

IN THE HIGH COURT FOR THE STATE OF TELANGANA

AT: HYDERABAD

CORAM:

*** THE HON'BLE SRI JUSTICE K. LAKSHMAN**

+ CIVIL REVISION PETITION No.1944 OF 2022

% Delivered on:20-12-2022

Between:

Mr. Katike Bheem Shankar

.. Petitioner

Vs.

\$ Mrs. T. Laxmi @ Punyavathi & others

.. Respondents

! For Petitioner

: Mr. R. Dheeraj Singh

^ For Respondent Nos.1 & 2

: Mr. N. Ashok Kumar

For Respondent Nos.3 to 5

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? Cases Referred

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1. 2015 SCC OnLine Hyd 389
2. 2010 SCC OnLine AP 350
3. Order in Second Appeal No.183 of 2014 decided 12.07.2019
4. 1959 Supp (2) SCR 798
5. (2001) 6 SCC 254
6. (1880) 5 App Cas 623
7. 1988 Supp SCC 604
8. (2011) 8 SCC 497
9. 2015 SCC OnLine MP 2812
10. 2016 SCC OnLine P&H 11166
11. 2018 SCC OnLine P&H 556
12. 1973 SCC OnLine Pat 95

HON'BLE SRI JUSTICE K.LAKSHMAN**CIVIL REVISION PETITION No.1944 OF 2022****ORDER:**

The present Civil Revision Petition is filed challenging the order dated 26.04.2022 passed in I.A. No.230 of 2019 in O.S. No. 116 of 2017 by the learned II Additional District and Sessions Judge (FTC), Mahabubnagar (hereinafter referred to as 'trial Court'), wherein the information obtained by the petitioner herein under the Right to Information Act, 2005 (hereinafter referred to as 'RTI Act, 2005') was not admitted as evidence on the ground that the documents obtained under the RTI Act, 2005 are not certified copies of public documents.

2. Heard Mr. R. Dheeraj Singh, learned counsel for the petitioner and Mr. N. Ashok Kumar, learned counsel for respondent Nos.1 and 2. It is mentioned in the cause title that respondent Nos.3 to 5 are not necessary parties to the present revision.

3. Facts of the case:

i) Respondent Nos. 1 and 2, the original plaintiffs, have filed O.S. No. 116 of 2017 seeking specific performance of agreement of sale dated 09.02.2015 against the petitioner herein (Defendant No. 1 in the suit). According to respondent Nos.1 and 2, they are the legal heirs of one T. Kishan.

ii) Allegedly, the petitioner herein along with other respondents agreed to sell land admeasuring Acs.55-16 Guntas, situated at Manikonda Village of Kolikonda Mandal, presently merged with Mahabubnagar Mandal (hereinafter referred to as 'subject property') for a total sale consideration of Rs.83,10,000/- to the said T. Kishan. The petitioner herein allegedly received Rs. 50,00,000/- as part of advance payment from T. Kishan and executed an agreement of sale dated 09.02.2015 in his favour. It is relevant to note that the said agreement of sale was executed on a non-judicial stamp paper bearing No.B 355988. The balance amount of Rs. 33,10,000/- was agreed to be paid on execution of sale deed, demarcation of lands and obtaining pattadar pass books.

iii) According to respondent Nos.1 and 2 herein, T. Kishan was always ready and willing to perform his part of the contract, but the petitioner herein failed to execute sale deed in respect of the subject property. The said T. Kishan passed away on 09.05.2016 leaving behind respondent Nos.1 and 2. According to respondents Nos.1 and 2, despite continuous requests, the petitioner herein did not execute a sale deed. Therefore, respondent No.1 got issued legal notices dated 17.06.2017 and 23.08.2017 demanding the petitioner herein to execute a sale deed in respect of the subject property. As the petitioner herein along with other defendants failed to execute the sale deed, respondent Nos.1 and 2 filed O.S. No. 116 of 2017 seeking specific performance of agreement of sale dated 09.02.2015.

iv) The Petitioner herein along with other defendants denied the allegations of respondent Nos.1 and 2 herein and contended that they have not executed the agreement of sale dated 09.02.2015 and the said agreement of sale is a forged one. While the said suit was pending, the petitioner herein filed I.A. No.230 of 2019 to receive certain documents obtained by him under the RTI Act, 2005 as evidence on the ground that they are public documents.

v) The following documents were filed by the petitioner herein to be received as evidence:

- a) Letter dated 18.04.2018 issued by the Public Information Officer, Stamps and Registration Department, Sangareddy stating that non-judicial stamp paper bearing no. B 355988 was sold to K. Balakrishna (stamp vendor).
- b) Non-judicial stamp papers sale register from 02.01.2015 to 31.12.2015 issued by the Joint Sub-Registrar, Sangareddy showing the sale of non-judicial stamp papers by one K. Balakrishna (stamp vendor).
- c) Letters dated 14.03.2018 and 21.03.2018 issued by the Public Information Officer, Commissioner and Inspector General of Stamps and Registration, Hyderabad stating that non-judicial stamps of Rs. 100 denomination bearing nos. B 352001 to B 360000 were issued to the District Registrar Office, Sangareddy.
- d) Letter dated 14.03.2018 issued by the Public Information Officer, Sub-Registrar's office, Sanjeeva Reddy Nagar along

with the enclosures of renewal of license and sale register of B. Chaitanya (stamp vendor).

vi) The trial Court *vide* order dated 26.04.2022 refused to accept the said documents as public documents under the Indian Evidence Act, 1872 (hereinafter called as 'the Act, 1872') on the ground that the said documents are not certified copies of public documents and are merely Xerox copies of private documents maintained by the concerned departments. Therefore, the said documents obtained under the RTI Act, 2005 were inadmissible in evidence.

vii) Therefore, the present civil revision petition is filed challenging the order passed by the trial Court.

