

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. OF 2026
[@ SLP (C) NO. 11868 OF 2024]

THARAMMEL PEETHAMBARAN AND ANOTHER ... APPELLANT(S)

VERSUS

T. USHAKRISHNAN AND ANOTHER ... RESPONDENT(S)

J U D G M E N T

S.V.N. BHATTI, J.

- 1.** Leave granted.
- 2.** The appeal is at the instance of the 1st and 2nd Defendants in O.S No. 197 of 2013 before the Senior Civil Judge, Kozhikode. The 1st Respondent filed OS No. 197 of 2013 for declaration, perpetual injunction, and damages for use and occupation. The Plaintiff is admittedly the owner of the Plaintiff A-Schedule consisting of three items of immovable property. A few household items are mentioned in Plaintiff B-Schedule. The Plaintiff is the 1st Defendant's sister. The Plaintiff resides in Mumbai, and the 1st Defendant resides in Kozhikode. The 1st defendant is the brother-in-law of the 2nd and 3rd Defendants. Stated chronologically, on 31.07.1998, the Plaintiff is said to have executed a Power of Attorney ("PoA") in favour of the 1st defendant. The PoA is exhibited by the Plaintiff as Exhibit A-4 and by the Defendants as Exhibit B-2, a notarised photocopy. On 15.03.2007, the 1st Defendant, in the purported authority given to him through the PoA/Exh. B-2, executed registered sale deeds nos. 262 and 263 of 2007 in favour of the 2nd and 3rd

Defendants. The Plaintiff, having come to know of the sale in favour of the 2nd and 3rd Defendants, through the lawyer's notice dated 20.04.2007, cancelled the PoA. The 1st Defendant refers to a receipt dated 23.04.2007, said to have been executed by the Plaintiff, acknowledging the receipt of Rs. 6,00,000/-, forming part of the sale consideration under the sale deeds dated 15.03.2007. The 1st Defendant issued a reply notice dated 05.05.2007 to the Plaintiff's legal notice dated 20.04.2007. In this background, O.S No. 597 of 2007 was filed before the Munsiff Court I, Kozhikode, renumbered as OS No. 197 of 2013 before the Senior Civil Judge, Kozhikode. The pleadings on both sides are considered in detail by the impugned judgment. Reference to pleadings as are necessary for disposing of the appeals is made in the Judgment. The Plaintiff claims title to item nos. 1 and 2 of the Plaintiff A-Schedule through the assignment deed dated 31.07.1998. Item no. 3 of the Plaintiff A-Schedule is claimed through the Partition Deed no. 317 of 1998.

3. The Plaintiff avers that the 1st Defendant has sent a draft PoA dated 31.07.1998/Exh. A-3 by post to her address in Mumbai for the execution of the PoA. Exh. A-3 is a general power of attorney. The Plaintiff, not interested in granting general power to the 1st Defendant to deal with the Plaintiff A-Schedule, has scored out the clauses dealing with the power to mortgage, alienate, etc in Exh. A-3. The Plaintiff admits execution of the PoA, i.e. Exh. A-4, which grants specific power and not general power to alienate the plaintiff schedule properties. The Plaintiff states that the PoA/Exh. B-2, relied on by the defendant, is a sham and fudged document. Therefore, by referring to a fudged PoA, execution of assignment deed nos. 262 and 263 of 2007 is illegal, unenforceable and not binding on the Plaintiff. The agent exceeded the authority given to him and the sale deeds do not bind the principal. In other

words, the Plaintiff asserts that the 1st Defendant/agent does not have the power to alienate or exceed the power granted to him under the PoA/Exh. A-4, signed and sent by the Plaintiff. The Plaintiff denies the execution of receipts dated 20.12.2006 (Exh. B-6) and 23.04.2007 (Exh. B-7) for Rs. 11,00,000/- towards the sale consideration. Hence, the suit for the reliefs prayed for.

