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Reserved On : 28/07/2026
Pronounced On : 14/08/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 17104 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE MAULIK J.SHELAT

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Approved for Reporting	Yes	No
	√	

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RAJESHBHAI KRUSHNAKANT JARIWALA & ORS.
Versus
FALGUNIBEN KAMALKANT JARIWALA & ORS.

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Appearance:
MR RR MARSHALL, SENIOR ADVOCATE WITH MR MRUGEN K PUROHIT(1224) for the Petitioner(s) No. 1,2,3,4,5,6,7,8,9
MR ARPIT A KAPADIA(3974) for the Respondent(s) No. 1,2,3
NOTICE SERVED for the Respondent(s) No. 4,5

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CORAM: **HONOURABLE MR. JUSTICE MAULIK J.SHELAT**

CAV JUDGMENT

1. Heard Mr.R.R.Marshall, learned Senior Counsel, assisted by Mr.Mrugen K. Purohit, learned advocate for the petitioners and Mr.Arpit Kapadia, learned advocate for respondent Nos.1 to 3 – Caveators.

1.1 Rule returnable forthwith. Mr.Kapadia, learned advocate, waives service of rule for respondent Nos.1 to 3. The presence of respondent Nos. 4 and 5 is not required to adjudicate the issue germane to this matter.

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1.2 For the sake of convenience, the parties will be referred to as per their original position in the suit. The petitioners herein are the original defendants Nos.1 and 3 to 10 (hereinafter referred to as '**the defendants**'), whereas respondent Nos.1 to 3 are the original plaintiffs (hereinafter referred to as **'the plaintiffs'**) and respondent Nos.4 and 5 are original defendants Nos.11 and 12.

2. The present petition is filed under Article 227 of the Constitution of India, seeking the following reliefs:

> *"(A) This Hon'ble Court may be pleased to issue an appropriate writ, order or direction and may be pleased to quash and set aside the impugned judgment and order at Annexure-A to the petition dated 21st September, 2021 passed below application Exh.300 in Special Civil Suit No.494 of 2011;*
>
> (B) Pending the admission, hearing and final. disposal of the present petition, this Hon'ble Court may be pleased to stay the impugned order at Annexure-A to the petition dated 21st September, 2021 passed below application Exh.300 in Special Civil Suit No.494 of 2011;
>
> **IN THE ALTERNATIVELY**
>
> *(C) Pending the admission, hearing and final disposal of the present petition, this Hon'ble Court may be pleased to stay the further proceedings of Special Civil Suit No.494 of 2011 pending before learned 3rd Additional Senior Civil Judge, Surat;"*

SHORT FACTS OF THE CASE :

3. The plaintiffs instituted Special Civil Suit No.494 of 2011 against the petitioners as well as respondent Nos.4 and 5,

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which is pending before the Principal Senior Civil Judge, Surat. The suit is filed for partition, maintenance, declaration and permanent injunction.

3.1 The trial court vide its order dated 16.01.2020, while adjudicating the injunction application filed below Exhibit 5 as well as other applications filed below Exhibits 6 and 7, passed a common order whereby it directed the parties to maintain status quo till final disposal of the suit and further directed the parties to file their documentary evidence within 15 days from the said order and to conclude their oral evidence within three months from the date of the said order.

3.2 The issues were framed on 16.01.2020 itself.

3.3 The aforesaid order appears to have been carried before this Court by way of Appeal from Order No.20 of 2020, wherein the Coordinate Bench of this Court, on 12.02.2020, did not disturb the aforesaid order passed by the trial court. The matter appears to have been carried before the Hon'ble Apex Court but the aforesaid orders not disturbed.

3.4 It appears that the Hon'ble Apex Court vide its order dated 20.04.2021, passed in I.A. Nos. 46643-46644 of 2021 in Criminal Appeal No.1785 of 2017, expedited the suit proceedings whereby it directed the trial court to deliver the final judgment not later than 31.03.2022. It further appears that vide order dated 19.10.2022 in the aforesaid appeal, the Hon'ble Apex Court has modified its aforesaid order, whereby it observed that the trial court shall ensure that the suit shall

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be disposed of within a period of six months from the date on which the stay gets vacated by this Court.

