

News



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Since a photocopy of a document is secondary evidence and does not constitute evidence unless it meets the requirements outlined in Section 65 of the Evidence Act, the Supreme Court has ruled against the sale that was carried out on the basis of a photocopied Power of Attorney.

When the original document cannot be provided under Section 64, supplemental evidence (copies, oral accounts) may be produced in accordance with Section 65 of the Evidence Act. This is applicable in the event that the original document or evidence is misplaced, destroyed, held by an adversary, or is made public.

The case was considered by a bench of Justices Pankaj Mithal and SVN Bhatti. The main point of contention was the type and extent of authority conferred by a Power of Attorney that the plaintiff had signed in 1998.

The defendants said that the plaintiff had signed a general power of attorney (PoA) enabling her brother to transfer the property, notwithstanding the plaintiff's argument that she had only issued a limited PoA authorizing management of the property and had specifically blacked

out terms permitting sale.

To support the sale in favor of the brothers' in-laws, the defendants cited a notarized photocopy of the purported general PoA. The plaintiff's complaint was approved by the Trial Court, which ruled that the sale deeds were null and void. The First Appellate Court overturned this and maintained the legality of the sale and the PoA. The defendants then filed an appeal with the Supreme Court after the Kerala High Court upheld the Trial Court's decision in the second appeal.

Justice Bhatti's judgment, which upheld the High Court's ruling, stated that merely admitting a document as secondary evidence does not prove its contents unless it is supported by fundamental evidence demonstrating that the purported copy is, in fact, an authentic copy of the original.

According to the court, "if a party wants to introduce a photostat copy, for example, they have to explain the conditions under which the copy was made and who had the original at the time the photograph was taken."

However, the party cannot rely on its secondary evidence if it is unable to prove the initial evidence. Until the original's non-production is explained in a way that qualifies the case for one of the particular exclusions listed in Section 65, secondary evidence is not admissible. The court stated that the party who filed the original is not allowed to present secondary evidence of its contents if the original is deemed inadmissible due to the party's failure to establish its validity.

The Court noted that the procedure of introducing secondary evidence involves two steps: first, the party must demonstrate that they have the legal authority to do so, and then they must use that evidence to support the documents' contents. Conjunctive twin criteria apply.

Furthermore, merely admitting a document or designating it as an exhibit does not eliminate the need to provide legal proof. Before endorsing the secondary evidence, the court must consider the document's probative value and make a determination regarding its admissibility. The court cannot lawfully permit the party to provide secondary evidence if the underlying facts—such as the loss of the original or the reason it was not produced—are not proven.

According to the Court's application of the law, a photocopy of a document is not evidence unless it is proven through the prescribed process. The First Appellate Court acknowledged the existence of power to alienate and acted on inadmissible evidence, citing Exh. B-2. Exh. B-2/photocopy is not evidence, and the High Court has correctly rectified the erroneous reliance on no evidence in the contested judgment. The High Court granted the second appeal after taking into account the Appellate Court's incorrect interpretation of the evidence and using the proper legal standards.

The appeal was therefore denied.

Title of Cause: T. Ushakrishnan and Another vs. Tharamel Pethambaran and Another