4. The 1st Defendant admits that the Plaintiff is the owner as per the records, but the possession of the house is with the 1st Defendant. On the fact in issue at stake between the parties, the 1st Defendant asserts that the Plaintiff executed the PoA/Exh. B-2 authorising the Defendant to have the power of management, mortgage and alienation. The sub-registrar verified the 1st Defendant's competence to execute the sale deed on behalf of the Plaintiff and accepted the sale deeds (Exh. A7 and A8) dated 15.03.2007, executed in favour of the 2nd and 3rd Defendants for registration. The said sale deeds executed are valid, legal and bind the Plaintiff as principal, because the 1st Defendant, as agent, acted under the comprehensive powers granted to him under Exh. B-2 by the Plaintiff. Resiling from the power vested in favour of the 1st Defendant is contradictory and contrary to the conduct of the Plaintiff in receiving Rs. 11,00,000/- under receipts (Exh. B-6 and B-7) dated 20.12.2006, and 23.04.2007, respectively. The Plaintiff, as beneficiary of the sale consideration, is not entitled to challenge the action of the 1st Defendant.

5. The Trial Court, on consideration of the oral evidence of PW 1 and the documentary evidence of Exhibits A-1 to A-9, DWs 1 and 2, and Exhibits B-1 to B-26, dismissed the suit. The issues settled by the Trial Court are as follows:

“ 1. Whether the plaintiff had executed a power of attorney authorizing the 1st defendant to sell the properties described in the plaint A schedule ?

2. Whether the power of attorney alleged to have been executed by the plaintiff on 31.7.199[8] is a valid genuine and properly executed document ?

3. Whether the power of attorney alleged to have been executed by the plaintiff on 31.7.1998 empowers the 1st defendant to execute a valid conveyance in respect of the properties described in the plaint A-schedule ?

4. Whether the defendant had executed registered sale deeds in favour of defendants 2 and 3 on the strength of a forged and fabricated power of attorney as alleged ?

5. Whether the plaintiff is entitled to get a declaration as prayed for ?

6. Whether the plaintiff is entitled to get a permanent prohibitory injunction as prayed for ?

7. Whether the plaintiff is entitled to get a mandatory injunction as prayed for ?

8. Whether the plaintiff is entitled to get damages for use Occupation at the rate of Rs. 3,000/- per month from 20.4.2007?

9. Whether the plaintiff is entitled to get share of mesne profits as alleged ?

10. Reliefs and Costs ?”

6. The Trial Court examined all the issues together, and the gist of the Trial Court’s findings is that the Trial Court compared the draft PoA (Exh. A-4) with the one used for the sale (Exh. B-2) and found that words providing for “sale” were added to the end of existing clauses. These additions lacked “cohesion” with the original document. It also noted that the spacing between letters in the added “sale” words was significantly different from the rest of the document (monospace vs. proportional), indicating they were inserted later. The 1st Defendant failed to produce the original PoA (Exh. B-2) despite being its holder. The Trial Court found his explanation that it was given to the Plaintiff’s husband to be inconsistent and contradictory. Under Section 33 of

the Registration Act, 1908, a PoA used for executing sale deeds must be properly authenticated. The Trial Court held that since the PoA was unregistered and its genuineness was unproven, the resulting sale deeds (Exh. A-7 and A-8) were invalid. While 1st Defendant claimed to have paid the plaintiff Rs. 11,00,000/-, the Trial Court found this evidence insufficient to validate the unauthorised sale deeds. The sale prices shown in the deeds were also lower than the amount he allegedly paid her, undermining his credibility. The Trial Court (i) declared that the sale deed nos. 262 and 263 of 2007 (Exh. A-7 and A-8) were invalid and void; (ii) The Trial Court granted the relief of injunction as well; (iii) Further directed, through a mandatory injunction, 1st Defendant to vacate and surrender the house situated on item no. 1 of the Plaintiff A-Schedule to the Plaintiff within two months; and (iv) rejected the claim for damages for use and occupation.