3.5 It further appears that at the stage of completion of evidence of the plaintiffs, an impugned application came to be filed by the plaintiffs below Exhibit 300, whereby they requested the trial court to take on record the documents submitted with a separate list at Exhibit 301 and those documents, being certified copies issued by the concerned bank and Surat Municipal Corporation (for short "**SMC**"), be exhibited. The defendant strongly objected to the aforesaid request of the plaintiffs, as according to the defendants, the documents sought to be exhibited are not public documents and without proving them in accordance with law, they cannot be exhibited. After hearing the parties, the trial court *vide* its impugned order dated 21/09/2021 allowed the impugned application whereby the documents are given exhibits, i.e., Exhibit Nos.302 to 315. Hence, the present petition.

SUBMISSIONS OF THE PETITIONERS/DEFENDANTS :

4. Mr. Marshall, learned Senior Counsel assisted by Mr.Purohit, learned advocate appearing for the petitioners, would submit that the trial court has committed a manifest error by treating the documents which are objected to by the petitioners / defendants before this Court as public documents and committed serious error in law by giving them exhibits. It is submitted that the documents produced at serial Nos.12, 13 and 14 *vide* document list at Exhibit 301, are private

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documents and merely because those documents were obtained under Right to Information Act, 2005 (for short "**RTI**") from SMC, the documents do not automatically become public documents.

4.1 Mr.Marshall, learned Senior Counsel, would strenuously submit that the trial court has completely lost sight of Section 74 (2) of the Indian Evidence Act, 1872 (hereinafter referred to as "**the Act, 1872**") and misconstrued the fact that private documents obtained by the plaintiffs under RTI from SMC become public documents. It is submitted that as per settled position of law, every private document which is presented before a public authority does not automatically become a public document unless it satisfies the condition precedent as per Sub-section (2) of Section 74 of the Act, 1872.

4.2 Mr.Marshall, learned Senior Counsel, would further submit that the impugned order is *ex-facie* erroneous, perverse and as such a non-speaking one which is required to be quashed and set aside by this Court. It is submitted that as agreed before this Court on 25/11/2021, the petitioners-defendants only objected to three documents produced by the original plaintiffs at serial Nos.12, 13, and 14.

4.3 Mr.Marshall, learned Senior Counsel, would further submit that so far as the 'family partition agreement', which is sought to be produced by the plaintiffs is a disputed document. The Executive Magistrate, District Surat, whose seal was applied on the alleged family partition agreement,

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has categorically stated in his police statement that neither the seal nor the signature found on the aforesaid family partition agreement is his. It is further submitted that since the aforesaid family partition agreement is under cloud and a criminal prosecution is already launched in this regard, the trial court ought not to have given exhibits to such family partition agreement. The plaintiffs are required to prove the disputed documents by leading appropriate evidence.

4.4 To buttress his arguments, Mr. Marshall, learned Senior Counsel, has placed reliance upon the following judgments :

(i) Deccan Paper Mills Company Limited vs. Regency Mahavir Properties and others - *(2021) 4 SCC 786.*

(ii) Smt. Rekha Rana and others vs. Smt. Ratnashree Jai - AIR 2006 Madhya Pradesh 107.

(iii) Kumarpal N.Shah (Since deceased) Through L.Rs. Mrs.Tarunbala Kumarpal Shah and others vs. Universal Mechanical Works Private Limited – 2019 SCC OnLine Bom. 1627.

SUBMISSIONS OF THE RESPONDENTS/PLAINTIFFS :

5. *Per contra*, Mr.Arpit Kapadia, learned advocate, would vehemently oppose this petition contending *inter alia* that there is no error committed by the trial court which requires to be corrected by this Court by exercising its power under Article 227 of the Constitution of India.

5.1 It is submitted that the three documents which are now objected to by the petitioners have been received by the

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plaintiffs under RTI from SMC and they being certified copies issued by the public authority, such documents are required to be exhibited as per section 74 (2) read with Section 77 of the Act, 1872. It is submitted that the trial court has correctly referred to different provisions of the Act, 1872 in its impugned order and arrived at a just conclusion that the documents which are produced by the plaintiffs with the list at Exhibit 301 require to be accepted and as such were correctly accepted.

5.2 Mr. Kapadia, learned advocate, would further submit that as per the settled position of law, any document received from the authority under RTI, such document is required to be admitted in evidence being a certified copy of the public record. It is submitted that if the public records of private documents are kept then such public records of such private documents kept in any State would be public documents and therefore, though they might be copies of private documents kept in the public record, they would be treated as public documents and their contents are not required to be proved as produced their certified copies.

5.3 Mr. Kapadia, learned advocate, would further submit that this Court, while exercising its power under Article 227 of the Constitution of India, should not interfere with the impugned order, as there is neither any manifest error committed by the Trial Court nor any perversity in the impugned order.

