

**HIGH COURT OF MADHYA PRADESH,**  
**BENCH AT INDORE**

**MISCELLANEOUS PETITION NO.6237/2018**

*(Nathulal s/o Heeralal (deceased) through LR  
Kailashchandra s/o Nathulal & another vs. Ramesh s/o  
Nathulal & others)*

28.08.2019 (INDORE):

Shri A.S.Garg, learned Senior Advocate with Shri Aditya Garg for the petitioners.

Shri Amit Dube, learned counsel for the respondent No.1.

None for respondents No.2 to 5 despite service.

Heard.

**ORDER**

Petitioners have filed the present petition being aggrieved by the order dated 10.12.2018 passed by IInd Civil Judge, Class-II, Sardarpur, district Dhar in COS No.76-A/17 whereby the trial Court has allowed the application filed by the plaintiff under sections 33 & 35 of the Indian Stamp Act and sent the document to the Collector (Stamps) for payment of stamp duty.

Facts of the case are as under:

2. Respondent No.1/plaintiff preferred a civil suit against the petitioners and respondents No.2 to 5 in respect of an agricultural land bearing survey No.1934 area 0.941 hectare situated at village Ledgaon, Tehsil Sardarpur, district Dhar (for short 'the suit property') seeking a decree of declaration

to the effect that he is the sole owner of the suit property by virtue of family settlement and partition which took place on 29.05.1993. The plaintiff also prayed for a decree of perpetual injunction. The defendants filed written statement denying the averment made in the plaint. Thereafter, trial Court framed issues on 23.08.2016. The plaintiff submitted the affidavit of his witnesses under Order 18 Rule 4 of the CPC.

3. On 21.09.2016, during the course of examination of plaintiff Rameshchandra (PW/1), a carbon copy of a partition deed dated 21.05.1993 was tendered in evidence by him. At that stage, the present petitioner raised an objection regarding admissibility of the said document for want of registration and proper stamp. Thereafter, petitioner moved an application under section 151 CPC challenging the admissibility of the said partition deed. The application was opposed by the plaintiff. After considering the contention of the parties and the nature of the document, learned trial Court vide order dated 08.11.2016 rejected all the objections and held that the deed is admissible in evidence.

4. Present petitioners filed a writ petition No.7622/2016 before this Court and by order dated 30.07.2018 the writ petition was allowed and set aside the order dated 08.11.2016 and held that the deed is an instrument of partition and not a memorandum of partition, hence stamp duty was required to be paid keeping in view the Indian Stamp Act, Schedule 1-A Item No.(52).

5. After the aforesaid order, on 11.10.2018 the plaintiff filed an application under sections 33 & 35 of the Stamp Act for sending the partition deed for stamping. Even the aforesaid application has been opposed by the present petitioners by filing reply that the partition deed produced by the plaintiff is neither an original document nor a carbon copy, therefore, it is not an instrument under section 2(14) of the Indian Stamp Act, hence the photocopy of the instrument cannot be impounded and sent to the Collector for validation of the said document. By impugned order dated 10.12.2018, learned trial Court has allowed the application and sent the document to the Collector for payment of stamp duty. Being aggrieved by the aforesaid order, petitioners/defendants No.3 & 4 have filed the present petition before this Court.

6. Shri A.S.Garg, learned Senior Advocate appearing for the petitioners submits that sections 33 & 35 of the Indian Stamp Act are applicable to the original instrument and not to the photocopy of the instrument. Section 2(14) of the Indian Stamp Act also deals with the instrument. By submitting the photocopy the document cannot be validated. In support of his contention he has placed reliance over the judgment passed by the Apex Court in the case of **Jupudi Kesava Rao vs. Pulavarthi Venkata Subbarao & others AIR 1971 SC 1070**; judgments of this Court in the case of **Sugreeva Prasad Dubey and others vs. Sitaram Dubey 2004 (1) MPHT 488** and **Abhiyank Builders Ltd. and another vs. Daulat Singh and others 2016 (2) MPLJ 450.**

He further submits that the so called partition deed dated 29.05.1993 filed by the plaintiff is not a partition deed because it is not signed by all the parties, hence the same cannot be validated even by paying deficit stamp duty.