4. **Contentions of the petitioner:**

- i. True copies of public documents certified by a Public Information Officer can be taken as certified copies of public documents. Reliance was placed on **Datti Kameswari v. Singam Rao Sarath Chandra**¹.

¹. 2015 SCC OnLine Hyd 389

- ii. The alleged agreement of sale dated 09.02.2015 bearing No. B 355988 contains the name of one B. Chaitanya (Stamp Vendor), whereas the information obtained under the RTI Act, 2005 states that the said stamp paper was allotted to one K. Balakrishna (Stamp Vendor). The RTI information also shows that the said stamp paper was allotted to Office of Sub-Registrar, Sangareddy, whereas the said stamp paper containing the agreement of sale states that it was sold by B. Chaitanya at S.R. Nagar. Further, the information under RTI shows that the said stamp paper was sold to one B. Dasharath Goud and not to T. Kishan. This shows that the stamp paper on which the agreement of sale was executed was a forged one and the petitioner never signed the same. Therefore, the said documents shall be admissible as evidence.

5. **Contentions of respondents:**

- i. The allegations of the petitioner were denied and it was contended that the non-judicial stamp paper containing the

agreement of sale was purchased by the petitioner in the name of T. Kishan (husband of respondent No. 1).

- ii. Further, it was contended that the documents received under the RTI Act, 2005 are not certified copies of public documents and are inadmissible in evidence. Reliance was placed on **Bhaskar Rao v. K.A. Rama Rao**².

6. **Analysis and findings of the Court:**

i) From the facts of the case and the contentions of the parties, the following issues fall for consideration before this Court:

1. Whether certified copies of register of sale of non-judicial stamp papers maintained at a sub-registrar's office and issued by a Public Information Officer under the RTI Act, 2005 falls within the definition of a Public Document under Section 74 of the Act, 1872?
2. Whether information issued in the form of a letter by a Public Information Officer under the RTI Act, 2005 falls within the

². 2010 SCC OnLine AP 350

definition of a Public Document under Section 74 of the Act, 1872?

ii) Before discussing the issues at hand, it is apposite to discuss the provisions relating to admissibility of documents as public documents under the Indian evidence law. For the sake of convenience, the relevant provisions under the Act, 1872 are extracted below:

35. Relevancy of entry in public record [or an electronic record], made in performance of duty. —An entry in any public or other official book, register or record [or an electronic record], stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record [or an electronic record] is kept, is itself a relevant fact.

61. Proof of contents of documents. —The contents of documents may be proved either by primary or by secondary evidence.

62. Primary evidence. —Primary evidence means the document itself produced for the inspection of the Court.

Explanation 1.—Where a document is executed in several parts, each part is primary evidence of the document.

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties

only, each counterpart is primary evidence as against the parties executing it.

Explanation 2.—Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest; but where they are all copies of a common original, they are not primary evidence of the contents of the original.

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.

64. Proof of documents by primary evidence. —Documents must be proved by primary evidence except in the cases hereinafter mentioned.

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 91[India], to be given in evidence;⁹²

(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.

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.

75. Private documents. —All other documents are private.

76. Certified copies of public documents.—Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.

Explanation. —Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

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.

79. Presumption as to genuineness of certified copies. —

The Court shall presume [to be genuine] every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer [of the Central Government or of a State Government, or by any officer [in the State of Jammu and Kashmir] who is duly authorised thereto by the Central Government]:

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

iii) Under the Indian evidence law, documentary evidence can be proved either by primary evidence or secondary evidence. Existence of a document and its contents is said to be proved by primary evidence only when the original document itself is placed to be marked as evidence. On the other hand, if the original document is unavailable or lost or is not in possession of the party seeking to rely on such original document, the existence of such document can be proved by secondary evidence. Secondary evidence in relation to a

document can be given by producing copies of the documents which were made from the original. However, the requirements of Section 65 of the Act, 1872 have to be satisfied in cases of giving secondary evidence of documents.

iv) Now coming to the procedure of marking public documents as evidence, Section 74 of the Act, 1872 defines public documents. Public documents can be proved through primary evidence by producing the original copies. However, more often than not the original copies of public documents are in the possession of the authorities and the same cannot be directly produced before the Courts. In such cases, certified copies may be given as secondary evidence of the public documents. Under Section 65(e) and Section 65(f) of the Act, 1872, secondary evidence of public documents may be given through certified copies. Further, Section 77 of the Act, 1872 also states that public documents can be proved by production of certified copies of such documents.

