
CASE ANALYSIS: SURINDER KAUR V. MEHAL SINGH AND ORS. (2013)¹

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CITATION (SCC): 2013 SCC Online P&H 25417: (2014) 1 RCR (Civil) 467: (2014) 1 ICC 1033

CITATION (Manupatra): MANU/PH/3614/2013

COURT: High Court of Punjab and Haryana

CORAM: Paramjeet Singh, J.

DECIDED ON: 04.12.2013

INTRODUCTION

The admissibility of evidence depends on the credibility or probative value, and authenticity it holds. So, generally, evidences are categorised into primary and secondary evidence. Primary evidence is that hold a primary value, and standard, therefore, is the most preferred form of evidence to be presented in court, if proved to be genuine. But when primary evidence is not available with the presenter, then they seek permission to present secondary evidence. But admissibility of secondary evidence has various conditions that need to be fulfilled. Therefore, to understand those conditions and properties of secondary evidence, the present case analysis will provide insight into this subject matter.

FACTS OF THE CASE

The Petitioner earlier filed a civil suit before Civil Judge of trial court of Amritsar, for partition of property belonging to her deceased father, Dara Singh. She claimed that 1/7th share of that property belongs to her. But on other hand, the Respondents, who are sons of deceased, challenged the suit by relying on an existing “Will” dated 09.09.1992, that was executed by

¹ Surinder Kaur Vs. Mehal Singh and Ors. (2013) SCC OnLine P&H 25417 (India).

their father in their favour.

During pendency of the case at trial court, the Respondents filed an application under Section 65 of the Indian Evidence Act, 1872² (hereinafter referred to as IEA)(Sec. 60 of Bharatiya Sakshya Adhiniyam, 2023 (BSA))³, for seeking permission to prove the Will via ‘secondary evidence’, as they claimed that the original Will was misplaced and is not traceable, even after best efforts and the certified copy of the same has already been on record. The petitioners contested the claim made, alleging that the Will is a “forged and fabricated document” and was never made by deceased. No FIR or DDR (Daily Diary Register) have been presented before the court regarding loss of the Will.

The Trial Court, in this regard, after considering all aspects and pleadings, allowed the application on 01.08.2013, filed u/s 65 of IEA⁴. The Petitioner then approached High Court, filing a civil revision petition under Article 227 of Constitution of India⁵.

ISSUES

The High Court scrutinised the main legal questions that arose:

1. Under what circumstances Photostat Copy can be regarded as evidence?
2. Whether a photostat copy comes under ambit of ‘Secondary Evidence’ under Section 63 of IEA, 1872?
3. Whether the order of Trial Court by allowing secondary evidence by providing proof of loss and execution, is sustainable or not?

ARGUMENTS IN BRIEF

FOR PETITIONER:

The counsel for Petitioner contended that the Will is a ‘forged and fabricated document’, and the deceased has never executed that Will in favour of Respondents. Also, Respondents have

² The Indian Evidence Act, 1872, §65.

³ Bharatiya Sakshya Adhiniyam, 2023, §60.

⁴ Supra note 2.

⁵ India Const. art. 227.

duly failed to prove the existence and loss of original Will. Therefore, the certified copy of that Will cannot be admitted as secondary evidence unless authentication is done.

FOR RESPONDENTS:

The counsel for Respondents contended that it is 'prima facie proved' that the original Will is lost. Therefore, it should be permitted that photostat copy be produced as secondary evidence. The counsel also stated that strict proof of loss of Will is not required, but laying "foundation" in the application is sufficient, which is duly done by Respondents. Therefore, the impugned order is legal and shall be upheld.

JUDGMENT

The High Court "dismissed the revision petition and upheld the decision of the Trial Court" and laid down a few strict guidelines and clarified that the "Best Evidence Rule" (u/s 64 of IEA)⁶ (Sec. 59 of BSA)⁷ is a 'golden thread' that connects provisions of admissibility of evidence, and therefore, the contents of document must be proved by primary evidence. But a few exceptions to this rule are stated u/s 65 of IEA⁸.

The Court therefore held that:

1. Permitting the presentation of secondary evidence does not mean that it is the proof of the original document.
2. The Respondents still have to prove the existence and loss of the original Will.
3. The Petitioner have full opportunity to contest the claims made.
4. The Trial Court must identify the probative value of that photostat/certified copy independently, by considering established legal principles.

The reasoning of the Court was based on "accurate reflection of original document" to be accepted as secondary evidence, because the copy can be "manipulated, altered by accident or

⁶ The Indian Evidence Act, 1872, §64.

⁷ Bharatiya Sakshya Adhinyam, 2023, §59.

⁸ Supra note 2.

intentionally, or incorrectly processed”.

The **PRINCIPLES** led by the court in the present case are as follows:

- a) Photostat copy can only be presented in absence of original document.
- b) Foundational facts have to be laid by party who has to produce photostat, by providing proof of existence of original and is now lost or in possession of other party.
- c) Objections on non-existence of circumstances or foundational facts, must be highlighted at earliest by opposite party, after the copy is submitted in evidence.
- d) If other party raises objections with regards to authenticity of copy of document, then its authenticity should be determined by ascertaining fulfilment of requirements of Section 63(2)⁹.
- e) Merely permitting the production of copy as evidence, does not make it admissible. The probative value has to be examined independently, by showing that it is made from original at a specific place and time.
- f) If the copy seems suspicious, then the court should not rely on such copy, unless its authenticity and genuineness is satisfied by Court.
- g) Accuracy of the copy will be established on oath by person preparing such copy or can speak of its accuracy to satisfaction of court.

