

Tripura High Court

Abdul Jabbar vs (A).Sri Jyotish Ch. Paul on 7 March, 2022

[1]

HIGH COURT OF TRIPURA  
AGARTALA  
RSA 57 OF 2019

Abdul Jabbar,  
S/o Murad Mohammad, village-Jubarajnagar,  
PO Babur Bazar, PS Irani, Kailashahar,  
District-Unakoti, Tripura.

---- Appellant.

Versus

1(a).Sri Jyotish Ch. Paul,  
S/o. Late Surjya Behari Paul.

1(b).Sri Subash Ch. Paul  
S/o. Late Surjya Behari Paul.

1(c).Sri Harish Ch. Paul  
S/o. Late Surjya Behari Paul.

1(d).Smti. Santi Rani Paul  
W/o. Sri Swapan Ch. Paul.

1(e).Smti. Sima Paul  
W/o. Late Sailendra Ch. Paul.

1(f).Sri Sushanta Paul  
S/o. Late Sailendra Ch. Paul.

1(g).Smti. Sagarika Paul  
D/o Late Sailendra Ch. Paul, W/o. Pulak Majumder.

1(h).Smti. Susmita Paul  
D/o Late Sailendra Ch. Paul.

1(i).Smti Gauri Paul  
W/o Late Sudhangshu Paul,

[2]

1(j).Sri Sukanta Paul  
S/o Late Sudhangshu Paul,  
All are of P.W.D. Road (Kazir Gaon),  
P.O. and P.S. - Kailashahar,

District - Unakoti Tripura, PIN - 799277.

2.Fayjul Haque  
S/o. Late Kabir Miah, .

3.Nihar Uddin  
S/o. Late Kabir Miah.

Both are of Vill - Jubarajnagar, P.O. - Babur Bazar, P.S. - Irani,  
Kailashahar, Distric t- Unakoti Tripura, PIN - 799281.

---Respondents.

RSA 59 OF 2019 Abdul Jabbar, S/o Murad Mohammad, village-Jubarajnagar, PO Babur Bazar, PS Irani, Kailashahar, District-Unakoti, Tripura.

---- Appellant.

Versus 1(a).Sri Jyotish Ch. Paul, S/o. Late Surjya Behari Pual.

1(b).Sri Subash Ch. Paul S/o. Late Surjya Behari Pual.

1(c).Sri Harish Ch. Paul S/o. Late Surjya Behari Pual.

1(d).Smti. Santi Rani Paul W/o. Sri Swapan Ch. Paul.

[3] 1(e).Smti. Sima Rani Paul W/o. Late Sailendra Ch. Paul.

1(f).Sri Sushanta Paul S/o. Late Sailendra Ch. Paul.

1(g).Smti. Sagarika Paul D/o Late Sailendra Ch. Paul, W/o. Pulak Majumder. 1(h).Smti. Susmita Paul D/o Late Sailendra Ch. Paul.

1(i).Smti Gauri Paul W/o Late Sudhangshu Paul, 1(j).Sri Sukanta Paul S/o Late Sudhangshu Paul, All are of P.W.D. Road (Kazir Gaon), P.O. and P.S. - Kailashahar, PIN - 799277, District - Unakoti ,Tripura.

2.Fayjul Haque S/o. Late Kabir Miah,.

3.Nihar Uddin S/o. Late Kabir Miah.

Both are of Vill - Jubarajnagar, P.O. - Babur Bazar, P.S. - Irani, Kailashahar, District- Unakoti, Tripura, PIN - 799281.

---Respondents.

For Appellant(s) : Mr. H. Deb, Advocate.

For Respondent(s) : Mr. A. Bhowmik, Advocate.

Date of hearing : 20.01.2022

Date of delivery of Judgment and order : 07.03.2022

[4]

Whether fit for reporting : Yes

HON'BLE MR JUSTICE ARINDAM LODH

Judgment & Order

This is a second appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, "CPC") challenging the legality and validity of the judgment dated 20.07.2019 and decree thereof, passed by learned District Judge, Unakoti Judicial District, Kailashahar, in connection with Title Appeal No.03 of 2019 whereby and whereunder learned appellate court has affirmed the judgment and decree dated 15.09.2018 and 29.09.2018 respectively, passed by learned Civil Judge, (Sr. Division), Court No.1, Unakoti District in connection with Title Suit No.14 of 2017.