v) It is relevant to note that in cases of private documents, the party willing to mark such documents has to lay a foundation under

Sections 65(a) or Section 65(b) or Section 65(c) to prove that the original copies of such documents are not available. However, no such requirement is needed to mark public documents. It is enough for the party to place the certified copy of such public document.

vi) In **Akbarbhai Kesarbhai Sipai v. Mohanbhai Ambabhai Patel**³, the Gujarat High Court has held as follows:

“74. The aforesaid contention of Mr. Desai as regards failure on the part of the defendants to lay any foundation to adduce secondary evidence should fail on the simple ground that the production of marking of certified copy as secondary evidence of a public document under Section 65(E) or 65(F) of the Evidence Act need not be preceded by laying any foundation for acceptance of the secondary evidence. At the cost of repetition, I state that the certified copy of a registered instrument/document issued by the Registering Officer by copying from Book-I, is a certified copy of a public document. It can therefore be produced in proof of the contents of the public document or part of the public document of which it purports to be a copy. It can be produced as secondary evidence of the public document (entries in Book I), under Section 65(e) read with Section 77 of the Evidence Act.

³. Order in Second Appeal No.183 of 2014 decided 12.07.2019

79. It is, therefore, clear that a person proposing to give secondary evidence by invoking clauses (a), (b) and (c) of Section 65 of the Evidence Act, has to first lay a foundation to the effect that the document is not in his possession and has not been produced inspite of a notice by the person who is in possession of the same; that the existence, condition or contents of the original have been proved to be admitted in writing or that the original has been destroyed, lost or cannot be produced, respectively. **It is further clear from a perusal of Section 65(e) and (f) that the aforesaid requirement, which are prescribed in Section 65(a), (b) and (c), are not required to be established when the person seeks to give secondary evidence by producing a certified copy of a document alone and no other kind of secondary evidence of a document which is a public document within the meaning of Section 65(e) of the Evidence Act or by giving a certified copy of a document alone and no other kind of secondary evidence of a document which is a certified copy of an original permitted by the Evidence Act or by any other law to be given in evidence under Section 65(f) of the Evidence Act as the preconditions mentioned in Section 65(a), (b) and (c) of the Evidence Act cannot be read into Section 65(e) or (f) by any stretch of statutory interpretation.**

80. In view of the aforesaid analysis I am of the considered opinion that while a sale deed per se is a private document

but once it is registered and entered in Book-I by the Registering Officer under Section 51 of the Registration Act, the records thereof maintained by such Registering Officer is a public document as defined by Section 74 of the Evidence Act and, therefore, a certified copy of the same can be given as secondary evidence of the existence, condition or contents of the same.”

The aforesaid decision i.e., **Akbarbhai (supra)** was confirmed by the Hon’ble Supreme Court *vide* order dated 26.08.2019 in SLP (C) Diary No. 27935/2019.

vii) It is also relevant to note that Section 79 of the Act, 1872 provides that the Courts shall presume the genuineness of certified copies of public documents. However, the Supreme Court in **Bhinka v. Charan Singh**⁴, has held that the presumption provided under Section 79 is rebuttable and parties can lead evidence to rebut the presumption of genuineness. The relevant paragraphs are extracted below:

“7. The first point, in the manner presented before us, does not appear to have been raised in any of the three Courts. Section 79 of the evidence Act reads:

⁴. 1959 Supp (2) SCR 798

“The Court shall presume to be genuine every document purporting to be a certificate, ... which is by law declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any officer of the Central Government or of a State Government,...

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.”

Under this section a Court is bound to draw the presumption that a certified copy of a document is genuine and also that the officer signed it in the official character which he claimed in the said document. But such a presumption is permissible only if the certified copy is substantially in the form and purported to be executed in the manner provided by law in that behalf. Section 4 of the Evidence Act indicates the limits of such a presumption. The relevant part of that section reads;

“Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.”

To put it differently, if a certified copy was executed substantially in the form and in the manner provided by law, the Court raises a rebuttable presumption in regard to its genuineness. The *khatauni* of 1355 fasli with which we are concerned, gives the relevant details and purports to have been signed by Ahmed Ali, the *patwari* of the village. It cannot be disputed that the *patwari* was an officer appointed by the State Government and that he was authorized to issue certified copies of the record of rights. The U.P. Land Records Manual gives the rules prescribing the form and the manner in which a certified copy of the record of rights should be issued. Para 26 of the Manual confers upon him the power to give to the applicants certified copies from his record; and under clause (d) of the said paragraph he should enter in his diary a note of such extracts. He should also note the amount of fee realised by him in the diary as well as on the extract. In this case neither the diary was produced to prove that the procedure prescribed was followed nor the extract to disclose that the officer made any note of payment. It cannot, therefore, be said that the certified copy was issued by the *patwari* in substantial compliance with the provisions of law governing such issue. If so, it follows that the Court is not bound to draw the presumption in regard to its genuineness.

