

RAJASTHAN HIGH COURT

Shankar Lal

Vs.

Civil Judge (Jr. Division)

C.W.P. No. 8166 of 2005

(Prem Shanker Asopa, J.)

15.04.2006

ORDER

Prem Shanker Asopa, J.

1. By the instant writ petition the petitioners plaintiffs seek to challenge the order dated 13-5-2005 passed by the Civil Judge (Jr. Division), Shahpura (*Jaipur*) whereby their application for leading secondary evidence as per Sections 63 and 65 of the Evidence Act read with Section 151 Civil Procedure Code has been rejected.

2. Briefly stated the relevant facts of the case are that the petitioners- plaintiffs instituted a suit for declaration and permanent injunction against respondent Nos. 2 to 5 in respect of the plot of land situated in Manoharpur, District Jaipur delineated in read color in the map annexed to the plaint. The case of the plaintiffs is that they and their predecessors owned and possessed the plot in dispute since 1929 but when the defendants attempted to make encroachment over the plot in question, to carry out some construction thereon and further collusively obtained allotment letter from the *Municipal Board, Manoharpur* in respect of the plot in question, the plaintiffs filed a civil suit for declaration and cancellation of the alleged allotment letter issued by the *Municipal Board, Manoharpur* and sought restrain order by way of permanent injunction to restrain the defendants from interfering with the possession of the plaintiffs over the plot in dispute.

3. The defendants filed written statement wherein they have denied the averments of the plaint, claiming their right, title and interest over the plot in dispute. They have further claimed their possession. The trial Court framed issues and posted the suit for evidence of the plaintiffs.

4. The plaintiffs filed documents in support of their case and one of the document was writing of Samvat year 1986 corresponding to English calendar year 1929 whereby the predecessor of the plaintiffs-petitioners purchased the land from erstwhile owner for valuable consideration. The plaintiffs further averred that when the original document

was lost while travelling from Shah- pura to *Jaipur*, a paper publication was made on 9-3-2003 and the same has not been traced out so far. Therefore, they have filed the photocopy of the same duly attested by Notary Public.

5. The plaintiffs filed an application under Sections 63 and 65 of the Evidence Act read with Section 151 Civil Procedure Code for leading secondary evidence in respect of photocopy of the aforesaid document of 1929.

6. The defendants-respondents have pleaded that the said photocopy of the document is forged and have opposed the application that the same was not registered and was insufficiently stamped. Therefore, the document was inadmissible in evidence and no secondary evidence can be led.

7. The trial Court after hearing both the parties, gave a finding that in the writing of Posh Budi 13 Samvat 1986 (corresponding to English Calendar year 1929), the value of the described property is more than Rs. 100, therefore, the said writing was required to be registered and properly stamped and the objection of the plaintiffs that 1 Rs. stamp was sufficient, was rejected and ultimately it was held that since the original writing was unstamped and unregistered and no justified reason has been given for not filing the original writing before the Court, therefore, no permission for leading secondary evidence can be granted. The relevant portion of the order of the trial Court is as follows:-

(Vernacular matter omitted...Ed.)

8. The submission of the counsel for the petitioners-plaintiffs is that the *Jaipur* Stamp Act came into force on 1st March, 1927 and the document in question being an instrument of conveyance witnessing sale of immovable property for consideration of Rs. 1,351/- fell under entry No. 13 of Schedule I of the *Jaipur* Stamp Act. The stamp duty payable was Rs. 5 for every 500/- or part thereof. Thus, the document in question was insufficiently stamped but the said position of law leads to another question whether the photocopy of document being insufficiently stamped was admissible in evidence under the Rajasthan Stamp Act, 1998 (for short 'the Act of 1998) which came into force on 27-5-2004 on impounding of the same under Section 37 of the Act of 1998 and realization of deficit stamp with penalty. Thereafter the same may be admitted in evidence.

9. As regards registration, the submission of the counsel for the petitioners is that the *Jaipur* Registration Act, 1944 repealed Hidayats. The *Jaipur* Registration Act, 1944 required compulsory registration of instrument of conveyance, transferring immovable property if the consideration was Rs. 100/- or more. The Hidayats of calendar year 1929 have not been made available by the parties and looking to the legislative history pertaining to registration of instrument, the parties proceed on the assumption that the document in question was compulsorily registrable under the Hidayats then in force.