7. The 1st Defendant filed A.S. No. 166 of 2014 before the District Judge, Kozhikode, and the First Appellate Court allowed the appeal, resulting in the dismissal of O.S. No. 197 of 2013. The First Appellate Court examined the issues and recorded the findings, which can be classified under the following heads:

Rejection of Independent Ownership Claims (Benami and Oral Sale)

7.1 The 1st Defendant's claim of purchasing items nos. 1 and 2 in the Plaintiff's name using his own funds was barred under the provisions of the Benami Transactions (Prohibition) Act, 1988. Similarly, regarding item no. 3, it was held that the immovable property was worth more than Rs. 100, and cannot be orally sold to the 1st Defendant without a registered document as per Section 17 of the Registration Act.

Validity and Existence of the Power of Attorney

7.2 Plaintiff in the legal notice (Exh. A-5) stated that she was “cancelling” the PoA. If the Plaintiff had never executed a valid power of attorney, there would have been no need to cancel it. Furthermore, PW1 admitted during cross-examination that she had seen the original PoA at her lawyer's office. Hence, the plaintiff was deliberately withholding the original PoA. Plaintiff's prior conduct in executing powers of attorney in favour of her father and brother proves that the Plaintiff was well aware of the legal formalities required for executing a PoA. Now, the stand she has taken undermines her claim of ignorance.

Admissibility of Secondary Evidence (Exh. B2)

7.3 Since the Plaintiff withheld the original power of attorney, the 1st Defendant produced a photocopy (Exh. B2) as secondary evidence under Section 66 of the Indian Evidence Act. Section 8(1)(a) of the Notaries Act, 1952 and Section 114(e) of the Indian Evidence Act hold that the PoA, which was notarised by a Notary, carry a presumption of valid execution and authentication.

Objections under the Registration Act

7.4 The Plaintiff's challenge under Section 33 of the Registration Act (requiring Registrar's authentication for the PoA) was also rejected because the plaintiff had relied on a similarly Notary-attested PoA for her own partition deed (Exh. B12). The other objection under Section 28 of the Registration Act that the sale deeds (Exh. A7 and A8) were registered in Kozhikode rather than the jurisdictional SRO at Kakkodi, where the land is situated, was also rejected because the Sub-Registrar in Kozhikode held the

charge of District Registrar, giving him jurisdiction to accept a document for registration.

Confirmation of Sale Receipts (Exh. B6 and B7)

7.5 Plaintiff had accepted sale consideration totalling Rs. 11 lakhs, receipts Exh. B-6 dated 20.12.2006 for Rs. 5,00,000/- and Exh. B-7 dated 23.04.2007 for Rs. 6,00,000/-. Expert witness (CW1) confirmed that the signature on the receipt Exh. B6 matched the Plaintiff's specimen signature. Regarding the second receipt (Exh. B7), the First Appellate Court, after making a comparison with the naked eye, concluded that the disputed signature was by the same author, i.e., the Plaintiff.

Validity of Sale Deeds and Possession of Documents

7.6 The Plaintiff did not explain as to why the 1st Defendant was in possession of all the original title deeds, including the prior sale agreement, purchase certificate, and partition deed. It was inferred that these were entrusted to the 1st Defendant for the purpose of selling the property. Consequently, the sale deeds executed by the 1st Defendant in favour of the 2nd Defendant and 3rd Defendant were valid.

8. The Plaintiff assailing the above findings filed the second appeal before the High Court, and through the impugned judgment, the High Court restored the findings of the Trial Court, and its consideration is summarised:

8.1 The original of Exh. B-2 is not marked. Without following the procedure under Sections 65 and 66 of the Evidence Act, Exh. B-2, a photostat copy does not satisfy the requirements of secondary evidence. The 1st Defendant traces the authority to sell the property to Exh. B-2. The non-marking of the original of Exh. B-2, coupled with non-compliance with Sections 65 and 66 of the Evidence Act, would render the assertion untenable.