8. That apart, a Court is bound to draw only a rebuttable presumption in regard to its genuineness. In this case the three Courts rejected the document on the

ground that it was not genuine on the basis of not only the internal evidence furnished by the document but also on other evidence. They have given convincing reasons for doing so, and even if there was any rebuttable presumption, it was rebutted in the present case.”

viii) In **State of Haryana v. Ram Singh**⁵, the Apex Court has held that the Courts can presume the genuineness of certified copies of public documents and admit the same without examining the parties to the documents and the author of such documents, unless the genuineness of such documents is questioned. The relevant paragraph is extracted below:

“6. Section 51-A of the Act is to the same effect. In *Land Acquisition Officer & Mandal Revenue Officer v. V. Narasaiah* [(2001) 3 SCC 530] it was held that by virtue of Section 51-A, a certified copy of a document registered under the Registration Act, 1908 including a copy under Section 57 of the Act may be accepted as evidence of the transaction recorded in such documents. **It is open to the Court to accept the certified copy as reliable evidence and without examining parties to the documents. This does not however preclude the Court from rejecting the**

⁵. (2001) 6 SCC 254

**transaction itself as being mala fide or sham provided
such a challenge is laid before the Court.”**

ix) Therefore, secondary evidence of public documents can be given through certified copies of such documents. No other proof is required to prove the contents of such certified copies as the Courts will presume their genuineness. However, the other party can always dispute the genuineness of such certified copies by leading evidence.

x) This takes me to another important question to decide the issues at hand i.e., what constitutes a public document for the purposes of admissibility under the Act, 1872? Section 74 of the Act, 1872 defines public documents as documents forming acts and records of the sovereign, official bodies, tribunals, public officers of legislative, judicial or executive departments of India or a foreign country and public records of private documents. A bare reading of Section 74 indicates that a broad ambit is provided for the Courts to determine if a particular document constitutes a public document or not. The terms official bodies, public records, public officers, etc., as seen in Section 74 are not defined. Therefore, this raises a question as to what shall

be the test to determine if a document falls within the definition of public document.

xi) Black's Law Dictionary (9th Edition) defines public document and public record as follows:

"Public document: A document of public interest issued or published by a political body or otherwise connected with public business."

"Public record: A record that a governmental unit is required by law to keep, such as land deeds kept at a county Courthouse. Public records are generally open to view by the public."

Halsbury's Laws of England, 4th Edn., Vol 17 defines as follows documents that are public documents:

"To render such a document admissible there must have been a judicial or quasi-judicial duty to inquire, undertaken by a public officer, the matter must have been required to be ascertained for a public purpose, and the document must have been made for the purpose of the public making use of it and being able to refer to it."

xii) Under the English law, the test to determine public documents was laid down by Lord Blackburn in **Sturla v. Freccia**⁶. As per the said decision, a public document is a document which is made available to public on request. The public shall have a right to inspect such document which is kept in records of official bodies and public authorities. The relevant portion of Lord Blackburn's opinion is extracted below:

“Taking that decision, the principle upon which it goes is that there should be a public inquiry, and a public document made by a public officer. I do not think that "public" is to be taken there as meaning the whole world. I think an entry in the books of a manor is public in the sense that it concerns all the people interested in the manor, and an entry probably in a corporation book concerning a corporation matter, or something in which all the corporation is concerned, would be public within that sense. But it must be a public document, and it must be made by a public officer. **I understand a public document there to mean a document that is made for the purpose of the public making use of it, and being able to refer to it. It is meant to be where there is a judicial or quasi-judicial duty to inquire, as might be said to be the case**

⁶. (1880) 5 App Cas 623

with the bishop acting under the writ issued by the Crown. That may be said to be quasi-judicial. He is acting for the public when that is done. But I think that the very object of it must be that it should be made for the purpose of being kept public, so that the persons concerned in it may have access to it afterwards. In many cases entries in the parish register of births, marriages, and deaths, and other entries of that kind, before there were any statute, relating to them, were admissible, and they were public then because the common law of England made the entries, kept in that sense by a public officer for the purpose of a register, a public document. I think it will be found that in any case in which a public document of that sort has been admitted, it has been made originally with the intent that it should be returned and kept as a register to be referred to ever after.”

xiii) Under the Indian evidence law, only documents as provided under Section 74 of the Act, 1872 constitute public documents and all other documents are private documents. To determine what constitutes public documents, the Courts shall fall back on Section 35 of the Act, 1872. Section 35 provides that any entry made by a public servant in discharge of his official duty or any entry made by a person in discharge of his duties as required under

any law in a public register or an official book or a record or electronic record shall be a relevant fact. Such relevant facts under Section 35 of the Act, 1872 can be proved by certified copies of such public register or an official book or a record or electronic record.

xiv) In **Birad Mal Singhvi v. Anand Purohit**⁷, the Apex Court laid down the criteria to determine admissibility of documents under Section 35 of the Act, 1872. The relevant paragraph is extracted below:

“15. The High Court held that in view of the entries contained in the Exs. 8, 9, 10, 11 and 12 proved by Anantram Sharma PW 3 and Kailash Chandra Taparia PW 5, the date of birth of Hukmi Chand and Suraj Prakash Joshi was proved and on that assumption it held that the two candidates had attained more than 25 years of age on the date of their nomination. In our opinion the High Court committed serious error. Section 35 of the Indian Evidence Act lays down that entry in any public, official book, register, record stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty specially enjoined by the law of the country is itself the relevant fact. **To render a document admissible**

