies made from or compared with the original;*
- (4)counterparts of documents as against the parties who did not execute them;*
- (5)oral accounts of the contents of a document given by some person who has himself seen it.”*

Section 65 of the Evidence Act deals with the cases in which secondary evidence relating to documents may be given.

Section 65 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 India, to be given in evidence;

(g) when the originals consist 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.”*

**10.** In the instant case, the question raised and as urged by learned counsel for the appellants that the certified copy of the sale deed, when exhibited by the Court without any objection from the opposite party, is deemed to have been proved and its admissibility in evidence cannot be questioned at a later stage.

**11.** In *R.V.E. Venkatachala Gounder vs. Arulmigu Viswesaraswami & V.P. Temple*, (2003) 8 SCC 752 Hon'ble Supreme Court held that “*Ordinarily, an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes: (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first*

*case, merely because a document has been marked as 'an exhibit', an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit.....”*

12. In the context of the present case, this Court finds that the defendants did not raise any objection when the certified copy of the sale deed was produced by the plaintiffs and taken into evidence by the learned trial Court being marked as (Ext.3 series). In this situation, certified copy of the original sale deed cannot be said to be inadmissible in evidence since the said deed was permitted to be exhibited by the defendants without any objection as regards the foundational aspects for non-production of original sale deed. In *Dayamathi Bai (supra)*, the Hon'ble Supreme Court had referred to *Venkatachala Gounder's case (supra)* and also took note of a passage from *Sarkar on Evidence, 15<sup>th</sup> Edn., p.1084*, where it has been stated that where copies of the documents

are admitted without objection in the trial Court, no objection to their admissibility can be taken afterwards in the court of appeal. When a party gives in evidence a certified copy, without proving the circumstances entitling him to give secondary evidence, objection must be taken at the time of admission and such objection will not be allowed at a later stage. There is no quarrel with the aforesaid enunciation of law.

**13.** But, here, the question is, whether the plaintiffs have been able to prove the contents and execution of the sale deed they adduced as evidence. The scribe of the sale deed was produced by the plaintiffs who deposed as PW.3. During his cross-examination, PW.3 admitted that he did not know Asrab Ali, the vendor of the sale deed in question or his hand writing or signature and he also could not say whether original Asrab Ali executed the sale deed before the Sub-Registrar. Furthermore, the case of the defendant/respondents is total denial of the facts and circumstances of execution of the sale deed.

**14.** Clause (b) of Section 65 of the Evidence Act contemplates that secondary evidence may be given of the existence, condition or contents of a document when the existence, conditions 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.

15. In the instant case, the existence, conditions or contents of the original sale deed have not been admitted in writing by the defendants against whom the plaintiffs wanted to prove it. However, considering the law that certified copy of a registered deed may be the proof of the contents of the original deed, the contents of the sale deed (Ext.3 series) may be admissible in evidence since objection to the contents was not raised by the defendants. Applying the principle as laid down in *Dayamathi Bai (supra)*, in the opinion of this Court, there cannot be any disagreement in the said proposition of law that admissibility of a document in the form of secondary evidence cannot be questioned if objection is not raised by the opposite party when the document is introduced and taken into evidence and marked as exhibit.

16. Here, however, the principal question hinges upon whether the execution of the sale deed (Ext.3 series) is proved or not, keeping in view the findings of the Courts below as regards admissibility of sale deed in evidence.

17. According to this Court, a certified copy is secondary evidence under Section 63 of the Evidence Act which acknowledges/recognizes the existence, conditions and contents of the deed, but not of its execution. This Court does not find any mention that secondary evidence itself is the

proof of the execution of the deed. Added to it, execution of document means the last act or series of acts which complete the document. It does not mean merely signing it. In other words, execution means all acts necessary to make the parties to the contract bound thereby. In furtherance thereof, it should be accompanied by the intention to give effect to the document in question. [*Abdul Hasan vs. Wajih-un-nissa and Others*, AIR 1948 Patna 186; 1947 SCC OnLine Patna 186; *Sundar Chaudhari vs. Lalji Chaudhari*, AIR 1933 Patna 129; 1931 SCC OnLine Patna 115; *Kumari Shantha Arogyadoss vs. G.C. Kamala*, 1999 SCC OnLine Mad 1137].

**18.** In the context of the present case, it is re-iterated at the cost of repetition that execution of the sale deed by Asrab Ali i.e. vendor of the sale deed (Ext.3 series) has not been proved since PW.3 admitted that he did not know Asrab Ali or his handwriting or signature and he also could not say whether original Asrab Ali executed the sale deed before the Sub-Registrar.

**19.** In this situation, according to this Court, in the present case, it is apparent that execution of the sale deed (Ext.3 series) has not been proved being not accompanied by the intention of the executant (Asrab Ali, the vendor) to give effect to the said sale deed, Ext.3 series in question, when

it is the specific pleaded case of the defendants/respondents that Late Asrab Ali had never intended to sell the suit land and the alleged sale deed (Ext.3 series) was simultaneously accompanied by a deed of reconveyance, which, in reality was a deed of mortgage. Therefore, in the context of the case, the attending circumstances of the execution of sale deed (Ext.3 series) ought to have been necessarily proved by the plaintiffs, which they failed to discharge by leading other evidence recognized by law of evidence.

**20.** Be that as it may, even, if this Court accepts the submission of Mr. Banerjee, learned counsel for the plaintiffs that the grounds of rejection of the certified copy of the sale deed holding its inadmissibility in evidence as considered by both the learned Courts below, are bad in law, but, then also, as a corollary to above discussion and analysis of law, this second appeal merits no consideration for admission on the ground that the plaintiffs have failed to prove due execution of the sale deed in question

**21.** Resultantly, the present second appeal is dismissed, with no order as to costs.

**JUDGE**