8.2 The High Court concluded that the original PoA – Exh B-2 was not duly executed by the Plaintiff. It compared the clauses in the draft/copy - Exh. A-4 with the disputed PoA/Exh. B-2. It was observed that the words providing for “sale” in the disputed PoA had no cohesion with the former parts of the clauses. Crucially, the spacing between the letters in the added words relating to “sale” was monospace, whereas the rest of the document used proportional spacing, indicating interpolation/fabrication. The High Court rejected the Defendant’s claim regarding the original PoA. It noted inconsistencies in the Defendant’s evidence regarding the whereabouts of the original document. It was finally noted that in the draft PoA/Exh. A-3 sent by the Defendant to the Plaintiff, the specific clause providing for sale and mortgage (Clause b) had been deleted from the final version - Exh. A-4/Exh. B-2, thus supporting the Plaintiff’s claim that she did not grant power to sell. Consequently, the High Court held that the sale deeds executed by the Defendant using the invalid POA were void, thereby restoring the Trial Court’s decree

9. Hence, the 1st and 2nd Defendants are in appeal challenging the impugned judgment.

10. We have heard learned senior counsel Mr. Pijush Kanti Roy and Mr. Siddharth Bhatnagar for the parties.

11. The Defendants assail the impugned judgment, as exceeding the jurisdiction of the High Court under Section 100 of the Code of Civil Procedure, 1908. The impugned judgment has not framed substantial questions of law for consideration. Still, by re-appreciating the evidence, it interfered with the findings of fact recorded by the First Appellate Court. The primacy of opinion available to the view of the First Appellate Court is not accorded in the impugned judgment. The illegality in the impugned judgment

is a reappreciation of oral and documentary evidence to record findings on facts in issue. Therefore, the impugned judgment, since it exceeded the jurisdiction of the High Court under Section 100 of the CPC, is liable to be set aside. Adverting to the merits, the Defendants contend that in the case on hand, the execution of PoA is not in dispute. Still, the core issue is whether the PoA/Exh B-2 granted comprehensive authority to deal with scheduled property or was it a limited power assigned to the 1st Defendant/Exh. B-2, a notarised photocopy of PoA, is a complete answer on the extent of power granted to the 1st Defendant. The clauses are clear and categorical, authorising the 1st Defendant to sell the Plaintiff A-Schedule Property. The acts of the 1st Defendant conform to the authority and are well within the power granted to the Defendant under Exh. B-2. The Plaintiff, having ratified the act of the 1st Defendant, by receiving Rs. 11,00,000/- through Exh. B6 and B7, dated 20.12.2006 and 23.04.2007, cannot resile and challenge the validity of the sale deeds dated 15.03.2007.

11.1 The 1st Defendant has discharged the burden fastened on him, and, on a combined reading of Section 85 of the Evidence Act, read with Section 33 of the Registration Act, the execution or extent of the power under the PoA is a non-issue. The High Court committed an illegality by failing to apply the available presumption to the sale deeds dated 15.03.2007. The 1st Defendant contends that the purported clauses authorising him to alienate are not manipulated or fudged; this is evidenced by the draft PoA/Exh. A-3 that was sent by the 1st Defendant to the Plaintiff.

12. The Plaintiff contends that the First Appellate Court committed a serious illegality by relying on PoA/Exh. B-2. The findings of fact recorded by

the First Appellate Court are contrary to the evidence or result of incorrect construction of the documents. The 1st Defendant admits that the original of Exh. B-2 is not available to him. Further, to place on record, Exh. B-2, a notarised photocopy of a PoA procedure for adducing secondary evidence must be followed. In the admitted scenario, neither is an original nor a photocopy on record after complying with the requirements of adducing secondary evidence. Exh. B-2, since it is not an original document, but a notarised PoA, cannot be the document of source for the authority said to have been given by the Plaintiff to the 1st Defendant. The requirements, either under Section 33 of the Registration Act, or Section 85 of the Evidence Act, fall for consideration only if the original deed or Exh. B-2 is produced after complying with the requirements of secondary evidence. The photocopy is not a piece of evidence. The High Court has not conducted an independent reappreciation of oral and documentary evidence, but tested the findings of fact on the oral and documentary evidence adduced by the parties. Such a procedure is within the scope and jurisdiction of the High Court. The unauthorised act of the 1st Defendant will not bind the Plaintiff, and no title is conveyed to the 2nd and 3rd Defendants through Exh. A-7 and A-8.

