



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 17903/2025

- 1 Kamlesh W/o Tekchand, Aged About 38 Years, Resident Of Patel Nagar, 2126/2N/6 R, Gali No. 3, Near Patel Nagar Railway Station, Central New Delhi, Presently Resident Of Opposite Panchayat Samiti, Ward No. 5, Virat Nagar, District Jaipur (Raj.)
- 2 Kunal Son Of Tekchand, Aged About 17 Years, Minor Through Natural Guardian Mother, Resident Of Patel Nagar, 2126/2N/6 R, Gali No. 3, Near Patel Nagar Railway Station, Central New Delhi, Presently Resident Of Opposite Panchayat Samiti, Ward No. 5, Virat Nagar, District Jaipur (Raj.)
- 3 Kanika D/o Tekchand, Aged About 19 Years, Resident Of Patel Nagar, 2126/2N/6 R, Gali No. 3, Near Patel Nagar Railway Station, Central New Delhi, Presently Resident Of Opposite Panchayat Samiti, Ward No. 5, Virat Nagar, District Jaipur (Raj.)

----Petitioners/Plaintiffs

Versus

- 1 Pappu Saini Son Of Dedaram Saini, Resident Of Opposite Panchayat Samiti, Ward No. 5, Virat Nagar, District Jaipur (Raj.)
- 2 Geeta Devi W/o Pappuram Saini, Resident Of Opposite Panchayat Samiti, Ward No. 5, Virat Nagar, District Jaipur (Raj.)
- 3 Smt. Kesari Devi, W/o Chothuram Mali
- 4 Lalluram, Son Of Chouthram
- 5 Indraj, Son Of Chouthram
- 6 Phoolchand, Son Of Chouthram
- 7 Jadav, D/o Chouthuram
- 8 Para D/o Chouthuram,
Respondent/defendant No. 3 To 8 Are Resident Of Opposite Panchayat Samiti, Ward No. 5, Virat Nagar, District Jaipur (Raj.)
- 9 Sultan Son Of Ghisa, Resident Of Ward No. 5, Teka Ki Dhani, Viratnagar, Tehsil Viratnagar, District Jaipur (Raj.)





- 10 Sub Registrar, Office Of Sub Registrar, Virat Nagar, District Jaipur (Raj.)
- 11 Tehsildar, Tehsil Virat Nagar, District Jaipur (Raj.)
- 12 State Of Rajasthan, Through District Collector, Jaipur (Raj.)
- 13 Assistant Engineer, Vidyut Vitran Nigam Limited, Virat Nagar, District Jaipur (Raj.)

-----Respondents/Defendants

Connected With

S.B. Civil Writ Petition No. 15604/2025

- 1 Kamlesh W/o Tekchand, Aged About 38 Years, Resident Of Patel Nagar, 2126/2N/6 R, Gali No. 3, Near Patel Nagar Railway Station, Central New Delhi, Presently Resident Of Opposite Panchayat Samiti, Ward No. 5, Virat Nagar, District Jaipur (Raj .)
- 2 Kunal Son Of Tekchand, Aged About 17 Years, Minor Through Natural Guardian Mother, Resident Of Patel Nagar, 2126/2N/6 R, Gali No. 3, Near Patel Nagar Railway Station, Central New Delhi, Presently Resident Of Opposite Panchayat Samiti, Ward No. 5, Virat Nagar, District Jaipur (Raj .)
- 3 Kanika D/o Tekchand, Aged About 19 Years, Resident Of Patel Nagar, 2126/2N/6 R, Gali No. 3, Near Patel Nagar Railway Station, Central New Delhi, Presently Resident Of Opposite Panchayat Samiti, Ward No. 5, Virat Nagar, District Jaipur (Raj .)

-----Petitioners/Plaintiffs

Versus

- 1 Pappu Saini Son Of Dedaram Saini, Resident Of Opposite Panchayat Samiti, Ward No. 5, Virat Nagar, District Jaipur (Raj .)
- 2 Geeta Devi W/o Pappuram Saini, Resident Of Opposite Panchayat Samiti, Ward No. 5, Virat Nagar, District Jaipur (Raj.)
- 3 Smt. Kesari Devi, W/o Chothuram Mali
- 4 Lalluram, Son Of Chouthram
- 5 Indraj, Son Of Chouthram





- 6 Phoolchand, Son Of Chouthram
- 7 Jadav, D/o Chouthuram
- 8 Para D/o Chouthuram,
Respondent/defendant No. 1 And 2 Are Resident Of
Opposite Panchayat Samiti, Ward No. 5, Virat Nagar,
District Jaipur (Raj .)
- 9 Sultan Son Of Ghisa, Resident Of Ward No. 5, Teka Ki
Dhani, Viratnagar, Tehsil Viratnagar, District Jaipur (Raj .)
- 10 Sub Registrar, Office Of Sub Registrar, Virat Nagar, District
Jaipur (Raj.)
- 11 Tehsildar, Tehsil Virat Nagar, District Jaipur (Raj .)
- 12 State Of Rajasthan, Through District Collector, Jaipur
(Raj.)
- 13 Assistant Engineer, Vidyut Vitran Nigam Limited Virat
Nagar, District Jaipur (Raj .)