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5.4 To buttress his arguments, Mr.Kapadia, learned advocate for the respondents-plaintiffs, has placed reliance upon the following judgments:

(i) Jagdishchandra Chandulal Shah vs. State of Gujarat and others – 1989 Cri.LJ 1724.

(ii) Abdul Rashid, S/o. Late Abdul Haque vs. Iftakhar Hussain @Dablu, S/o. MD Raja and others – 2025 LawSuit (Pat.) 267.

6. No other and further submissions have been advanced by the learned advocates for the respective parties.

POINTS FOR DETERMINATION:

7. Having heard learned advocates for the respective parties and upon perusal of the impugned application filed below Exhibit 300 and the impugned order passed thereon by the trial court, the short but an interesting point arises for my consideration as follows :

(i) Whether the private document obtained under Right to Information Act, 2005, (RTI), constitutes a 'public document' within meaning of sub-section (2) of Section 74 of the Evidence Act, 1872?

(ii) Whether a certified copy of such document obtained under RTI is admissible as secondary evidence as per Section 65 (e) or (f) of the Act, 1872?

ANALYSIS :

8. The facts noted at the outset are not in dispute. It appears that the trial court has accepted the additional

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documents submitted by the plaintiffs *vide* impugned application, solely on the ground that they were received by the plaintiffs under RTI and being public documents, thus, they are admissible in evidence. I could not find any other reason than observed above.

9. While issuing notice in this matter, my predecessor *vide* its order dated 25/11/2021 passed the following order:

> *"By preferring present petition, the petitioners have challenged the order dated 21st September 2021 passed below application Ex. 300 by the learned Court below in Special Civil Suit No. 494 of 2011.*
>
> *Heard learned advocate for the petitioners.*
>
> *It was submitted by learned advocate for the petitioners that vide application Exh. 300 preferred by the respondent-plaintiffs, it was requested to give exhibit the documents shown in the list of documents Exh. 301. Learned advocate for the petitioners has submitted that the petitioners have no objection to give exhibit to the documents produced at Sr. No.1 to 11 in DE list Ex. 301. Learned advocate for the petitioners has objected the documents produced at page no. 258 ie., completion certificate issued by the Architect on behalf of Tea Square, at page no. 260 ie., completion certificate issued by the Architect on behalf of Tea Square and at page no. 262 ie., zerox copy of the agreement of family division.*
>
> *Learned advocate for the petitioners has further submitted that these three documents are private documents and neither they are certified copies. Merely because they are available from the office of the Surat Municipal Corporation, they cannot be treated as certified copy or official record.*
>
> *Notice only to the extent of these three documents produced by the original plaintiffs in the suit vide list Exh. 301 at Sr. no.12, 13 and 14 returnable on 23.12.2021.*

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> *Court below may not touch these three documents produced by the plaintiffs in list of documents Exh. 301 till returnable date."*
>
> (Emphasis supplied)

9.1 Thus, in view of the above order, now the dispute remains qua documents which are produced at serial Nos.12 to 14 with the list at Exhibit 301. In light of above order, I would not like to make any comment so far as other documents which are produced by the plaintiffs with the list at Exhibit 301 and given exhibits as per the impugned order.

POINT NO - I

10. The documents at serial Nos.12, 13 and 14 appear to be completion certificates of bungalow Nos.61/A and 61/B of Nehrunagar Cooperative Housing Society, Atwalines, Surat, issued by the Architect namely Tee Square and a family partition agreement, respectively. These documents appear to have been received under RTI from SMC by the plaintiffs and produced with the list at Exhibit 301. According to the case of the plaintiffs, these being certified copies of public documents, they are admissible in evidence and no error can be found with the trial court when they are exhibited. *Per contra,* the defendants have disputed such position contending *inter alia* that any private document received under RTI would not automatically become a public document. It was objected by the defendants that any copy received under RTI of such documents cannot automatically be admitted in evidence; rather, the plaintiffs are required to prove the documents in accordance with law.

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11. As observed above, the trial court has not considered the objections of the defendants, rather assumed that the aforesaid documents are public documents, as received under RTI, accordingly exhibited those documents. No other and further reason assigned. In such circumstances, ordinarily, this Court would have quashed the impugned order and remanded the matter back to the trial court to re-look the issue afresh. However, considering the fact that the suit is of the year 2011 and there was already a direction issued by the Honourable Apex Court to conclude the adjudication of the suit at the earliest, and also the request made by the respective learned advocates to this Court that such issue may be decided by this Court, I would like to examine the issue independently, as follows.