13. The arguments on both sides are noted, and the record is perused and appreciated.

14. The controversy centres around the disputed circumstance, namely, the power of agency given by the plaintiff to the 1st defendant through Exh. B-2, if the documentary evidence in Exh. B-2 satisfies the requirement of law, whether it is fudged with additions, etc. Inasmuch as the 1st Defendant can convey title to the 2nd and 3rd Defendants only when the authority to do so is

proved as pleaded by him. The admitted circumstances are that the Plaintiff is the owner of the Suit A-Schedule Properties, the Plaintiff resides in Mumbai, the 1st defendant resides in Kozhikode, and was authorised to, according to the Plaintiff, manage the property and according to the 1st Defendant, he was authorised to act as an agent of the Plaintiff for all purposes. The Plaintiff denies having given general power, including the alienation of the Suit A-Schedule in favour of the 1st Defendant. The 1st Defendant asserts and claims that the PoA in his favour includes the power to alienate the Suit A-Schedule Property.

15. In the admitted and disputed circumstances, the issue boils down to whether the 1st Defendant proved the case as pleaded in the written statement. The burden is on the 1st Defendant. For clarity, we excerpt the averments in the written statement on the execution, scope and content of PoA, which reads as under:

“XxX

the plaintiff handed over to the first defendant all the powers to handle, sell, mortgage the above said property as his own and a power of attorney draft was prepared and sent as per the plaintiff's instructions. Plaintiff herself voluntarily prepared it as her on style and signed it and sent it to the 1st Defendant.

XxX

the plaintiff has nowhere (sic) stated why the 1st defendant was entrusted with the power to dispose of the property, sell it etc. From these circumstances it is proved that the 1st defendant also had the authority over the above said property.

XxX

The draft Power of Attorney produced by the Plaintiff along with the plaint was sent by the 1st defendant. Similarly the 1st respondent (defendant) admits the letter sent along with it. But no letter has been sent by the 1st defendant after getting the Power of Attorney.

XxX

The Power of Attorney issued by the plaintiff also empowered the 1st defendant to sell the property. The registrar allowed to register the document after fully understanding the contents. Up to this point, the plaintiff has not raised an argument that the officials of the Register Office and these defendants have conspired to create the Sale deeds.

XxX"

These pleadings will be considered at the appropriate stage.

16. We now turn to whether the High Court exceeded its jurisdiction under Section 100 of the Code of Civil Procedure, 1908, while reversing the judgment of the First Appellate Court. The defendants argue that the High Court's findings were recorded on reappreciation of oral and documentary evidence. The Plaintiff contends that the High Court has not reappreciated the evidence but has examined whether the evidence was misread/documents were not correctly interpreted, and whether inadmissible documents were relied upon by the first appellate Court. The broad parameters for exercising the jurisdiction under Section 100 of the Code of Civil Procedure are summed up hereunder:

16.1 The Code of Civil Procedure (Amendment) Act, 1976, introduced a specific embargo on the High Court's jurisdiction under Section 100 to ensure the finality of findings of fact and to confine its jurisdiction to cases involving a substantial question of law.¹ Consequently, the general rule is that findings of fact recorded by the trial and appellate courts are binding and will not be disturbed, even if they appear to be erroneous.²

16.2 However, this restriction is not absolute. Where the findings of fact are founded on assumptions, conjectures or surmises, or suffer from the vice of perversity, the High Court is well within its jurisdiction to interfere with

¹ *Ramathal v. Maruthathal*, (2018) 18 SCC 303.