7. Per contra, Shri Dube, learned counsel appearing for the respondent No.1/plaintiff submits that the petitioners had already raised this objection at the time of exhibiting the said partition deed and vide order dated 08.11.2016 the trial Court had already rejected the same. This Court vide order dated 30.07.2018 has held that the instrument is a partition deed but not sufficiently stamped, hence the stamp duty is required to be paid and now the petitioners cannot raise the objection for payment of stamp duty. The petitioners cannot be permitted to approbate and reprobate. Earlier they raised an objection that being a partition deed it requires to be stamped properly. When this Court has directed for payment of stamp duty, now they cannot object that the stamp duty cannot be paid for validating the instrument because the document being a photocopy it is not a primary evidence. In support of his contention he has placed reliance over the judgment in the case of **Nagubai Ammal and others vs. B.Shama Rao and others AIR 1956 SC 593** and prayed for dismissal of the writ petition.

8. The entire case of the plaintiff is based on a family partition held on 29.05.1993 between the plaintiff, defendants and mother Ayodhyabai. He pleaded that the original stamped copy of the deed is with the defendant No.1

and other signed copies are with the son of defendants. When he tendered the partition deed in evidence, the defendants/present petitioners raised the following objections:

1. उक्त लेख असल न होकर प्रतिलिपि है।
2. उक्त बटवारा लेख अपर्याप्त रूप से स्ताम्पित है।
3. उक्त लेख अरजिस्ट्रीकृत है।
4. जिस दिनांक का लेख है उसी दिनांक का बटवारा होना भी दावे में उल्लेखित है।
5. यदि लेख को पारिवारिक व्यवस्था लेख भी मान लिया जाये तब भी लेख पर्याप्त रूप से स्ताम्पित नहीं है।
6. लेख पर कोई स्ताम्प नहीं है।
7. वादी ने सेकेन्डरी ऐवीडेन्स पेश करने की कोई परमिशन नहीं ली है।
8. मूल लेख वादी ने पेश नहीं किया है। छायाप्रति अथवा द्वितीय प्रति साक्ष्य में ग्राह्य नहीं है।
9. मूल दस्तावेज वादी के मुताबिक 10/- रुपये के स्ताम्प पर था। मूल दस्तावेज अपर्याप्त रूप से स्ताम्पित होने से उसकी प्रतिलिपि अथवा द्वितीय प्रति साक्ष्य में ग्राह्य नहीं है।
10. इस न्यायालय द्वारा अस्थायी निषेधाज्ञा आवेदन पत्र के निराकरण के दौरान यह अभिमत दिया गया कि लेख विल के स्वरूप का न होकर सेटलमेंट के स्वरूप का है। ऐसी दशा में यदि तर्क के लिए लेख को सेटलमेंट अथवा व्यवस्थापन लेख भी मान लिया जाये तब भी स्ताम्प एक्ट के शेड्यूल वन-ए के क्रमांक 52 में के मुताबिक स्ताम्प ड्यूटी लेख पर देय है। लेख उक्त स्ताम्प ड्यूटी अनुसार स्ताम्पित नहीं है।
11. वादोक्त भूमि नाथुलाल की स्वअर्जित सम्पत्ति है जिसके संबंध में सक्षम न्यायालय द्वारा नाथुलाल के पक्ष में घोषणा की गई है।

9. While answering objections No.1, 7 & 8, the trial Court has held that the partition deed dated 29.05.1993 produced by the plaintiff being a carbon copy is a primary evidence, therefore, he is not required to obtain a permission to prove it as secondary evidence. The trial Court has also rejected other objections by order dated 08.11.2016. The defendants challenged the aforesaid order before this Court by way of writ petition No.7622/2016. Learned counsel appeared for the petitioner in the writ petition No.7622/2016 had straight

away drawn attention of the Court towards the partition deed dated 29.05.1993 as well as para-4 of the plaint and submitted that it is a partition deed and not a memorandum of partition, therefore, the petitioners had confined the petition only in respect of payment of stamp duty for the said partition deed. This Court has accepted the contention and held that it is a partition deed and stamp duty is required to be paid and accordingly allowed the application filed under section 151 of the CPC. Shri Garg, learned Senior Counsel submits that the writ Court has set aside the entire order dated 08.11.2016 as a whole, therefore, all the findings recorded by the trial Court in the order dated 08.11.2016 have been set aside. Though the petitioners have challenged the entire order dated 08.11.2016 before this Court but they confined the writ petition only to the issue of stamp duty payable on a partition deed. They specifically argued that the deed dated 29.05.1993 is a partition deed and not a memorandum of partition. This Court has held that the stamp duty is liable to be paid and accordingly the plaintiff filed an application under sections 33 & 35 of the Indian Stamp Act which has been allowed by the trial Court.