2. Since common questions of law and facts are involved in both the appeals, these two appeals are taken up together for disposal by this common judgment on consent of the learned counsels appearing for the parties to the lis.

3. The appellant, Abdul Jabbar was the principal defendant of the case bearing No. T.S. 14/2017 instituted by plaintiffs, Fayjul Haque and Nihar Uddin, the respondent nos. 2 and 3 here-in, both being the sons [5] of Lt. Kabir Miah. Late Sudhir Chandra Paul, who was impleaded as respondent no.1 in this appeal was proforma defendant of T.S. 14/2017. On his death, during the pendency of this appeal his legal heirs have been impleaded as respondent nos. 1(a) to 1(j). The plaintiffs, Fayjul Haque and Nihar Uddin instituted the suit for declaration of their right, title and interest over the suit property described in Schedule-'B' being the part and parcel of the land of Schedule-'A' of the plaint and for recovery of possession of the said Schedule-'B' land. It is asserted in the plaint that 'A' Schedule land measuring 0.80 acres under Khatian No.578 and CS Plot Nos.431/1272 originally belonged to late Sudhir Chandra Paul, the proforma defendant. Late Sudhir Chandra Paul had sold the suit land to one Sonajan Bibi vide registered sale deed No.1-1561, dated 21.04.1980 when physical possession was also handed over to said Sonajan Bibi. Since then, Sonajan Bibi has been possessing the land of Schedule-'A' exercising all her rights as owner. During revisional settlement operation 0.50 acres of land of Schedule-'A' was recorded in the name of her husband Kabir Ali alias Kabir Miah vide Khatian No.340 and land measuring 0.13 acres had been recorded in her name vide Khatian No.339 and rest of the land measuring 0.17 acres remained unchanged i.e. in the name of late Sudhir Chandara Paul vide Khatian no.332, but, entire 'A'-

[6] Schedule land was under the exclusive possession of Sonajan Bibi till her death. After expiry of both Sonajan Bibi and her husband Kabir Miah about 7/8 years ago the plaintiffs became the absolute owners and possessors of entire 'A' Schedule land as per Islamic Law of Inheritance. It is found that name of one Farmuja Bibi was recorded as permissive possessor at Col. No.16 of Khatian No.332 comprising land of Schedule- 'B'. It is the plea of the plaintiffs that the name of Farmuja Bibi was illegally recorded as permissive possessor in the Khatian No.332 since she had no right, title and interest and possession over the said land under Khatian No.332. According to plaintiffs, Farmuja Bibi had forcefully occupied the land under Khatian No.332 i.e. the land of Schedule 'B' on 10.03.2012 denying the right, title of the plaintiffs, being the son of said Farmuja Bibi the principal defendant Abdul Jabbar has been using the suit land of Schedule-'B' by way of fishery. To establish the title, the plaintiffs, had brought on record the certified copy of registered deed no.1-1561 and certified copies of Khatian Nos.332, 340 and 339. They have stated in para 9 of the plaint that the original 'kabala' [sale deed] was destroyed.

4. The plaintiffs in T.S. 14/2017 have prayed for following reliefs:-

[7] "(A) For a decree of right, title and interest of the plaintiffs in the 'A' schedule land and for recovery of khas possession by evicting the principal-defendant no.1 from 'B' schedule land (SUIT LAND) by removing all signs of illegal possession thereon by his expenses.

(B) For decree of any other relief as the learned court deem fit and proper."

5. The description of lands as stated in the schedules are as under:-

SCHEDULE-'A' Mouja-Jubarajnagar, Tehsil-Tilagaon, Khatian No.578 previously, at present 332,339 & 340, C.S. Plot No.432/1272, R.S. Plot Nos. 722,723 & 722/1498, Class- Nal, Area-0.80 Acres.