² *Jagdish Singh v. Natthu Singh*, (1992) 1 SCC 647.

findings of fact. The legality of a finding of fact, when challenged on the ground of perversity, itself constitutes a question of law and, therefore, may give rise to a substantial question of law under Section 100 of the CPC.³

16.3 A finding may be termed perverse where it is arrived at by ignoring or excluding relevant and material evidence, by considering irrelevant material, or where it is based on no evidence or on wholly unreliable evidence. A decision based on no evidence is not confined to cases of complete absence of evidence, but also includes cases where the evidence on record, taken as a whole, is incapable of reasonably supporting the findings recorded. A finding that outrageously defies logic, suffers from irrationality, or is such that no reasonable person acting judicially could have arrived at it, is equally perverse in the eye of the law. Findings resting on the *ipse dixit* of the court or on conjecture and surmises reflect non-application of mind and stand vitiated on that ground as well.⁴

16.4 Insofar as documentary evidence is concerned, an inference drawn from the contents of a document is ordinarily a question of fact. However, the legal effect of a document's terms, its construction involving the application of legal principles, or a misconstruction thereof gives rise to a question of law.⁵

16.5 While exercising jurisdiction under Section 100 of the CPC, the High Court must be satisfied that the case involves not merely a question of law but a substantial question of law having a material bearing on the rights of the parties. A substantial question of law may arise where the legal position is debatable or unsettled. It may also occur in cases where statutory

³ Dinesh Kumar *v.* Yusuf Ali, (2010) 12 SCC 740.

⁴ Bharatha Matha *v.* R. Vijaya Renganathan, (2010) 11 SCC 483.

⁵ Hero Vinoth *v.* Seshammal, (2006) 5 SCC 545, ¶24.

provisions or binding precedents well settle the legal position. Still, the courts below have decided the matter by ignoring settled principles or by acting in direct contravention of them. In such cases, the substantial question of law arises not because the law is uncertain, but because the decision violates the settled position of law.⁶

16.6 Section 103 of the CPC enables the High Court, in a second appeal, to determine an issue of fact, provided the evidence on record is sufficient, in two contingencies: first, where an issue necessary for the disposal of the appeal has not been determined by the lower appellate court or by both courts below; and second, where such issue has been wrongly determined by reason of a decision on a question of law as referred to in Section 100 of the CPC.⁷

16.7 Section 103 does not operate as an exception to, or a substitute for, Section 100, but is intended to advance the same legislative purpose. The power under Section 103 CPC can be exercised only in exceptional circumstances and with circumspection. Before invoking this provision, the High Court must record a clear finding that the findings of fact recorded by the courts below are vitiated by perversity. In the absence of such a categorical finding, the exercise of power under Section 103 would fall outside the permissible limits of Section 100 of the CPC.⁸

17. Therefore, we examine whether the findings in the impugned judgment are based on reappreciation of evidence, or on a finding of misreading of evidence, wrong interpretation of documents, and reliance on inadmissible evidence, Exh. B-2.

⁶ Ibid.

⁷ *Sitaramji Badwaik v. Bisaram*, (2021) 15 SCC 234.

⁸ *Municipal Committee, Hoshiarpur v. Punjab SEB*, (2010) 13 SCC 216, ¶26.

18. The evidence of DW1 is important, and in chief examination the witness denied the Plaintiff's claims, stating that while the Plaintiff A-Schedule properties (Items 1 and 2) were purchased in the Plaintiff's name from their brother Mohandas, this was done solely due to Mohandas's insistence and the plaintiff's love and affection to assist DW1, who could not raise the full funds immediately. DW1 claimed he had originally entered into an agreement to sell with Mohandas for Rs.7 lakhs and paid an advance of Rs.1 lakh, and later the plaintiff provided Rs.6 lakhs to complete the purchase. Further, he has been in exclusive possession of the property since 1984, residing there with his family, and denied being merely a caretaker. Regarding Item 3, he claimed to have orally purchased it from the Plaintiff for Rs. 2 lakhs. That Plaintiff voluntarily prepared, signed, and notarised a PoA empowering him to sell the property and sent it to him. Furthermore, DW1 had settled all financial obligations to the Plaintiff by paying Rs.5,00,000/- on 20.12.2006 and Rs.6,00,000/- on 23.04.2007, for which the plaintiff signed receipts. Further, the Plaintiff's suit was an afterthought driven by ulterior motives, and he had sold the property to the 2nd and 3rd Defendants with full authority and with the Plaintiff's knowledge. The appreciation of the chief examination of DW-1 would not show the crucial aspect of clauses in Exh. B2.