LEGAL REASONING & ANALYSIS

Under Section 63(2) of IEA¹⁰ (Sec. 58 of BSA)¹¹, which includes “copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy.” Despite the copy of Will fitting this description, the Court highlighted suspicions that can be raised, like manipulation, ‘cut and paste’, editing, etc.

Under Section 65 of IEA, the conditions for admissibility of secondary evidence state that they

⁹ The Indian Evidence Act, 1872, §63(2).

¹⁰ Supra note 7.

¹¹ Bharatiya Sakshya Adhinyam, 2023, §58.

are admissible if party to proceedings accounts for non-production of original document. Clause (a) of the provision states that “when the original document is with the adverse party”, and Clause (c) states that “when the original document is lost or destroyed.”

The Court in present case has relied on multiple other judgments like, *Smt. J. Yashoda v. Smt. K. Shobha Rani*¹², SC dealt with issue of admissibility of photocopy of document, whereby original was in possession of third party. It held that, due to non-compliance of the conditions under Section 65 of IEA¹³, it makes photostat copy inadmissible, because it is necessary to account for non-production of original document.

Other cases referred to were *H. Siddiqui (Dead) by LRs. v. A. Ramalingam*¹⁴, SC held that foundational evidence has to be presented in order to prove authentication of secondary evidence. In *Benga Behera v. Braja Kishore Nanda*¹⁵, wherein first respondent was at obligation to prove loss of original Will beyond reasonable doubt.

Therefore, the Court in present case held that “photostat copy of a document is not admissible as secondary evidence unless proved to be genuine or is admitted by opposite party.” And if the Court have allowed to treat a photostat as evidence, then it is open for parties to contest probative value.

CRITICAL ANALYSIS

The judgment highlights “Best Evidence Rule” under Section 64 of IEA¹⁶, which provides safeguard against any fraud. Giving primary importance to the original document, ensures that court have authentic and genuine proof of whatever the party has claimed. But court still mentions the cases where original document is lost or destroyed. Therefore, this judgment creates a balance between admissibility of secondary evidence and strict guidelines pertaining to same.

The court has rightly focused on problems associated with photostats. It noted that the copies can be “susceptible to purposeful or accidental alteration” through various means, because in today’s digital era, manipulation of documents is common. As court relied on *Ashok*

¹² Smt. J. Yashoda v. Smt. K. Shobha Rani, 2007 INSC 441 (India).

¹³ Supra note 2.

¹⁴ H. Siddiqui (Dead) by LRs. v. A. Ramalingam, (2011) 4 SCC 240 (India).

¹⁵ Benga Behera v. Braja Kishore Nanda, (2007) 9 SCC 728 (India).

¹⁶ Supra note 5.

*Dulichand v. Madhavlal Dube*¹⁷, dealt with clause (a) of S. 65 of IEA¹⁸, and upheld decision of High Court wherein “it recorded a finding that the photostat copy did not appear to be above suspicion and could not be admitted.” As the appellant failed to explain the circumstances under which photostat copy was prepared. “Thus, it was held that no foundation had been laid by the appellant for leading secondary evidence in the shape of the photostat copy.”

The ‘principle of natural justice’ has also been highlighted, because creating a difference between admissibility of secondary evidence and probative value of the same, showcases the equal opportunity provided to both parties to exercise their rights. If the court has allowed to produce secondary evidence (here, photostat of Will), then it gives equal right to the other party to rebut against it and its loss.

Recently, the present case has been relied in *P.C. Ananda Lakshmi vs. Sudha Rao and Ors.*¹⁹, With respect to admissibility of secondary evidence. The court cited the present case and stated that there should be a proper explanation for the absence of original document, to ensure authenticity of the copy. Also, in case of *State of Maharashtra vs. Pragyasingh Chandrapalsingh Thakur and Ors.*²⁰, the court referred to the principles laid down in present case regarding permitting production of secondary evidence. Similarly, in *Punjab State Warehousing Corporation vs. B.K. Chadha*²¹, court relied on principles because the issue was same in both cases, so, according to circumstances, the court held that secondary evidence (photocopy) cannot be admitted unless “foundational facts” have been established.

There are various other cases where present case has been referred. Therefore, the principles established by this case have played a vital role in shaping the aspect of admissibility of secondary evidence by ensuring genuineness of same. To establish it, the court requires foundational facts to be established and accuracy in production of copies. If allowed to present that copy as evidence, then it will not directly make it proof of original. If the court has some suspicion on copy, it may evaluate it deeply or refuse to rely on it. The emphasis on the aspects of forged or manipulated copy of a document, signifies the situations occurring in modern era that required immediate solution.

¹⁷ Ashok Dulichand v. Madhavlal Dube, (1975) 4 SCC 664 (India).

¹⁸ The Indian Evidence Act, 1872, §65(a).

¹⁹ P.C. Ananda Lakshmi v. Sudha Rao and Ors., (2024) SCC OnLine Kar 18087 (India).

²⁰ State of Maharashtra vs. Pragyasingh Chandrapalsingh Thakur and Ors., MANU/OT/0043/2025 (India).

²¹ Punjab State Warehousing Corporation vs. B.K. Chadha, MANU/PH/0898/2020 (India).

CONCLUSION

This case has provided an important interpretation of evidence law. To avoid strict application of law regarding original documents being lost, it has provided flexibility to it, along with certain safeguards that have to be undertaken by court before considering the presented evidence as admissible. By analysing this aspect through principles and statutory provisions, the case has provided insight where it is specified that in what cases the courts have to consider them as admissible and in what cases court can evaluate them deeply or completely deny to admit them. To check the probative value and establishment of foundational facts of evidence provides clear future guidelines for accurate evaluation of secondary evidences.