12. Before adverting to the issue germane to this petition, I would first like to refer to a few provisions of the Indian Evidence Act, 1872, which read thus:

> *"**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*

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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.

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is 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) *****
(b) *****
(c) *****
(d) *****

(e) when the original is a public document

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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 1[India] to be given in evidence****.*

*** *** ***

In case (e) or (f), a certified copy of document, but no other kind of secondary evidence, is admissible.

*** *** ***

74. Public documents. *––The following documents are public documents: ––*

(1) ********

(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 there for, 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."*

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13. The documents which are disputed by the defendants undoubtedly are private documents, inasmuch as they could not be said to be public documents in any manner whatsoever. Since these documents are not forming the acts or records of the acts of sovereign authority, official bodies and tribunals and public officers, etc., it is required to be analyzed as to whether such documents can become public documents in light of sub-section (2) of Section 74 of the Act, 1872, i.e., *public records kept in any State of private documents*.

14. The issue is no longer remain *res integra* as decided by the Honourable Apex Court and various other courts including this Court. Learned advocates appearing for the respective parties have placed reliance upon various decisions to prove their point. Instead of referring to all, I would like to refer to the judgment of the Patna High Court in the case of **Abdul Rashid (supra)**, as in this decision, the Patna High Court has referred to the decision of the Madhya Pradesh High Court in the case of **Smt. Rekha Rana (supra)**, the decision of the Honourable Apex Court in the case of **Deccan Paper Mills Company Limited (supra)** as well as the Privy Council decision in the case of ***Gopal Das v. Shri Thakurji - 1943 AIR (PC) 83***. Over and above the said decisions, the decision of the Constitutional Bench of the Honourable Apex Court in the case of **N.N. Global Private Limited Vs. Indo Unique Flame Ltd. - (2023) 7 SCC 1** was also referred. The relevant paragraphs of the decision of **Abdul Rashid (supra)** read thus:

"[9] Similar issue came before this Court in the case of

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Ram Briksha Singh *(supra) and paragraph nos. 7, 8, 9 & 10 are quire apposite for consideration of the issues raised in the present matter and the same are extracted for ready reference. Paragraph nos. 7, 8, 9 & 10 of the same read as under:-*

> *"7. Section 75 of the Evidence Act provides that all other documents are private. Now a sale deed is no doubt a private document but whether its certified copy would come under the category of public records kept in any state of private document?* ***The Division Bench of Madhaya Pradesh High Court in the case of Smt. Rekha Rana & Ors. Vs. Smt. Ratneshree Jain, 2006 AIR(MP) 107 has held the proposition that a certified copy of a sale deed is a public document or a registered sale deed is a public document are erroneous. It has further been held that a registered document (deed of sale etc.) is not a public document. It is a private document****. Further, a certified copy of a registered document, copied from Book and issued by the Registering Officer, is neither a public document, nor a certified copy of a private document, but is a certified copy of a public document. In other words, a certified copy of a registered document is a certified copy of public document. The basis for saying so lies in the fact that when a sale deed is registered before the Registering Authority, necessary entries are maintained in the book kept at the Registration Office and, thus, it is a record 'kept in a state of private documents' and, therefore, a public document. When a person applies for the certified copy of document registered in the office which is entered/filed in Book 1, a certified copy of document as copies/filed in Book 1 is furnished to the applicant. Such certified copy of any entries in Book 1 is a certified copy of a public document. But such certified copy of registered document extracted from Book 1 is not itself a public document. It is really a true copy of a copy (copy of original deed entered in Book 1). The discussion has been made by the Division Bench of the Madhya Pradesh High Court considering the provisions of the Registration Act, 1908, specially Sections 51 and 57. Thus, it has been concluded that a certified copy of a registered document*

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issued by Registering Officer, by copying from Book 1, is a certified copy of a public document. Similar question came up before the Hon'ble Supreme Court in the case of ***Appaiya Vs. Andimuthu @ Thangapandi & Ors., [Civil Appeal No. 14630 of 2015 {@ SLP (C) No. 10013 of 2015}****], wherein the Hon'ble Supreme Court has observed in paragraph no. 29, which reads as under:-*