18.1 During cross-examination, he admitted he did not know where the original PoA was. The cross-examination further reads that a witness named Muraleedharan retrieved the documents from the office of the Sub-registrar and handed the original POA to the Plaintiff's husband. He admitted that he had nothing to say as to why this significant fact was omitted from his pleadings. When confronted with a photocopy of the POA, he admitted that it lacked witness signatures and contained no notary endorsement. He

denied sending the draft PoA to the Plaintiff. Regarding the payment receipts, he admitted they were written in his own handwriting on the Plaintiff's husband's letterhead and were not stamped. He admitted he did not affix a revenue stamp to the receipts and justified it by saying the plaintiff was her sister. He admitted to filing a previous cheque case (CC No. 667/09) against a woman named K.K. Rajani, and that the accused in that case alleged that DW1 had forged her signature. Subsequently, DW1 withdrew the case as not pressed rather than pursuing it. He admitted that he continued to reside in the house on the property. That he did not accompany the buyer Sunil Kumar to register the subsequent sale of the property and did not know who currently possesses item no. 3. He admitted the house ownership in the Panchayat records were still in the name of plaintiff.

19. The crux of the matter depends on whether Exh. B-2 can be treated as documentary evidence warranting interpretation of the clauses and the alleged contradictions with Exh. A-3 and A-4. Exh. B-2 is a photocopy, or a mechanical copy, of the purported PoA. This, therefore, implies that Exh. B-2 is, at best, secondary evidence. Secondary evidence is evidence that proves the contents of an original document through a medium that is one step removed from the source. Section 63 of the Indian Evidence Act provides an exhaustive list of what constitutes secondary evidence. This includes certified copies, copies made from the original by mechanical processes ensuring accuracy, copies compared with such copies, counterparts of documents against parties who did not execute them, and oral accounts of the contents given by a person who has seen the document.

20. The broad parameters summarising the procedure to be followed for introducing secondary evidence are reiterated and read thus:

20.1 The fundamental principle of the Indian Evidence Act is that facts have to be established by primary evidence.⁹ Section 64 mandates that documents must be proved by primary evidence, which is considered the “best evidence”. Primary evidence is the rule, while secondary evidence is an exception admissible only in the absence of primary evidence. A party is generally required to produce the best evidence available; so long as the superior evidence (the original) is within a party's possession or reach, they cannot introduce inferior proof (secondary evidence).¹⁰

20.2 Before secondary evidence can be admitted, the party relying on it must lay a factual foundation. This involves two steps: First, the party must prove that the original document actually existed and was executed. Secondly, the party must establish valid reasons as to why the original cannot be furnished.¹¹

20.3 Secondary evidence is inadmissible until the non-production of the original is accounted for in a manner that brings the case within the specific exceptions provided in Section 65.¹² If the original itself is found to be inadmissible through failure of the party who files it to prove it to be valid, the same party is not entitled to introduce secondary evidence of its contents.¹³

20.4 Section 65 of the Evidence Act is exhaustive and states the specific circumstances under which secondary evidence is permissible. To introduce secondary evidence, a party must satisfy the conditions of one of the clauses (a) through (g) of Section 65.¹⁴

⁹ Jagmail Singh v. Karamjit Singh, (2020) 5 SCC 178. (Para 14)

¹⁰ Smt. J. Yashoda v. K. Shobha Rani (2007) 5 SCC 730.

¹¹ Ibid; Kaliya v. State of Madhya Pradesh, (2013) 10 SCC 758.

¹² H. Siddiqui (D) By Lrs. v. A. Ramalingam AIR (2011) SC 1492.

¹³ Smt. J. Yashoda v. K. Shobha Rani (2007) 5 SCC 730.