Bounded by North:- Harmuj Bibi, South: Aftab Ali, East: Own land, West: Jote Harmuj Bibi & others.(as per purchased Deed) 'B' SCHEDULE (SUIT) LAND Mouja-Jubarajnagar, Tehsil-Tillagoan, Khatian No. previously 578, present Kh.No.332, C.S. Plot No. 432/1272, R.S. Plot No.722, Class-Nal at present fishery, area 0,17 acres. Bounded by North Abdul Jabbar, South: Plaintiffs, East: Rubia Begam, West: Abdul Jabbar, within this boundary land measuring 0.17 acres which is part land of 'A' schedule land.

6. The suit instituted by the plaintiffs Fayjul Haque and Nihar Uddin was contested by the principal defendant Abdul Jabbar, the appellant herein, denying the right, title and interest of the plaintiffs over [8] the suit land of Schedule-'B'. Said Abdul Jabbar also had filed a counter claim which was registered as TS 01(CC) of 2017. In the counter claim, Abdul jabbar pleaded that the 'A' Schedule land along with other land measuring 2.53 acres was originally owned and possessed by his grandfather Ashab Shah. After his death his legal heirs Murad Mohammed along with others became the rightful owner and possessors of the entire land of Schedule-'A' and he inherited the suit

land of Schedule-'A' after the death of his father Murad Mohammed. It is further pleaded that one of his predecessors sold out 0.17 acres of land to late Sudhir Chandra Paul with wrong khatian number, CS Plot No. and boundaries of the land, but, no possession was handed over to him. The possession of the land was with Farmuja Bibi, mother of Abdul Jabbar [counter claimant-plaintiff]. The said land was mutated in the name of Sudhir Chandra Paul in Khatian No.332, CS Plot No.431/1272 (Old), present-722, but, in Col. No.16 the name of Farmuja Bibi was wrongly mentioned as permissive possessor but it ought to have been mentioned as forceful possessor. The mother of Abdul Jabbar died about 18 years ago and after her death Abdul Jabbar has been occupying and possessing the suit land denying the right, title and interest of the recorded owner, late Sudhir Chandra Paul by growing crops [9] and fishery. Abdul Jabbar in his counter claim has prayed for following reliefs:-

"(a) Granting declaration to the effect that the plaintiff has right, title, interest and possession over the "A" Schedule land on the basis of inheritance;

(b) Granting declaration to the effect that the plaintiff has his right, title and interest."

7. Proforma defendant, late Sudhir Chandra Paul appearing before the learned trial court responded to the T.S.14/2017 by way of filing written statement wherein he supported the case of the plaintiffs. In counter claim also he denied the right, title and interest and possession of Farmuja Bibi over the land of Schedules- 'A' & 'B'. Late Sudhir Chandra Paul in his written statement admitted that he purchased the 'A' Schedule land of the plaint by registered Kabala bearing No.3607, dated 15.12.1977 and thereafter he sold out the said land to Sonajan Bibi, the mother of plaintiffs.

8. Denying the pleadings made in the counter claim filed by Abdul Jabbar, the plaintiffs of T.S.14/2017 stated that it was not known to them about the quantum of land owned and possessed by Ashab Shah "but it is a fact that Ashab Shah had transferred his land to one Sabir Ali" who [10] transferred the land measuring 0.80 acres to his wife Jamila Bibi vide registered deed no.3609, dated 19.08.1976 and again Jamila Bibi had transferred the said 0.80 acres of land i.e. 'A' Schedule land to one Digendra Kumar Das, who later on sold out the said land to late Sudhir Chandra Paul vide registered deed no. 1-3607, dated 15.12.1975 with delivery of physical possession of the land of Schedule-'A' comprising land of Schedule 'B'.

9. For convenience, Fayjul Haque and Nihar Uddin, the plaintiff-respondent nos. 2 and 3 of this second appeal will be addressed as "plaintiffs"; the principal defendant-counter claimant who is the appellant of the present appeal will be addressed as 'Abdul Jabbar' and late Sudhir Chandra Paul will be addressed as "proforma-defendant" for the purpose of this judgment.