10. Shri Garg, learned Senior Counsel submits that the partition deed produced by the plaintiff is a photocopy under section 2(4) and section 46 of the Indian Stamp Act and only an original document can be validated. In support of his contention he has relied the judgments in the cases of Jupudi Kesava Rao, Sugreeva Prasad Dubey and Abhiyank Builders

(supra) and also the judgment passed by the Apex Court in the case of **Hariom Agrawal vs. Prakash Chand Malviya (2007) 8 SCC 514.**

11. The trial Court has held that the partition deed produced by the plaintiff is a carbon copy signed by the parties. Section 62 of the Evidence Act defines primary evidence and according to which primary evidence means the document itself produced for the inspection of the Court. There is an Explanation-1 to section 62 which provide that where a document is executed in several parts, each part is primary evidence of the document. The carbon copy is always prepared along with the original copy, therefore, both the documents original as well as carbon are prepared together, hence, as per Explanation-I, both are primary evidence. This Court in the case of **Satish Kumar vs. Lalsingh (1982 JLLJ 738)** has held that carbon copy of a document is a primary or original document can be validated under section 35 of the Stamp Act. Allahabad High Court in the case of **Smt.Kamala Rajamaikkam vs. Smt.Sushila Thakur Dass (AIR 1983 Allahabad 90)** has also held that the carbon copy prepared along with the original, then each one is original copy. The same view has been followed by Gujrat High Court in the case of **Bhagwanji and Kalyanji vs. Punjabhai Hajabhai Rathod reported in AIR 2007 Gujrat 88.** The Supreme Court in the case of **Prithi Chand vs. State of Himachal Pradesh (AIR 1989 SC 702)** has

held that carbon copy made by one uniform process of certificate of doctor is admissible being a primary evidence.

12. In the case of **Satish Kumar vs. Lalsingh 1982 JLJ 738**, this Court has held as under:

*“In the instance case the trial Court has held that as the carbon copy purports to have been signed by parties it is original. In my view, the view taken by the trial Court is correct. What appears to be is that the document is prepared in duplicate and each one has been signed by the parties, is a primary evidence in view of section 62 of the Evidence Act. See Gulam Mohammad vs. Ali Hussain (3). I would venture to seek support in this view from the decision of the Supreme Court in the State of Bihar vs. Karamchand Thapar and Brother Ltd. (supra). In this case, the arbitrator had prepared an award in triplicate, signed all of them and sent one each to the parties and the third to the Court. The copy sent to the Court, though bore an endorsement “certified copy” was held to be an original and the words “certified copy” were held to be mis-description. The relevant observation is set out below-*

*“Therefore, the question is whether the award which was sent by the arbitrator to the Court is the original instrument or a copy thereof. There cannot, in our opinion, be any doubt that it is the original and not a copy of the award. What the arbitrator did was to prepare the award in triplicate, sign all of them and send one each to the party and the third to the Court. This would be an original instrument, and the third to the Court. This would be an original instrument and the words “certified copy” appearing thereon are a misdescription and cannot have the effect of altering the true character of the instrument. There is no substance in this contention of the appellant either. In the result, the appeal fails and is dismissed with costs.”*

13. This Court in the case of **Firm Jethmal Bakhtawarmal through Proprietor vs. Smt.Chandrakanta Jain & others (Misc. Petition**



**No.1158/2017 dated 06.07.2018**) has held that carbon copy prepared along with original is also an original copy. Against the aforesaid judgment an SLP (SLP No.24753/2018) was filed and that has been dismissed by order dated 28.09.2018.

14. The petitioners ought to have raised this objection in the writ petition No.7622/2016 that though it is partition deed but cannot be validated by paying deficit stamp duty.

The petitioners might have raised this point but did not obtain any order from the Court. The Court has already ordered that the stamp duty is required to be paid keeping in view the provisions of the Indian Stamp Act. It is also settled law that once any deed or document comes before the Court and the Court finds that it is not properly stamped and the stamp duty is liable to be paid, then it is the duty of the Court to send the said document to the Collector of Stamps. At this stage, the only issue of payment of deficit stamp duty over the partition deed is concerned whether that amounts to validating the stamp or the probative value of the partition deed is yet to be decided by the Court. In the case of **Narbada Devi Gupta vs. Birendra Kumar Jaiswal (2003) 8 SCC 745** the Apex Court has held that mere production and marking of document as exhibit by the Court cannot be held to be due proof and its execution has to be proved by admissible evidence.

15. In view of the above, I do not find any substance in the present writ petition filed under Article 227 of the

Constitution of India. Accordingly, the petition being devoid of merit and substance is hereby dismissed.

**(VIVEK RUSIA)  
JUDGE**

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