⁷. 1988 Supp SCC 604

under Section 35, three conditions must be satisfied, firstly, entry that is relied on must be one in a public or other official book, register or record; secondly, it must be an entry stating a fact in issue or relevant fact; and thirdly, it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty specially enjoined by law. An

entry relating to date of birth made in the school register is relevant and admissible under Section 35 of the Act but the entry regarding the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded. In *Raja Janaki Nath Roy v. Jyotish Chandra Acharya Chowdhury* [AIR 1941 Cal 41 : 45 CWN 141 : 193 IC 419] a Division Bench of the Calcutta High Court discarded the entry in school register about the age of a party to the suit on the ground that there was no evidence to show on what material the entry in the register about the age of the plaintiff was made. The principle so laid down has been accepted by almost all the High Courts in the country, see *Jagan Nath v. Mali Ram* [AIR 1951 Punj 377] , *Sakhi Ram v. Presiding Officer* [AIR 1966 Pat 459] , *Ghanchi Vora Samsuddis Isabhai v. State of Gujarat* [AIR 1970 Guj 178] and *Radha Kishan Tickoo v. Bhushan Lal Tickoo* [AIR 1971 J&K 62] , In addition to these decisions the High Courts of Allahabad, Bombay, Madras have considered the question

of probative value of an entry regarding the date of birth made in the scholar's register or in school certificate in election cases. The Courts have consistently held that the date of birth mentioned in the scholar's register or secondary school certificate has no probative value unless either the parents are examined or the person on whose information the entry may have been made, is examined, see *Jagdamba Prasad v. Jagannath Prasad*, [42 ELR 465 (All HC)] *K. Paramalali v. I.M. Alangam* [31 ELR 401 (Mad HC)] , *Krishna Rao Maharu Patil v. Onkar Narayan Wagh* [14 ELR 386 (Bom HC)].”

xv) Therefore, for the purposes of determining what constitutes a public document, Section 35 is to be read with Section 74. The following shall be the criteria to determine if a document is a public document:

- (a) The document shall be part of public record which is required to be maintained under any law by public officers or government employees or any other person in discharge of their official duties.
- (b) The document shall be accessible to general public and the concerned authority shall be duty bound to provide certified

copies of such document as and when requested by any person.

Given the aforesaid discussion, this Court shall now examine whether certified copies of documents and information in the form of letters obtained under the RTI Act, 2002 fall within the definition of public documents under Section 74 of the Act, 1872.

xvi) It is relevant to note that the RTI Act, 2005 was enacted in recognition of citizens' right to information. The object behind RTI Act, 2005 is to provide information maintained by public authorities to the general public in order to achieve the goal of transparency in governance. The RTI Act, 2005 also provides that the information obtained by citizens can be used to seek any relief.

xvii) The Apex Court in **CBSE v. Aditya Bandopadhyay**⁸, discussed various provisions of the RTI Act, 2005 and explained its scope as follows:

“12. To consider these questions, it is necessary to refer to the Statement of Objects and Reasons, the Preamble and the relevant provisions of the RTI Act. The RTI Act was

⁸. (2011) 8 SCC 497

enacted in order to ensure smoother, greater and more effective access to information and provide an effective framework for effectuating the right to information recognised under Article 19 of the Constitution. The Preamble to the Act declares the object sought to be achieved by the RTI Act thus:

“An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

Whereas the Constitution of India has established democratic republic;

And whereas democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;

And whereas revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

And whereas it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;”

13. Chapter II of the Act containing Sections 3 to 11 deals with the right to information and obligations of public authorities. Section 3 provides for the right to information and reads thus: “*Subject to the provisions of this Act, all citizens shall have the right to information.*” **This section makes it clear that the RTI Act gives a right to a citizen to only access information, but not to seek any consequential relief based on such information.**

14. Section 4 deals with the obligations of public authorities to maintain the records in the manner provided and publish and disseminate the information in the manner provided. Section 6 deals with requests for obtaining information. It provides that the applicant making a request for information shall not be required to give any reason for requesting the information or any personal details except those that may be necessary for contacting him.

23. The definition of “information” in Section 2(f) of the RTI Act refers to any material in any form which includes records, documents, opinions, papers among several other enumerated items. The term “record” is defined in Section 2(i) of the said Act as including any document, manuscript or file among others. When a candidate participates in an

examination and writes his answers in an answer book and submits it to the examining body for evaluation and declaration of the result, the answer book is a document or record. When the answer book is evaluated by an examiner appointed by the examining body, the evaluated answer book becomes a record containing the “opinion” of the examiner. Therefore the evaluated answer book is also an “information” under the RTI Act.

24. Section 3 of the RTI Act provides that subject to the provisions of this Act all the citizens shall have *the right to information*. The term “*right to information*” is defined in Section 2(j) as the right to information accessible under the Act which is held by or under the control of any public authority. Having regard to Section 3, the citizens have the right to access to all the information held by or under the control of any public authority except those excluded or exempted under the Act. The object of the Act is to empower the citizens to fight against corruption and hold the Government and their instrumentalities accountable to the citizens, by providing them access to information regarding functioning of every public authority.