----Respondents/Defendants

For Petitioner(s) : Mr. Gajendra Singh Rathore with
Ms. Neetu Mathur

For Respondent(s) : Mr. Z.A. Naqvi, Sr. Adv. assisted by
Mr. Sehban Naqvi,
Ms. Rabiya Mateen
Mr. Sahil Khan

HON'BLE MR. JUSTICE BIPIN GUPTA

Judgment

Reportable

Date of hearing and conclusion of arguments	01.04.2026
Date on which the judgment was reserved	01.04.2026
Whether the full judgment or only the operative part is pronounced	Full Judgment
Date of pronouncement	10.04.2026

1. Since the present writ petitions arise from a common suit, both the petitions have been heard together and are being decided by this Common Judgment.





2. The writ petition bearing No. S.B. Civil Writ Petition No.15604/2025 has been filed assailing the order dated 11.02.2025, passed by the learned Civil Judge, Virat Nagar, District Jaipur (Kotputli-Behror) in Civil Suit No.15/2019, whereby the application filed by the plaintiffs-petitioners seeking permission to lead secondary evidence in respect of the agreement to sell dated 12.03.2003, which was only available as a photocopy, has been rejected.

3. The writ petition bearing No. S.B. Civil Writ Petition No.17903/2025 has been filed assailing the order dated 26.08.2025, passed by the learned Civil Judge, Virat Nagar, District Jaipur (Kotputli-Behror) in Civil Suit No.15/2019, whereby the application filed by the plaintiffs-petitioners under Sections 35 and 37 of the Rajasthan Stamp Act, 1998 (hereinafter referred to as 'the Act of 1998') for impounding the agreement to sell dated 12.03.2003 and for sending the same for payment of appropriate stamp duty has been dismissed.

4. The controversy arises from the fact that the suit was filed by the plaintiffs-petitioners for specific performance of the agreement to sell dated 12.03.2003. The plaintiffs were neither in possession of the original document nor any certified copy thereof, and only had a photocopy of the said document. Accordingly, the petitioners initially filed an application seeking permission to lead secondary evidence of the agreement to sell dated 12.03.2003. The learned Trial Court dismissed the said application, holding that the plaintiffs were seeking to lead secondary evidence on a document which was insufficiently stamped and, therefore, inadmissible in evidence. The plaintiffs-petitioners challenged the





order dated 11.02.2025 by filing S.B. Civil Writ Petition No. 15604/2025.

5. Thereafter, the petitioners filed an application under Section 35 read with Section 37 of the Act of 1998, seeking a direction that the agreement to sell dated 12.03.2003 be impounded and sent to the competent authority for the purpose of payment of appropriate stamp duty, so as to render it admissible under the provisions of the Act of 1998. However, the said application was dismissed by the learned Trial Court on the ground that a photocopy, in the absence of the original document, cannot be impounded. Consequently, the application was rejected vide order dated 26.08.2025, which is under challenge in S.B. Civil Writ Petition No. 17903/2025.

6. Learned counsel for the petitioners, making submissions in both the writ petitions, contends that the petitioners ought to be permitted to lead secondary evidence of the document, as the original is not in their possession. It was submitted that the original document is with the Electricity Department. It was further submitted that the existence of the document has been sufficiently established, and therefore, the petitioners should be allowed to adduce the photocopy in secondary evidence.

7. Learned counsel for the petitioners further submits that once the existence of the document has been established, the photocopy thereof can also be impounded and sent to the competent authority for the purpose of payment of requisite stamp duty, so as to render it admissible under the provisions of the Act of 1998. Accordingly, it was prayed that the orders dated 11.02.2025 and 26.08.2025 passed by the learned Trial Court be





quashed and set aside, and that the agreement to sell dated 12.03.2003 be permitted to be impounded and sent to the competent authority for payment of stamp duty. Upon such payment, the petitioners may be permitted to lead the said document in secondary evidence.

8. Learned counsel for the plaintiffs-petitioners relied upon the following judgments to buttress his arguments:

(i) **Ferani Hotels Pvt. Ltd. vs State Information Commissioner Greater Mumbai & Ors.**; 2019 (14) SCC 504.

(ii) **Mr. Katike Bheem Shankar vs Mrs. T. Laxmi @ Punyavathi & Ors.**; Civil Revision Petition No. 1944/2022 (Decided on 20.12.2022) {High Court of Telangana, Bench Hyderabad}.