10. I have gone through the judgments of learned court below passed in both TS 14/2017 as well as T.S. (CC) 01/2017. Learned trial court decreed the suit in favour of the plaintiffs declaring their right, title, interest over the land of Schedule 'A' and consequently, directed for recovery of khas possession of the land of Schedule 'B' evicting Abdul Jabbar therefrom. Abdul Jabbar is directed to vacate the 'B' Schedule land [11] immediately and/or within 30 days from the date of decree by

removing /demolishing all signs of possession.

11. Learned trial Judge while decreeing the suit at Para 17 of the judgment held that -

"Considering the above mentioned evidence of both PWs and DWs adduced in both the suits as mentioned above, I find, the evidence adduced on behalf of the plaintiffs are believable being supported by documentary evidence, but, the evidence adduced on behalf of the counter-claimant is not believable."

From Exbt.1 of TS(CC)01/2017, the Khatian No.100, I find Ashab Shah is the original owner of land of Dag No.431. From Exbt.1 of T.S. 14 of 2017, the sale deed no.1- 2296 dated 03.05.1966, I find, the original owner Ashab Shah sold the land of Dag No.431 of Khatian No.100 and other land to Sabir Ali. From Exbt.4 of TS 14 of 2017, the sale deed no.1-609 dated 19.08.1976, I find, Sabir Ali sold the land of Khatian No.478 of Dag No.431/1272 measuring 80 shatak to Jamila Bibi by sale deed No.2994 on 14.05.1969. From the said Exbt.4, I also find Jamila Bibi sold land measuring 80 Shatak of Khatian No.478, Dag No.431/1372 to Digendra Kumar Das. From Exbt.2 of TS 14 of 2017, the sale deed no. 1-3607 dated 15.12.1977, I find, Digendra Kumar Das sold the land of Dag No.431/1272 for land measuring 80 shatak to Sudhir Chandra Paul, the [12] proforma-defendant. From Exbt.5 of TS 14 of 2017, the sale deed no.1-1561, I find, Sudhir Chandra Paul sold land measuring 80 shatak to Sonajan Bibi, the mother of the plaintiffs.

Thus, from the above mentioned documents, it can be found that the land of Dag No.431/1272 measuring 80 shatak ['A' & 'B' Schedule land of both the suits] has been sold and transferred by original owner Ashab Shah and ultimately purchased by the mother of the plaintiffs, Sonajan Bibi."

12. On perusal of the findings of the learned trial court, it comes to fore that the learned Judge primarily relying upon the certified copies of the sale deeds declared the title of the plaintiffs over the land of Schedule 'B' of the plaint and further holding that Abdul Jabbar had failed to establish the essentialities of adverse possession. Similarly, in first appeal, learned District Judge, Unakoti District held that the plaintiffs had been able to establish their title over the suit land and upholding the judgment of the learned trial court dismissed the first appeal vide judgment and decree dated 20.07.2019 passed in connection with Title Appeal Nos. 3/2019 and 4/2019.

13. Being aggrieved by and dissatisfied with the aforesaid judgment and decree, Abdul Jabbar has preferred the instant second appeal before this court.

[13]

14. At the time of admission of this appeal, following substantial question of law has been formulated:-

"Whether certified copy of sale deed can be admitted in evidence without proof of its contents?"

15. At the time of hearing of this appeal, Mr. H. Deb, learned counsel for the defendant-appellant Abdul Jabbar had urged for formulating another substantial question of law which was formulated as under:-

"Whether the certified copies of a registered instrument can be allowed as secondary evidence without compliance of the requirements of Section 65 of the Evidence Act?"

16. Bearing in mind the aforesaid substantial questions of law, at the outset, I must say that under law of evidence it is necessary that contents of documents and its execution are required to be proved either by primary or by secondary evidence. In the instant case, no primary evidence was led by the plaintiffs. The certified copies of the sale deed [Exbt.4] has been brought on record wherein the proforma-defendant, Sudhir Chandra Paul had transferred the land of Schedule 'A' comprising the land of Schedule 'B' in favour of Sonajan Bibi, the predecessor of the plaintiffs. From the nature of the documents it is crystal clear that the certified copy [14] of a sale deed is deemed to be a secondary evidence as defined under Section 63 of the Evidence Act, which 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."