59. The effect of the provisions and scheme of the RTI Act is to divide “information” into three categories. They are:

(i) Information which promotes *transparency and accountability* in the working of every public authority,

disclosure of which may also help in containing or discouraging corruption [enumerated in clauses (b) and (c) of Section 4(1) of the RTI Act].

(ii) Other information held by public authority [that is, all information other than those falling under clauses (b) and (c) of Section 4(1) of the RTI Act].

(iii) Information which is not held by or under the control of any public authority and which cannot be accessed by a public authority under any law for the time being in force.

Information under the third category does not fall within the scope of the RTI Act. Section 3 of the RTI Act gives every citizen, the right to “information” held by or under the control of a public authority, which falls either under the first or second category. In regard to the information falling under the first category, there is also a special responsibility upon the public authorities to *suo motu publish and disseminate such information* so that they will be easily and readily accessible to the public without any need to access them by having recourse to Section 6 of the RTI Act. There is no such obligation to publish and disseminate the other information which falls under the second category.

63. At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information *that is available and existing*. This

is clear from a combined reading of Section 3 and the definitions of “information” and “right to information” under clauses (f) and (j) of Section 2 of the Act. **If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in Section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non-available information and then furnish it to an applicant.** A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. It is also not required to provide “advice” or “opinion” to an applicant, nor required to obtain and furnish any “opinion” or “advice” to an applicant. **The reference to “opinion” or “advice” in the definition of “information” in Section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act.”**

xviii) It is relevant to note that Section 2(j) defines right to information which also includes right to obtain certified copies. Such certified copies are to be issued by a Public Information Officer who is to be appointed under Section 5 of the Act, 2005. Therefore, under the RTI Act, 2005 unless the information sought by general public is exempted under Section 8 of the RTI Act, 2005, the Public Information Officer is duty bound to issue certified copies of documents.

xix) **ISSUE No.1:**

a) The question whether certified copies of documents obtained under the RTI Act, 2005 fall within the definition of public documents had fallen for consideration before various High Courts in the country.

b) In **Bhaskar Rao (supra)**, a single judge of the High Court of Andhra Pradesh held that documents obtained under RTI Act, 2005 are true copies in the form of Xerox copies and they cannot be equated to certified copies under the Act, 1872. Therefore, copies obtained under the RTI Act, 2005 are inadmissible. The relevant paragraph is extracted below:

“21. Similarly, CMP No. 674 of 2009 is also filed for the same purpose and the same Para 3 is reiterated. Reception of additional evidence, it is well settled, must be in accordance with the ingredients as prescribed under Order 41 Rule 27 CPC. The decision of the Supreme Court in *K. Venkataramaiah's case* (supra), clearly shows that the appellant must satisfy one of the ingredients thereof. I am unable to appreciate any of the said ingredients in the affidavit filed in support of the said application. It is not as if that in spite of existence of due diligence, the appellant was not able to trace out and produce these documents before the trial Court. All the said documents relate to proceedings before the ULC authorities and while the appellant got marked Ex. A1 certified copy of the declaration of the defendant under the Act, there is no reason as to why he could not get the rest of the documents, which he is now proposing to file by way of additional evidence. **Further, none of the said documents are certified copies and only the Xerox copies of the documents are certified as true copies under the Right to Information Act. True copies cannot, therefore, be equated to certified copies under the Evidence Act.** The affidavit does not state as to why these documents could not be produced earlier nor it is supported by any other sufficient cause as contemplated under Order 41 Rule 27 CPC. Further, the suit was disposed of as early as on 16.2.2001 and this appeal is pending since 2001. These

documents are, for the first time, sought to be produced in the year 2009 without their being any averment in support of the said documents. **The documents filed in support of CMP No. 674 of 2009 are only Xerox copies whereas the documents filed along with CMP No. 1946 of 2009 are Xerox copies of documents certified as true Xerox copies by the Information Officer except document No. 2, which is a certified copy.** The documents Nos. 13, 14 and 15 are office copies of legal notices and there is no explanation as to why these documents could not be produced before the trial Court.”

c) The said decision is not applicable to the facts of the case.

In that case, Xerox copies of the certified copies were filed and not the certified copies themselves. In any case, perusal of the record in the present case clearly shows that the documents filed in the present case are certified copies issued by a Public Information Officer.

d) In **Datti Kameswari (supra)**, a learned Single Judge of Andhra Pradesh High Court held that Xerox copies of private documents certified by a Public Information Officer are not certified copies under the Act, 1872. However, Xerox copies of public documents obtained under the RTI Act, 2005 and certified by a Public

Information Officer can be treated as certified copies of public documents and no further proof of the same is required. The relevant paragraph is extracted below:

“17. In view of the above analysis, the xerox copy certified by the designated Public Information Officer under Right to Information Act of the private documents are not certified copies within the meaning of the provisions of Section 65 of the Evidence Act. They are merely true copies of the private documents available in the records of the particular Department. The production and marking of such copies is permissible only after laying a foundation for acceptance of secondary evidence under clauses (a)(b) or (c) of Section 65 of the Act. The condition prescribed under the above cases (a), (b) or (c) of Section 65 of the Act have to be fulfilled before marking the true copies obtained under the Right to Information Act. **However, the true copies of public documents certified by the designated Information Officer can be taken as certified copies of the public documents.**”

e) The Madhya Pradesh High Court in **Narayan Singh v. Kallaram**⁹ held that certified copies obtained under RTI Act, 2005 are admissible as evidence under Section 65(f) of the Act, 1872. The relevant paragraphs are extracted below:

⁹. 2015 SCC OnLine MP 2812

“1. The singular question involved in this petition is whether the certified copy of documents obtained under Right to Information Act, 2005 (for brevity, the ‘Act of 2005’) can be admitted as secondary evidence?