(iii) **Datti Kameswari vs Singam Rao Sarath Chandra & Anr.**; AIR 2016 Hyderabad 112.

9. Per contra, learned counsel for the respondents submits that the agreement to sell dated 12.03.2003 is a forged and fabricated document, and that no such agreement was ever executed. He further submits that if the petitioners believe that the original agreement to sell dated 12.03.2003 is in the custody of the Electricity Department, they are at liberty to obtain a certified copy of the same under the Right to Information Act, 2005 (hereinafter referred to as 'RTI Act').

10. Learned counsel for the respondents further contends that, if necessary, the relevant record may be summoned from the Electricity Department. He submits that the petitioners' contention





that the original agreement to sell dated 12.03.2003 is with the Electricity Department is incorrect.

11. Learned counsel for the respondents also submits that any document obtained under the RTI Act, which is itself prepared from a photocopy, cannot be permitted to be adduced as secondary evidence. He submits that only such copies obtained under the RTI Act which are reproduced through a mechanical process directly from the original document may be admissible as secondary evidence. Therefore, he contends that the original document dated 12.03.2003 is neither with the Electricity Department nor with any other authority, and reiterates that the said agreement to sell is false and fabricated.

12. Learned counsel for the respondents further submits that it is a settled principle of law that a mere photocopy of a document, without proof of the existence and execution of the original, cannot be admitted as secondary evidence. He also submits that if a photocopy of a document is insufficiently stamped, the same cannot be impounded by the Court. It is argued that the power of impounding under the law applies only to original documents, and not to photocopies. Accordingly, he submits that the learned Trial Court has rightly rejected the petitioners' application for leading secondary evidence vide order dated 11.02.2025, and has also rightly dismissed the application for impounding the document vide order dated 26.08.2025, without committing any illegality.

13. Learned counsel for the respondents further submits that the learned Trial Court has neither committed any illegality nor any perversity so as to warrant interference by this Court in exercise





of its supervisory jurisdiction under Article 227 of the Constitution of India.

14. Learned counsel for the respondents relied upon the following judgments to buttress his arguments:

(i) **Tharammel Peethambaran and Anr. Vs T. Ushakrishnan and Anr.**; 2026 INSC 134.

(ii) **Shankar Lal vs The Civil Judge (Junior Division), Shahpura and Ors**; 2006 RRD 495.

(iii) **Manorama Srivastava and Ors. vs Saroj Srivastava**; AIR 1989 All 17.

(iv) **Champa Lal vs Panna Lal**; 1951 RLW 258

(v) **Gordhan Lal Agarwal vs Mali Ram Modi and Anr**; 2013 (1) DNJ (Raj.) 451

(vi) **Nihal Singh vs Singh Ram and Ors.**; RLR 1989 (1) 384.

(vii) **Ram Pratap vs Nar Singh Lal**; RLR 1990 (1) 339.

(viii) **Sher Khan vs Jitender and Anr.**; Misc. Criminal Case No.5484 of 2024 (Decided on 26.04.2024){High Court of Madhya Pradesh, Bench Indore}.

(ix) **Durga Shankar Bareth vs Shayam Lal**; S.B. Civil Writ Petition No.5511/2021 (decided on 19.09.2022) {Rajasthan High Court, Bench Jaipur}.

15. Heard learned counsel for the parties and perused the material available on record.

16. The core issue that arises for consideration before this Court is that whether a photocopy document which is insufficiently stamped can be impounded under Section 35 of the Act of 1998





and whether a photocopy document if not sufficiently stamped can be permitted in secondary evidence.

17. Section 35 of the Act of 1998 clearly provides that an instrument chargeable with duty shall not be admitted in evidence for any purpose unless it is duly stamped. The bar contained in the provision is absolute in nature, subject only to the exception that such a document may be admitted upon payment of proper duty along with penalty.

18. In the present case, admittedly, the agreement dated 12.03.2003 which is insufficiently stamped has been sought to be lead in secondary evidence. The application to impound the agreement as well as to exhibit the same in evidence was preferred by the plaintiffs-petitioners. However, it is a settled position of law that a photocopy of the insufficiently stamped and unregistered agreement cannot be permitted in secondary evidence.

19. It is a settled proposition of law that what cannot be done directly cannot be permitted to be done indirectly. If the original document itself is inadmissible in evidence for want of proper stamps and is insufficiently stamped, its secondary evidence cannot be admitted to circumvent the statutory bar. The admissibility of a document is a condition precedent to its mode of proof. Only after a document is found admissible in law does the question of proving it, whether by primary or secondary evidence, arise.