¹⁴

20.5 Further, admitting a document as secondary evidence does not automatically prove its contents. The secondary evidence must be authenticated by foundational evidence showing that the alleged copy is, in fact, a true copy of the original. For instance, if a party wishes to introduce a photostat copy, they must explain the circumstances under which the copy was prepared and who possessed the original at the time the photograph was taken.¹⁵

20.6 Mere admission of a document or making it an exhibit does not dispense with the requirement of proving it in accordance with the law. The court has an obligation to examine the probative value of the document and decide the question of admissibility before making an endorsement on the secondary evidence. If the foundational facts, such as the loss of the original or the explanation for its non-production, are not established, the court cannot legally allow the party to adduce secondary evidence.¹⁶

20.7 There is no requirement that an application must be filed to lead secondary evidence. While a party may choose to file such an application, secondary evidence cannot be ousted solely because no application was filed. It is sufficient if the party lays the necessary factual foundation for

Condition for Secondary Evidence	Statutory Clause	Type of Secondary Evidence Allowed
Adversary Possession	Section 65(a)	Any secondary evidence (after notice).
Written Admission	Section 65(b)	The written admission itself.
Loss or Destruction	Section 65(c)	Any secondary evidence.
Immovable Original	Section 65(d)	Any secondary evidence.
Public Document	Section 65(e)	Only a certified copy.
Law-Specified Document	Section 65(f)	Only a certified copy.
Voluminous Records	Section 65(g)	Testimony of a skilled examiner.

¹⁵ *Ashok Dulichand v. Madahavla Dube and Another* (1975) 4 SCC 664; *Chandra v. M. Thangamuthu*, (2010) 9 SCC 712.

¹⁶ *Rakesh Mohindra v. Anita Beri*, (2016) 16 SCC 483.

leading secondary evidence either in the pleadings or during the course of evidence.¹⁷

21. Therefore, the introduction of secondary evidence is a two-step process, wherein, first, the party must establish the legal right to lead secondary evidence, and second, they must prove the contents of the documents through that evidence. The twin requirements are conjunctive.

22. The High Court recorded a finding which is not challenged, that the PoA produced by the 1st Defendant is a notarised photocopy, and not the original document. The 1st Defendant is obligated to follow the procedure for adducing secondary evidence, and thereafter, claim presumption, if any, available to a document so adduced in evidence. It is axiomatic that secondary evidence is permissible only as an exception to the requirement of adducing primary evidence.

23. The case on hand falls within the meaning of mechanical copies. In law, the existence of Exh. B-2, in the absence of laying down a factual foundation and following procedure, ought to be ignored for the purpose of appreciating the 1st Defendant's claim on the power to alienate Plaintiff A-Schedule Property. It is apposite to refer to one of the views expressed by the First Appellate Court by examining the signature in Exh. B-2, and recording a finding against the plaintiff. It is axiomatic and fairly established by the authorities¹⁸ of this Court that courts should not by itself compare disputed signatures without the assistance of any expert, when the signatures with which the disputed signatures compared, are themselves not the admitted signatures. In our considered view, neither Section 33 of the Registration Act nor Section 85 of

¹⁷ Dhanpat v. Sheo Ram 2020 (16) SCC 209.

¹⁸ *O. Bharathan v. K Sudhakarana*, 1996 2 SCC 704.

the Evidence Act would come into application if the primary requirement of adducing secondary evidence is discharged by the party relying on the document. Section 85 of the Evidence Act falls under Chapter V, titled Documentary Evidence. In the absence of an original or at least a secondary evidence, it is impermissible to apply Section 85 of the Indian Evidence Act to conclude the execution and extent of authority given by the plaintiff to the 1st defendant. No order is brought to our notice through which secondary evidence is brought on record before the Trial Court. A photocopy of a document is no evidence unless the same is proved by following the procedure set out. Relying on Exh. B-2, the First Appellate Court acted on inadmissible evidence and accepted the existence of power to alienate. Exh. B-2/photocopy is no evidence, and the incorrect reliance on no evidence, has been rightly corrected by the High Court through the impugned judgment. The High Court has considered the misreading of evidence by the Appellate Court and, by applying the correct principles of law, allowed the second appeal.

24. Therefore, the Civil Appeal is without merit and is dismissed accordingly. No order as to costs. Pending application(s), if any, stand disposed of.

.....J.
[PANKAJ MITHAL]

.....J.
[S.V.N. BHATTI]

New Delhi;
February 06, 2026.