17. Now, secondary evidence of a document is given in proof of its existence, condition or contents of a document and such evidence can be introduced in evidence under the circumstances as embodied in Section 65 of the Evidence Act, which will be useful to reproduce here-in-below:-

"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;

[15]

(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<sup>2</sup>; <sup>1</sup>[India] to be given in evidence;

(g) when the originals consists 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."

18. In the instant case, the plaintiffs have stated that the original sale deed dated 21.04.1980 had been destroyed. Consequence of such statement in the pleadings as well as in their examination-in-chief will be discussed later on in this judgment.

[16]

19. For convenience, I prefer to cautiously examine and discuss the evidentiary value of the certified copy of a sale deed. Needless to say, certified copy of a document does not constitute primary

evidence. Primary evidence means the document itself produced for the inspection of the court [Section 62 of the Evidence Act]. Certified copy of a document is secondary evidence as contemplated under Section 63 of the Evidence Act. Secondary evidence may be given of the existence, condition or contents of a document subject to fulfillment of certain pre-conditions as embodied under Section 65 of the Evidence Act. A minute perusal of Section 65 of the Evidence Act, it would reveal that in cases (a), (c) & (d), any secondary evidence of the contents of the document is admissible and in case (b) the written admission is admissible. I have considered the submissions of learned counsel appearing on behalf of the appellant that contents of the certified copy cannot be said to be proved without formal proof as provided under Section 65 of the Evidence Act. Now, on bare reading of Section 65 of the Evidence Act, it becomes aptly clear that certified copy of the original is admissible in evidence. From the substantial question of law as formulated by this court being suggested by learned counsel for the appellant it comes to fore that the learned counsel has primarily challenged the mode of proof of the contents of the certified [17] copy of the original. In the case in hand, since the original copy of the sale deed is destroyed, certified copy of the said original sale deed may be brought on record as secondary evidence in proof of the existence or contents of the original sale deed as embodied in case (c) of Section 65 of the Evidence Act. Again, if we carefully read case (b) of Section 65, then, it is abundantly clear that if the contents of the original have been proved to be admitted in writing by the person against whom it is proved, then, such written admission of the executor/vendor of such sale deed will be admissible in evidence. In the instant case, late Sudhir Chandra Paul being the vendor of the sale deed in question himself contested the suit filed by Abdul Jabbar as defendant by filing written statement wherein he admitted that he had sold the suit land in favour of Mst. Sonajan Bibi, the predecessor of the plaintiffs. Late Sudhir Ch. Paul also deposed before the court by way of filing examination-in-chief admitting the contents of the sale deed in question. By such appearance before the court as well as deposing himself as DW-3 late Sudhir Ch. Paul, the vendor not only admitted the contents of the sale deed but also admitted the execution of the sale deed. In the written statement, late Sudhir Ch. Paul as proforma defendant has categorically admitted in writing that he had transferred the 'A' schedule land to Mst. Sonajan Bibi, the predecessor of the plaintiffs [18] vide registered sale deed No.1-1561, dated 21.04.1980. Late Sudhir Ch. Paul also deposed that before the court as DW-3 in support of the statements he made in his written statement and reiterated the said statements. In view of this written admission, both in his written statement as well as in his examination-in-chief which he filed under Order XVIII, Rule 4 of CPC, the contents of the original sale deed as well as the execution of the sale deed have been proved in the light of Section 65 of the Evidence Act.

20. Yet another aspect, which I should discuss herein is that when sale deed dated 21.04.1980 was introduced in evidence and marked as Exhibit, Abdul Jabbar did not raise any objection regarding the mode of proof of the said certified copy of the sale deed or bringing it into the evidence. In these circumstances, the party, herein the defendant who seeks to dispute the document as a whole, then, such objection must be raised at the earliest point of time when such certified copy being secondary evidence is sought to be put in instead of its original and not even at the argument stage before the learned trial court. The Privy Council in Padman Vrs. Hanwanta, AIR 1915 PC 111, [SCC OnLine PC 21] did not permit the appellant to take objection to the admissibility of a registered copy of a Will in appeal for the first time. It was held that this [19] objection should have been taken in the trial court. Further, It was observed that:- [AIR p.112] "The defendants have now appealed to His Majesty in

Council, and the case has been argued on their behalf in great detail. It was urged in the course of the argument that a registered copy of the will of 1898 was admitted in evidence without sufficient foundation being laid for its admission. No objection, however, appears to have been taken in the first Court against the copy obtained from the Registrar's office being put in evidence. Had such objection been made at the time, the District Judge, who tried the case in the first instance, would probably have seen that the deficiency was supplied. Their Lordships think that there is no substance in the present contention."