> "***29.*** *Having regard to all the aforesaid circumstances and in the light of the various provisions of the Evidence Act mentioned hereinbefore we will firstly consider the question whether the appellant/plaintiffs had succeeded in proving the contents of Ext.A1. Going by Section 65(e) when the original of a document is a public document within the meaning of Section 74, secondary evidence relating its original viz., as to its existence, condition or contents may be given by producing its certified copy. Ext.A1, indisputably is the certified copy of sale deed No. 1209/1928 dated 27.08.1928 of SRO Andipatti. In terms of Section 74(2) of the Evidence Act, its original falls within the definition of public document and there is no case that it is not certified in the manner provided under the Evidence Act. As noticed hereinbefore, the sole objection is that what was produced as Ext.A1 is only a certified copy of the sale deed and its original was not produced in evidence. The hollowness and unsustainability of the said objection would be revealed on application of the relevant provisions under the Evidence Act and the Registration Act, 1908. It is in this regard that Section 77 and 79 of the Evidence Act, as extracted earlier, assume relevance. Section 77 provides for the production of certified copy of a public document as secondary evidence in proof of contents of its original. Section 79 is the provision for presumption as to the genuineness of certified copies provided the existence of a law declaring certified copy of a document of such nature to be admissible as evidence. When that be the position under the aforesaid provisions, taking note of the fact that the document in question is a registered sale deed, falling within the definition of a public document, the question*

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

(Underlined for emphasis)

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

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

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10. Section 65 (e) and Section 77 of the Evidence Act read as under:-
"*(a).....*
(b).....
(c).....
(d).....
(e) when the original is a public document within the meaning of section 74;
(f).....
(g).....
77. Proof of documents by production of certified copies. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies."

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

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

*[10] *** *** ****
[11] However, learned counsel for the petitioner has referred to the decision of a Three Judges Bench of the Hon'ble Supreme Court in the case of ***Deccan Paper Mills Company Limited*** *(supra) wherein the Hon'ble Supreme Court while considering the arbitrability of disputes in the absence of arbitration agreement when there were allegations of fraud and the plaintiffs sought cancellation of the written instrument under Section 31 of the Specific Relief Act, 1963 incidentally considered this issue.* ***The Hon'ble Bench relying on the decision of Gopal Das (supra) observed that a certified copy of a registered instrument was not a public record of a private document under Section 74(2) of the Evidence Act, 1872****. While doing so the Hon'ble Supreme Court also referred to the case of* ***Smt. Rekha Rana & ors.*** *(supra) and* ***its paragraph nos. 8 & 9 with approval which read as under****: -*

> "***8*** *A deed of sale is a conveyance.* ***A deed of conveyance or other document executed by***

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any person is not an act nor record of an act of any sovereign authority or of any official body or tribunal, or of any public officer, legislative, judicial and executive. Nor is it a public record kept in a State of any private documents*. A sale deed (or any other deed of conveyance) when presented for registration under the Registration Act, is not retained or kept in any public office of a State after registration, but is returned to the person who presented such document for registration, on completion of the process of registration, An original registered document Is not therefore a public record kept in a state of a private document, Consequently, a deed of sale or other registered document will not fall under either of the two classes of documents described in Section 74, as 'public documents'. **Any document which is not a public document is a private document**. We therefore have no hesitation in holding that a registered sale deed (or any other registered document) is not a public document but a private document.*

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

> *"It was contended by Sir Thomas Strongman for the respondents that the receipt comes within para 2 of Section 74, Evidence Act, and was a "public document"; hence under Section 65(e) no such foundation is required as in cases coming within Clauses (a), (b) and (c) of that section. Their Lordships cannot accept this argument since the original receipt, of 1881 is not "a public record of a private document". The original has to be returned to the party..... A similar argument would appear at one time to have had some acceptance in India but it Involves a misconstruction of the Evidence Act and Registration Act and later decisions have abandoned it.*
>
> ***We may also refer to the following passage from Ratanlal's Law of Evidence (19th Edition page 237):***

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

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

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

10.2 Section 51 relates to Register Books to be kept in the registration offices. Relevant portions thereof extracted below:

> *51. Register-books to be kept in the several offices: (1) The following books shall be kept in the several offices hereinafter named, namely:*
> *A. In all registration offices -*
> *Book 1, "Register of non-testamentary documents*

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relating to immovable property".
Book 2, "Record of reasons for refusal to register".
Book 3, "Register of wills and authorities to adopt", and Book 4, "Miscellaneous Register".
B. In the offices of Registrars -
Book 5, "Register of deposits of wills".