20. Therefore, an insufficiently stamped document, being inadmissible in evidence, cannot be looked into even in the form of secondary evidence unless the defect of stamp duty is first





cured in accordance with law. The said position of law has been reiterated by the Hon'ble Apex Court in the case of ***Hariom Agrawal vs. Prakash Chand Malviya*** ; AIR 2008 SC 166, wherein the Court has categorically held that the bar contained under Section 35 is absolute in nature and operates at the threshold stage of admissibility. It has further been held that unless the defect of stamp duty is cured, the document cannot be acted upon or admitted in evidence. Further, a Co-ordinate Bench of this Court, in the case of ***Narendra Kumar Shrivastava & Anr. vs Shri Radhakrishna***; S.B. Civil Writ Petition No. 1612/2014 (decided on 21.08.2017), while relying on the case of ***Hariom Agarwal*** (supra), held as under:

"While in Hariom Agarwal (supra), a Bench of three Hon'ble Judges of the Supreme Court considering admissibility of the document which was not properly stamped in evidence held that instrument not properly stamped was not admissible as evidence and that a photocopy of original instrument cannot be admitted in evidence. It was a case wherein the appellant and respondent executed an agreement whereby landlord tenanted the shop to appellant on payment of advance amount. Respondent filed suit on the ground of bonafide requirement. Appellant produced a photocopy of agreement which was admitted as secondary evidence in the trial court. On appeal, the High Court held that photocopy of agreement cannot be admitted as evidence and that such a document can neither be impounded nor accepted in secondary evidence. In the





appeal filed against the judgment of the High Court, the Apex Court held that Photostat copy which was produced as secondary evidence did not show that on the original agreement proper stamp duty was paid and that copy of instrument cannot be validated by impounding and this cannot be admitted as secondary evidence. Referring to Section 35 of the Indian Stamp Act, 1988 it was held that the document which was not properly stamped shall not be admitted in evidence and the appeal was dismissed."

21. Keeping in view, the settled position of law, this Court is of the firm opinion that secondary evidence in respect of a photocopy of an insufficiently stamped document is not permissible in the eyes of law.

22. Furthermore, the plaintiffs-petitioners have sought to rely upon a photocopy of the agreement, allegedly obtained from the Electricity Department under the RTI Act. Under Section 65 of the Indian Evidence Act, 1872, secondary evidence may be given of the existence, condition, or contents of a document only when foundational requirements are satisfied, such as:

- existence of the original document,
- its execution, and
- valid reasons for non-production of the original.

23. A bare perusal of the record reveals that the plaintiffs-petitioners have failed to establish the existence and execution of the original agreement in a legally acceptable manner, the custody and loss or unavailability of the original document, and that the photocopy is a true and faithful reproduction of the original. The





Hon'ble Supreme Court in the case of **Tharammel Peethambaran** (supra) has reiterated that mere production of a photocopy does not *ipso facto* make it admissible as secondary evidence. The party must lay proper foundational facts regarding the existence, execution, and loss or non-availability of the original document. Further, impounding under the Act of 1899 is contemplated with respect to an 'instrument'. A photocopy does not answer the description of an instrument capable of being impounded. Therefore, in absence of the original document, the question of impounding does not arise. The relevant paragraph of **Tharammel Peethambaran** (supra) is reproduced as under:

24. 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. 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).

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.

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. 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.

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.

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.

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.

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

25. Moreover, a photocopy of a document does not automatically become admissible merely because it has been obtained through official channels. The evidentiary value of such a copy remains subject to strict proof. When the original document itself is neither produced nor proved to be in existence, and the authority from which the copy is obtained does not possess the original, such a photocopy cannot be treated as reliable secondary evidence. A photocopy of a photocopy, lacking proper foundational proof, does not satisfy the requirements of admissibility and cannot be permitted to be lead in secondary evidence.

26. The contention of the plaintiffs-petitioners that the learned Trial Court ought to have impounded the document also does not advance their case. Impounding presupposes the production of an original instrument or at least a document capable of being acted upon under the Act of 1998. However, in the present case, what





has been produced is merely a photocopy. A photocopy cannot be impounded in the absence of the original instrument.

27. In view of the above discussion, this Court is of the considered opinion that an insufficiently stamped document is inadmissible in evidence unless proper stamp duty and penalty are paid. Such a document cannot be admitted even in the form of secondary evidence to bypass the statutory bar. Further, the photocopy document cannot be impounded under the 35 of the Act of 1998 by the Court.

28. The learned Trial Court has rightly appreciated the legal position and has not committed any jurisdictional error in passing the impugned orders dated 11.02.2025 and 26.08.2025. Consequently, both the present writ petitions being devoid of merit are hereby **dismissed**.

29. Pending applications, if any, stands disposed of.

(BIPIN GUPTA),J

Sudha/