8. Clause (f) of section 65 of Evidence Act makes it crystal clear that a certified copy permitted under the Evidence Act or by any other law in force can be treated as secondary evidence. Right to Information Act, in my view, falls within the ambit of “by any other law in force in India”. The definition of “right to information” makes it clear that certified copies of documents are given to the citizens under their right to obtain information. In my view, the Court below has rightly opined that the documents can be admitted as secondary evidence. I do not see any merit in the contention that the documents obtained under the Act of 2005 are either true copies or attested copies. The definition aforesaid shows that the same are certified copies. Even otherwise, it is interesting to note that in *Black's Dictionary*, the meaning of “certified copy” is as under:—

“Certified copy”-a copy of a document or record, signed or certified as a true copy by the officer to whose custody original is entrusted.”

Since the documents are covered under section 65 of the Evidence Act, there was no need to compare the same with the originals.”

f) The Punjab & Haryana High Court in **Munshi Ram v. Balkar Singh**¹⁰, held that the information obtained under RTI Act, 2005 and responses of Public Information Officer shall be treated as public documents under the Act, 1872. The relevant paragraph is extracted below:

“8. In the two appeals bearing FAO No. 2705 and 2838 of 2013 filed by the owner, the most crucial issue is, whether the driver had a valid driving licence. He did not join at the time of trial and there was evidence brought through a person from the DTO Office at Agra, which originally had issued the licence making reference to the licence No. as 18690 of 2003 and making a verification to say that it had not been issued in the name of Balkar Singh, who was the driver. At the Appellate Court, the owner has filed an application under Order 41 Rule 27 CPC that has elicited through RTI a response to say the licence number had been wrongly given as 18690/Ag/2003 when it was actually 16690/Ag/2003 and that it had been issued in the name of Balkar Singh. **A response through RTI is of a public**

¹⁰. 2016 SCC OnLine P&H 11166

officer and it is a public document and would require no further corroboration in the manner contemplated under Section 77 of the Evidence Act. The document must be taken to be true of what its recitals state. The certified copy of the licence issued also shows that the licence had been renewed at the DTO Office at Mansa on 26.08.2008, which was valid up to 19.09.2011. This also shows that the driver had a valid driving licence at the relevant time. I take the additional evidence as relevant and important to decide that the owner and driver were entitled to full indemnity. The award denying indemnity and providing for a right of recovery against for the insurer is set aside. The appeals filed by the owner and driver are allowed. The amount deposited by the owner and driver at the time of preferring the appeals are ordered to be returned to the owner.”

g) Subsequently, the Punjab & Haryana High Court in **Reliance General Insurance Company Ltd. v. Sameem**¹¹ held that certified copies received under the RTI Act, 2005 cannot be considered as public document, unless a person is examined to prove that such copy was obtained under the RTI Act, 2005. The relevant paragraph is extracted below:

¹¹. 2018 SCC OnLine P&H 556

“4. The first argument raised by the learned counsel is that the appellant had exhibited RTI proceedings whereby the concerned transport authority had verified that the driving license was fake. As per him the reply received pursuant to an application under the RTI Act would be a certified copy of the public document under Section 76 of the Evidence Act and thus had to be taken that driving license was fake. In this connection, he has relied upon the judgment of this Court passed in the matter of “*Munshi Ram v. Balkar Singh*, 2016 (2) PLR 526” where this Court has held that response of RTI application would be covered under Section 77 of the Evidence Act. In my opinion, there is no quarrel with the proposition that a response elicited under the RTI Act could be a certified copy of public document if the document is covered under Section 74 of the Evidence Act. But the issue in the present case is that these documents were merely placed on record and no oral evidence was led. Had it been a case where an employee of the appellant had appeared to prove the RTI application and the reply, it could have been held that the driving license was fake. But in the absence of any person who appeared to testify to this effect, and was cross-examined, it would not be possible to come to the conclusion that the document placed on record was actually a public document. In the circumstances, the

argument that the driving license was proved to be fake has to be rejected.”

h) This Court cannot agree with the finding in **Sameem (supra)** that oral evidence has to be led by the Public Information Officer responsible for issuing certified copies of the public documents as Section 65(e) and Section 65(f) of the Act, 1872 read with Sections 77 and Section 79 of the Act, 1872 make it clear that certified copies of public documents can be directly read into evidence, unless the same is objected by the other party. It is always open for the other party to challenge the genuineness of certified copies of public documents by leading evidence. Therefore, according to this Court, certified copies of public documents obtained under the RTI Act, 2005 are directly admissible as evidence.

i) In the present case, certified copies of register of sale of non-judicial stamp papers maintained at a sub-registrar's office and issued by a Public Information Officer under the RTI Act, 2005 fall within the definition of a public document under Section 74 of the Act, 1872. The said sale register is required to be maintained at the sub-registrar's office under the Standing Orders issued by the Registration

& Stamps Department. The relevant Standing Orders are extracted below:

“S.O.784. A Register of Records received from Vendors in the following Proforma shall be maintained in the Registering Office and the period for preservation of this register is 12 years.

