



IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH

CR-8079-2019 (O&M)

Sandeep Kumar

. . . . Petitioner

Vs.

Satpaul Malra and others

. . . . Respondents

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Gunjan Mehta , Advocate, for the petitioner.

Mr. Anuj Raura, Advocate,
for the respondents No. 1 & 2.

Service of respondent No. 3 dispensed with

Reserved on: 10.08.2026

Pronounced on: 11.08.2026

Pronounced fully/operative part: Fully

DEEPAK GUPTA, J.

The present revision petition has been filed by the plaintiff assailing the order dated 26.11.2019 (*Annexure P-13*) passed by the learned Civil Judge (Junior Division), Chandigarh, whereby the application filed by defendant No.1 under Section 65 of the Indian Evidence Act, 1872 (for short, 'the Evidence Act') has been allowed and defendant No.1 has been permitted to lead secondary evidence in respect of a purported property visit report relating to Flat No.2420, Category B, Pushpak-1, Sector 48-C, Chandigarh.

2. The dispute between the parties arises out of an agreement concerning the aforesaid flat. The plaintiff's case, as noticed in the impugned order, is that defendant Nos.1 and 2 received earnest money of ₹14 lakh without disclosing that the property had been mortgaged with M/s Chola mandalam Finance & Investment Co. Ltd. The defence, on the other hand, is that the plaintiff and his wife were aware of the mortgage and that the plaintiff's wife had herself verified the property, when the officials of the financial institution visited the flat.

The property visit report is sought to be relied upon by the defendant to establish such knowledge.

3. Assailing the impugned order, learned counsel for the petitioner has mainly contended that the document sought to be proved is merely a photocopy and that the defendant failed to establish the foundational facts necessary for permitting secondary evidence. It has further been submitted that the original report has neither been produced nor has its alleged destruction or loss been established in accordance with law.

4. The submission has merit. At the outset, it may be noticed that the mere relevance of a document is not sufficient to make its secondary evidence admissible. Section 64 of the Evidence Act incorporates the general rule that documents are to be proved by primary evidence, while Section 65 creates specific exceptions in which secondary evidence may be given. The conditions prescribed by Section 65 are required to be satisfied before secondary evidence of the contents of a document can be received.

5. Hon'ble Supreme Court in ***Smt. J. Yashoda v. Smt. K. Shobha Rani, (2007) 5 SCC 730***, after examining Sections 63 and 65 of the Evidence Act, held that the conditions prescribed under Section 65 must be fulfilled before secondary evidence can be admitted and that non-production of the original has first to be accounted for in a manner bringing the case within one of the contingencies contemplated by Section 65.

6. Likewise, in ***Ashok Dulichand v. Madahavlal Dube and another, (1975) 4 SCC 664***, the Supreme Court declined to permit secondary evidence where the party had failed to lay the requisite foundation, observing that the circumstances in which the photocopy had been prepared and the person in whose possession the original was at the relevant time had not been established.

7. Similarly, in ***Rakesh Mohindra v. Anita Beri and others, (2016) 16 SCC 483***, the Supreme Court reiterated that the party seeking to produce secondary evidence must establish the reason for non-production of the original and that, unless it is established that the original has been lost or destroyed, or is otherwise unavailable in circumstances contemplated by Section 65, secondary

evidence cannot be accepted. At the same time, the Court clarified that once secondary evidence is admitted, such admission by itself does not amount to proof of the genuineness, correctness or contents of the document.

8. Tested on the aforesaid principles, the impugned order cannot be sustained in its present form. The learned trial Court has observed that the photocopy of the property visit report was already on the judicial file and, therefore, according to it, the existence of the original stood proved. It has further noticed that the original was not available despite summoning a witness from Cholamandalam Finance & Investment Co. Ltd. and has thereafter concluded that the defendant was entitled to lead secondary evidence.

9. The reasoning, however, conflates existence of a photocopy with existence and subsequent loss or destruction of the original document. The two are conceptually distinct. The fact that a photocopy is available on the court file may, at the highest, establish the existence of the photocopy. It does not, by itself, establish that the photocopy was prepared from an original document, nor does it establish the circumstances in which the original ceased to be available.

10. Significantly, the defendant's own case, as noticed in the impugned order, was that after the loan liability had been discharged and the mortgage redeemed, Cholamandalam had allegedly destroyed the original property verification report and retained only its certified copy. However, the impugned order does not record any categorical finding, based upon the testimony of the concerned official or otherwise, that the original had in fact been destroyed, when it was destroyed, by whom, or in what circumstances. On the contrary, the order itself records the defendant's assertion in terms of what had "perhaps" happened to the original.

11. Mere non-availability of the original on the court file is also not synonymous with proof of its loss or destruction. Section 65 does not dispense with the requirement of establishing the circumstance, which permits departure from the normal rule of primary evidence. The party seeking such permission has to lay the requisite factual foundation.

12. The learned trial Court has also relied upon the proposition that a prayer to lead secondary evidence cannot be rejected merely because the opposite party alleges that the document is forged. There can be no quarrel with that proposition. However, that principle comes into play only after the statutory foundation for secondary evidence has been established. The question whether the document is genuine or forged is distinct from the anterior question i.e. whether its secondary evidence is legally admissible at all.

13. Similarly, the fact that the document is relevant to the defence cannot cure the failure to satisfy Section 65. The trial Court was certainly justified in observing that the document, if duly proved, may have a bearing upon the controversy regarding the plaintiff's alleged knowledge of the mortgage. But relevance and admissibility are different questions. The former cannot by itself establish the latter.

14. At the same time, this Court would not express any opinion at this stage regarding the genuineness, authenticity, contents or evidentiary value of the property visit report. Those questions have to be determined by the trial Court after the parties have led their evidence. Even where secondary evidence is permitted, its admission does not amount to proof of the document. This distinction has been expressly emphasised by the Hon'ble Supreme Court in ***Rakesh Mohindra's case (supra)***.

15. In the circumstances, the impugned order suffers from an error of law in permitting secondary evidence without recording a satisfactory finding regarding the foundational requirement contemplated by Section 65 of the Evidence Act.

16. Consequently, the present revision petition is allowed. The impugned order dated 26.11.2019 passed by the learned Civil Judge (Junior Division), Chandigarh, is set aside and the application filed by defendant No.1 under Section 65 of the Evidence Act is dismissed.

17. It is, however, clarified that this order shall not preclude defendant No.1 from moving a fresh application, if so advised, after laying the requisite factual foundation in accordance with law, particularly regarding the existence,

execution/authorship and loss or destruction/non-availability of the original document and the circumstances, which bring the case within any of the clauses of Section 65 of the Evidence Act. If such an application is filed, the same shall be considered independently, without being influenced by any observation made herein on the ultimate genuineness or evidentiary value of the document.

18. The trial Court shall thereafter proceed with the suit in accordance with law.

19. Revision petition stands disposed of in the above terms. Any pending application(s), if any , also stand disposed of.

11.08.2026

Vivek Pahwa

**(DEEPAK GUPTA)
JUDGE**

Whether speaking/reasoned:-

Yes

Whether reportable:-

Yes

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