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

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

10.3 Section 57 requires the Registering Officers to allow inspection of Books No, 1 and 2 and indexes relating to Book No. 1 and to give certified copies thereof. The relevant portion of the said Section is extracted below:

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

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

10.4 Section 60 requires the Registering Officer to

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

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

10.5 Section 61 deals with copying of endorsements and certificate and return of document. It is extracted below:

> *(1) The endorsements and certificate referred to and mentioned in Sections 59 and 60 shall thereupon be copied into the margin of the Register Book, and the copy of the map or plan (if any) mentioned in Section 21 shall be filed in Book No.1.*
>
> *(2) The registration of the documents shall thereupon be deemed complete, and the document shall then be returned to the person who presented the same for registration, or to such other person (if any) as he has nominated in writing in that behalf on the receipt mentioned in Section 52.*
>
> *(Emphasis supplied)*

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

> ***(i) A Registered document (Deed of sale etc.) is not a public document. It is a private document.***
>
> ***(ii) Book 1 kept in the Registration Offices under the Registration Act, where the Registered documents (private documents) are copied, entered or filed, is a public document.***
>
> ***(iii) A certified copy of a registered document, copied from Book 1 and issued by the Registering Officer, is neither a pubic document, nor a certified copy of a private document, but is a certified copy of a public***

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***document.*"**

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

[13] This issue also received attention of a Constitution Bench of the Hon'ble Supreme Court in the case of ***N.N. Global Mercantile (P) Ltd.*** *(supra) where in paragraph no. 141.2, the Hon'ble Supreme Court recorded as under:-*

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

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> *liable to be impounded and dealt with as provided in the Stamp Act.*"
>
> *(Emphasis supplied)*

15. The Co-ordinate Bench of this Court in the case of **Jagdishchandra Chandulal Shah** (supra) explained that which private documents can be treated as public documents as per Sub-section (2) of Section 74 of the Act, 1872. The relevant observations read thus:

> *"6. It may be stated that so far as the proving of the contents of the documents is concerned, it is provided in Chap. V of the Evidence Act. Section 61 of the Evidence Act provides that contents of the documents may be proved either by primary or secondary evidence. Section 62 of the Evidence Act defines what is 'primary evidence'. Primary evidence means the document itself produced for the inspection of the Court. The definition of 'secondary evidence' inter alia includes the certified copies given under the provisions contained in the said Act. Section 65 of the said Act also provides that secondary evidence may be given of the existing condition or contents of a document in the cases enumerated therein, inter alia, when the original document is a public document within the meaning of Section 74 of the said Act and 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. So, secondary evidence in respect of a document can be given by certified copy of the document inter alia in cases enumerated in Clauses (a) to (f) of Section 65 of the said Act, and in cases falling under Clauses (e) and (f) of Section 65 of the Act the certified copy of the document and no other kind of secondary evidence is permissible. Section 74 of the said Act specifies the documents which are 'public documents' and Sub-section (2) of Section 74 provides that public records kept in State of private documents are public documents. Private documents are defined as those documents which are not falling within the category of public documents. Section 77 of the said Act provides*

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that such certified copies may be produced in proof of the contents of the public document or parts of public documents of which they purport to be copies.

7. ***From the above provisions of the Evidence Act it is clear that there might be private documents but if public records thereof are kept in any State then such public records of the private documents would be public documents and, therefore, certified copies of such documents can also be produced in proof of the contents of the private documents of which public records are kept****. Initially such documents might be private documents and such private documents never change the character as private documents, but if public records thereof are kept then such public records of such private documents kept by the State would be public documents and therefore, though they might be copies of private documents kept in the public record, they would be public documents and hence the contents thereof can be proved by producing certified copies thereof."*

(Emphasis supplied)

16. Thus, in view of the aforesaid legal position as it stands today, it is abundantly clear that a private document of which public record is kept does not in itself constitute a public document. However, the public record of such private document kept in any State is a public document. To put it simply, a private document merely stored or available in a public office does not automatically become a public document unless it is kept as public record.

17. The plaintiffs have indisputebly received the aforesaid documents in question under RTI from SMC. As observed above, the documents are private documents and for any

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purpose submitted to SMC. Since the documents submitted on record of the case are photostat copies of the documents whose records are kept by SMC, their certified/true copy obtained through under RTI Act, 2005 do not constitute public documents. In my considered view, these private documents do not, in themselves, constitute public documents within the meaning of sub-section (2) of Section 74 of the Act, 1872, merely because they are kept by SMC. *Point No. (i)* answered accordingly.