S.O.786. The Stamp Vendor should not prepare Annexures I-A under Section 47 A of Indian Stamp Act, 1899, 37-G of Income Tax Act, Patta Transfer Application, ‘M’ Notices, Plaints, etc., accompanying a document.

S.O.787. Though Board Standing Orders of Andhra Pradesh Stamp Manual contemplate sanction of temporary licence regarding the disposal of stock of a stamp vendor whose Licence lapsed or who died leaving stock or otherwise yet it should be discouraged. The Stamp Vendor or representative of the deceased Stamp Vendor may be advised to apply for refund of excess stock.

S.O.788. i) The Sub-Registrars shall append a certificate regarding the number of pages in the Sales and Stock Register of the Stamp Vendors in their respective jurisdictions.

ii) They shall collect records of the Stamp Vendors at the end of each calendar year and scrutinize them. Any grave irregularities noticed by them shall be submitted to District Registrars concerned for initiating suitable action.”

j) It is relevant to note that various decisions across the country have held that public registers recording information under any law will be treated as public documents. For instance, the Patna High Court in **Dwarka Prasad Agarwala v. Firm Lalchand Bhagat Ambika Ram**¹² held that money lenders' register maintained at sub-registrar's office is a public document. The relevant paragraph is extracted below:

“22. Apart from the provisions contained under the Evidence Act, Mr. Sinha also referred to Section 4 of the Bihar Money-Lenders Act, 1938, which provides that (1) every Sub-Registrar shall maintain a register, moneylenders in such form and containing such particulars as may be prescribed. (2) Such register shall be deemed to be a public document within the meaning of the Indian Evidence Act, 1872. The above provision in the Act itself, leaves no manner of doubt that the register maintained in the office of the Sub-Registrar shall be deemed to be a public document. Learned counsel also pointed out, by reference to the Schedule attached to Section 18 of the Bihar Money Lenders Act, 1939, which shows that Section 4 along with some other sections of 1938 Act was not repealed by 1939 Act. In the

¹². 1973 SCC OnLine Pat 95

schedule in the column No. 4 “Extent of repeal”, is mentioned “In Section 2, clauses (b), (c), (e), (k) and (n); Chapter III, and Sections 22 and 26” whereas Chapter V of 1938 Act was wholly repealed. In my opinion, the submission of Mr. Sinha is well founded. Ext. 26 was admissible in evidence.”

k) Therefore, the sale register of stamp vendors maintained at the sub-registrar’s office satisfies the definition of public document under Section 74 as the same was maintained by the concerned authority under the relevant Standing Orders in discharge of its official duty and the said documents were accessible to general public under the RTI Act, 2005.

xx) **ISSUE No.2:**

The information issued in the form of a letter by a Public Information Officer under the RTI Act, 2005 falls within the definition of a Public Document under Section 74 of the Act, 1872. A Public Information Officer under the RTI Act, 2005 only issues information in the form of letters based on the public records available with him/her. As stated above, the definition of public documents is wide enough to include letters issued by Public Information Officers

under the RTI Act, 2005. The said view was also expressed in **Munshi Ram (supra)**, wherein it was held that responses received under RTI Act, 2005 can be read as public documents. Therefore, in the present case, the letter dated 18.04.2018 issued by the Public Information Officer at the sub-registrar's office, Sangareddy stating that non-judicial stamp paper bearing number B355988 was issued to one K. Bala Krishna and letter dated 14.03.2018 issued by Public Information Officer stating that non-judicial stamp papers of 100 denomination bearing Nos. 352001 to 360000 were allotted to District Registrar's Office Sanagareddy constitute public documents.

7. Conclusion

i) According to this Court, information in the form of letters and certified copies issued by Public Information officers under the RTI Act, 2005 fall within the definition of public documents under Section 74 of the Act, 1872. Such documents obtained under the RTI Act, 2005 can be proved by placing the certified copies on record and the said certified copies shall be treated as secondary evidence under Section 65 (e) of the Act, 2005. Under Section 79 of the Act, 1872,

the Courts shall presume the genuineness of such certified copies of public documents obtained under the RTI Act, 2005, unless such presumption is rebutted by leading evidence.

ii) The said aspects were not considered by the trial Court in the impugned order. Therefore, the impugned order dated 26.04.2022 passed in I.A. No.230 of 2019 in O.S. No.116 of 2017 by the trial Court is set aside and I.A. No.230 of 2019 filed by the petitioner - defendant No.1 is allowed receiving the documents mentioned therein subject to proof and relevancy.

iii) The present Civil Revision Petition is accordingly allowed. However, there shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the revision shall also stand closed.

K. LAKSHMAN, J

20th December, 2022

Note: L.R. copy be marked.
(B/O.) Mgr