21. In this regard, I may again fortify myself from a decision of Privy Council rendered in *Bhagat Ram Vrs. Khetu Ram & Anr.*, 1929, SCC OnLine PC 5: AIR 1929 PC 110, where their Lordships held that when no objection is taken to the admissibility of a document at the trial, it is not necessary to consider whether the document was admissible under the law. Similar view was expressed in the case of *Dol Govinda Das Vrs. Makbul Sekh's infant heir and Ors.*, 1935 SCC OnLine Cal 142: AIR 1936 Cal. 164] that objection has to be raised at the earliest opportunity as envisaged under Section 5 of the Evidence Act. The said principle of law was further followed by Hon'ble Supreme Court in *P.C. Puroshothama Reddiar Vrs. S. Perumal*, 1972 (1) SCC 9: AIR 1972 SC 608.

[20]

22. In the instant case, admissibility of the certified copy of the sale deed dated 21.04.1980 has not been challenged and only the mode of proof of the certified copy of the said sale deed has been challenged alleging the same to be irregular or insufficient. In the former case, mere marking the document as "an exhibit" shall not exclude the aggrieved party from raising objection regarding its admissibility even at a subsequent stage or even in appeal or revision, but, in the latter case, when the admissibility of the document is not challenged and it is allowed to be brought on record, then, objection to the mode of proof cannot be raised at a later stage as a matter of rule of fair play. Order 13 Rule 4 CPC provides for every document admitted in evidence in the suit being endorsed by or on behalf of the court, which endorsement signed or initialed by the Judge amounts to admission of the document in evidence. An objection to the admissibility of the document should be raised before such endorsement is made and the court is obliged to form its opinion but the question of admissibility and express the same on which opinion would depend the document being endorsed as admitted or not admitted in evidence. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission [21] to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons; firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adapted going against the party tendering the evidence, the opportunity of seeking indulgence of the court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to here- in-above, in the latter case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting

on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in a superior court. [Ref: (2003) 8 SCC 752, R.V.E.Venkatachala Gounder Vrs. Arulmigu Viswesaraswami & V.P. Temple & Anr.] [22]

23. In the case in hand, had the defendant raised his objection at the earliest opportunity i.e. when the certified copy of the sale deed dated 21.04.1980 was introduced and taken in evidence as Exbt.5 because such copy being admissible in evidence under Section 63 of the Evidence Act may be given to prove the existence as well as the contents of the original sale deed in question.

24. Coming back to the submission of learned counsel appearing on behalf of the appellants that the plaintiffs had failed to substantiate the foundation of the fact that the sale deed dated 21.04.1980 (Exbt.5) was destroyed. In this regard, I again reiterate that at the time of admission of the questioned sale deed dated 21.04.1980 (Exbt.5), Abdul Jabbar never had taken the plea that there was no foundation behind the statement made by the plaintiff that the questioned sale deed dated 21.04.1980 (Exbt.5) was destroyed. Therefore, such challenge asserting that there is no foundation behind the factum of destruction of the sale deed, which the plaintiffs have asserted for introducing the certified copy of the said sale deed dated 21.04.1980 executed by the vendor Sudhir Chandra Paul in favour of the predecessor of the plaintiffs cannot be entertained by this Court at this stage in exercise of its jurisdiction under Section 100 of CPC.

[23] Accordingly, both the substantial questions of law have been answered.

25. The offshoot of the aforesaid discussions on both legal and factual aspects is that the plaintiffs have been able to prove their title and both the present second appeals filed by Abdul Jabbar are liable to be dismissed being devoid of merit, and accordingly, the appeals are dismissed.

26. In the result, the judgment and decree passed by the learned Courts below are hereby affirmed and upheld.

Prepare decree accordingly.

Send back the LCR's.

JUDGE