POINT NO - II

18. To answer this point, I would like to refer to few provisions of the Right to Information Act, 2005 which are as follows:

> ***"2. Definitions.*** *—In this Act, unless the context otherwise requires, —*
>
> *** *** ***
>
> ***(f)*** **"*information*"** *means any material in any form,* ***including records, documents,*** *memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;*
>
> ***(i) "record" includes--***
> ***(a) any document****, manuscript and file;*
> *(b) any microfilm, microfiche and facsimile copy of a document;*
> *(c) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and*
> *(d) any other material produced by a computer or any other device;*
>
> ***(j) "right to information" means the right to information accessible under this Act which is***

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***held by or under the control of any public authority and includes the right to**--*

(i) inspection of work, documents, records;

(ii) taking notes, extracts or certified copies of documents or records;

(iii) taking certified samples of material;

*(iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;***"**

18.1 As referred earlier, clause (f) of section 65 of Evidence Act makes it abundantly clear that a certified copy permitted under the Evidence Act or by any other law in force can be treated as secondary evidence. The RTI Act, according to my view, falls within the ambit of "by any other law in force in India". There should not be any cavil on the point that documents received under RTI is required to be treated as certified copy of the documents if the document is a public document. In my view, such document can be admitted as secondary evidence.

18.2 Yet, the photo copy of documents certified by the designated Public Information Officer under RTI of private documents are not themselves the certified copy within the provisions of Section 65 of the Act,1872. They are merely true copies of the private documents available in the records of the particular Department. The production and marking of such copies are permissible only after laying a foundation for

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acceptance of secondary evidence under clauses (a), (b) or (c) of Section 65 of the Act, 1872. The condition prescribed under the above clauses (a), (b) or (c) of Section 65 of the evidence Act have to be fulfilled before marking the true copies obtained under the RTI, so far private documents are concerned. However, as observed above, the true copies of public documents certified by the designated Information Officer can be treated as certified copies of the public documents.

18.3 At this juncture, it would also be apposite to refer to the decision of the Bombay High Court in the case of **Kumarpal N. Shah (supra)**, wherein the High Court observed and held thus:

> *"35. Under RTI, usually the applicant gets photostat copies of the documents which are certified as true copies. They cannot be equated with certified copies mentioned in the Evidence Act.* ***In other words, if the official under RTI certifies and supplies a private document, it still remains a private document. Thus, the RTI Act does not affect the nature of a document.***
>
> *36. In Datti Kameswari, a learned Single Judge of the High Court of Andhra Pradesh has held that* ***the copies obtained under the Right to Information Act certified by the Authorised Information Officer cannot be termed public documents or primary evidence. Only if the original qualifies to be a public document, then does its certified copy. But if the original is a private document, its copy secured under RTI Act does not get transformed into a public document. In that event, that certified copy of the private document must satisfy the provisions of Evidence Act for secondary evidence****.*

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37. Under Section 65 (f) of the Act, secondary evidence is permissible "when the original is a document of which a certified copy is permitted by the Evidence Act or by any other law in force in India," to be given in evidence. Interpreting this provision, Gurmukh Ram Madan has held that secondary evidence is admissible despite the original being available, only if either the Act or any other law permits its certified copy to be produced. That means, if the document is not a public document, its certified copy gets no immunity; the party must let in evidence explaining the non-availability of the original.

38. *** *** ***

In perspective:

39. To put the issue of marking documents in perspective, I hold that respondent, in fact, may raise objection about the admissibility of the documents. To that extent, their account cannot be found fault with. About the impugned order, I may note that in most instances the trial Court has accepted that PW1 is competent enough to have the Vina khadpe 15.08.2019_sr.25.wp.8764.2018 1st draft documents marked through him. On the other hand, it has however ruled that each document must be marked through the official who has issued it. This may assume importance or relevance vis-à-vis a private document which a party has secured through a public authority under RTI Act--say, a registered deed of sale, a deed of lease, or sub-lease.

40. In fact, this Court, in ***Vithoba Savlaram v. Shrihari Narayan (AIR 1945 BOM 319), has held that once a private document has been kept in official record with entry about their execution, say by a registering authority, that document per se does not become a public document. But the entry in the official record in relation to that document does****. That said, I will note that under Order 18 Rule 4 of CPC, certain documents need not be placed before the court as was contemplated either under Order 7 Rule 14 or under Order 8 Rule 1A of CPC, besides Order 13 Rule 1. Instead those could*

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> *be produced for cross- examining a witness if the witness is its author or the originator, in the generic sense.*
>
> *41. Here the alleged registered 'leave and license agreement' still remains a private document that its registration does not cure the mischief under Section 74 of the Act. Its marking through PW1 does not amount to its proof, though. I reckon the other documents are public documents or private documents sought to be marked through PW1, from whom they originate. At any rate, over the documents 1 and 2, the petitioner's gave up their contention."*
>
> (Emphasis supplied)

18.4 It has been so held that any private document which is obtained under RTI does not affect the nature of the document and the party must lead evidence explaining the non-availability of the original. I am in agreement with such a view taken by the Bombay High Court in **Kumarpal N. Shah (supra)**.

19. Apart from the aforesaid, it appears from the record of the case that so far as the family partition agreement is concerned, the genuineness of this document is itself disputed by the defendants. It further appears that pursuant to a criminal complaint filed, a statement of an Executive Magistrate, whose signature and seal were found on the said document, was recorded by the police concerned, wherein he has categorically stated that neither the seal nor the signature on the said document is his. I would not like to discuss anything more on this aspect, since the trial of the suit as well as the criminal case is pending. Nonetheless, for the reasons

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supra, the aforesaid document, i.e., the family partition agreement though received under RTI by the plaintiffs, would not automatically become a public document as per the provisions of the Act, 1872 and even if it may be admitted as secondary evidence, first the plaintiffs are required to lay its foundation and prove it in accordance with law. Likewise, the plaintiffs also require to prove other two documents in accordance with law.

20. Thus, in view of the aforesaid, the three documents in question are private documents and the public information officer of SMC only certified as their true copy, in my view, these copies cannot be treated as certified copies under clause (e) or (f) of Section 65 of the Act, 1872, and hence are not admissible as secondary evidence under either of the said clauses unless the plaintiffs lay their foundation and prove it in accordance with law. *Point (ii)* answered accordingly.

CONCLUSION:

21. In view of the foregoing observations, discussions and reasons, I am of the considered view that the reasons assigned by the Trial Court while giving exhibits to the aforesaid three documents by treating them as public documents is nothing but a gross error of law and the view taken by the Trial Court is not sustainable in law. Such a view must have to be corrected by this Court while exercising its power under Article 227 of the Constitution of India. [See - **Waryam Singh vs. Amarnath - AIR 1954 SC 215**].

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22. Accordingly, I hold that the aforesaid three documents in question are not public documents within the meaning of sub-section (2) of Section 74 of the Act, 1872. Merely because they obtained under RTI, they cannot be treated as certified copies as per clause (e) or (f) of Section 65 of the Act, 1872. I also hold that unless a foundation lay down by the plaintiffs to prove those documents as secondary evidence as per clause (a), (b) or (c) of Section 65 of the Act, 1872, these documents cannot be admitted as secondary evidence. Consequently, at this stage, they cannot be exhibited. Thus, a burden is upon the plaintiffs to prove these documents as a secondary evidence in accordance with law.

23. In view of the aforesaid, the impugned order dated 21/09/2021 passed by the 2nd Additional Senior Civil Judge, Surat, below Exhibit 300 in Special Civil Suit No. 494 of 2011 is modified to the extent that the documents which are produced at serial Nos.12 to 14 with the list at Exhibit 301 can be admitted as secondary evidence subject to fulfilling condition as stipulated in Section 65 of the Act, 1872, supra. Thus, at this stage, they are required to be de-exhibited and accordingly, de-exhibited. The Trial Court is hereby directed to de-exhibit the above referred three documents.

23.1 Once the plaintiffs proved these three documents in accordance with law, it is needless to say that at that time, the Trial Court shall give them exhibit.

23.2 So far as the rest of the documents are concerned which are already exhibited, the impugned order qua those

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documents is not disturbed.

24. Now, the Trial Court shall proceed with the suit at the earliest and conclude its trial as early as possible. The parties shall have to cooperate with the Trial Court for early adjudication of the suit.

25. In view of the foregoing conclusion, the present petition is partly allowed. Rule is made absolute to the aforesaid extent. No costs.

(MAULIK J. SHELAT, J)

FURTHER ORDER

After pronouncement of the judgment, Mr.Kapadia, learned advocate appearing for the respondents – plaintiffs requests for suspension of this order for two weeks. Mr.Purohit, learned advocate for the petitioners strongly objects this request.

In view of the reasons set out in the judgment and as the suit is of the year 2011, which is already expedited by the Hon'ble Supreme Court, the request is refused.

(MAULIK J. SHELAT, J)

GAURAV J THAKER

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