The Hidayats were repealed by the *Jaipur* Registration Act, 1944 which came into force on 8-2-1944 and the *Jaipur* Registration Act continued to be in force till the Registration Act, 1908 was extended to the whole of India except the State of Jammu and Kashmir by Act No. 3 of 1951. Presently also, the said Act is in force in the State of Rajasthan. In such circumstances, the counsel for the petitioners has submitted that as per proviso of Section 49 of Indian Registration Act, unregistered document can be received in evidence for collateral purposes. Section 49 of the *Jaipur* Registration Act is *pari materia* with the Indian Registration Act, therefore, the judgments in respect of the Indian Registration Act will apply. In support of the aforesaid submissions, Mr. Agrawal, counsel for the petitioners placed reliance on *Bondar Singh and others v. Nihal Singh and others*,¹

10. The submission of the counsel for the respondents is that the petitioners -plaintiffs have not mentioned this fact of purchase of land from Thikana Shahpura in the calendar year 1929 through lease deed in their suit, therefore, the document in question is forged. No FIR has been lodged for lost of the original and further there was no evidence to show that on the date of attestation original was in existence. The entire story that the document was lost and paper publication made, was concocted to lead secondary evidence. In support of the aforesaid submissions, the counsel for the respondents has cited a judgement of this Court in *Mangilal v. Purshottam and Ors.*,² according to which secondary evidence can only be led when the circumstances and conditions under Section 65 of the Evidence Act are satisfied for giving secondary evidence.

11. On merit the submission of the counsel for the respondents is that as per Section 29 of the *Jaipur* Stamp Act which came into force on 1-3-1927, no instrument chargeable with duty shall be admitted in evidence for any purpose by any person by law or consent of the parties to receive evidence and further the same was insufficiently stamped as per Entry No. 13 of Schedule-I. As regards registration, it is submitted by the respondents that this transaction relates to the calendar year 1929, therefore, Hidayat No.22 relating to the registration is applicable. The erstwhile *Jaipur* State has enacted the *Jaipur* Registration Act, 1944 by repealing Hidayat No. 22 vide Section 93 of the Act.

12. I have gone through the record of the writ petition and further considered the rival submissions of the parties.

13. The relevant Section 2(14) of the Indian Stamp Act, 1899 of the definition of instrument, Section 3(12) of the *Jaipur* Stamp Act, Sections 17(1)(b) and 49(c) of the *Jaipur* Registration Act, 1944, Section 49 of the Registration Act, 1908, Section 29 of the *Jaipur* Stamp Act along with Entry No. 13 of Schedule I, Section 91 of the Rajasthan Stamp Act, 1998 and Section 65 of the Evidence Act are as under :-

Section 2(14) of the Indian Stamp Act, 1899 :

2(14) Instrument.- "Instrument" includes every document by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded;

Section 3(12) of the *Jaipur* Stamp Act :

3(12). "Instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded.

Section 17(1)(b) of the *Jaipur* Registration Act, 1944 :

17(1) The following documents shall be registered, if executed on or after the date on which this Act comes into force, namely-

(a)

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property."

Section 49(c) of the *Jaipur* Registration Act, 1944 :

"49. No document executed after passing of this Act and required by Section 17 or by any provision of the *Jaipur* Transfer of Property Act, 1944 to be registered shall,

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered.

Provided that an unregistered document affecting immovable property and required by this Act or the *Jaipur* Transfer of Property Act, 1944 to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of *Jaipur* Specific Relief Act, 1943 or as evidence of part performance of a contract for the purpose of Section 63-A of the *Jaipur*

Transfer of Property Act, 1994 or as evidence of any collateral transaction not required to be effected by registered document."

Section 49 of the Registration Act, 1908 :

49. No document required by Section 17 (or by any provision of the Transfer of Property Act, 1882 (4 of 1882) to be registered shall-

(a) Affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power,

Unless it has been registered :

(Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (1 of 1877), or as evidence of part-performance of a contract for the purposes of Section 53-A of the Transfer of Property Act, 1882 (4 of 1882), or as evidence of any collateral transaction not required to be effected by registered instrument.)

Section 29 of the *Jaipur* Stamp Act along with Entry No. 13 of Schedule I :

"29. No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer unless such instrument is duly stamped.

13. Conveyance (as defined by Section 3(8) not being a transfer charged or exempted under (No. 33)

(a) transferring property situated outside *Jaipur* City.

Where the amount of value of the consideration for such conveyance as set forth therein does not exceed Rs. 50.Eight annas.

Where it exceeds Rs. 50, but does not exceed Rs. 100.One rupee.

Where it exceeds Rs. 100, but does not exceed Rs. 1000.One per cent.

and for every Rs. 500, or part thereof in excess of Rs. 1000.Five rupees.

(b) transferring property situated within *Jaipur* City-

where the amount or value does not exceed Rs. 10.Eight annas.

where the amount or value exceeds Rs. 10, but does not exceed Rs. 20.One rupee and eight annas.

where the amount or value exceeds Rs. 20, but does not exceed Rs. 50.Two rupees and eight annas.

Where the amount or value exceeds Rs. 50, but does not exceed Rs. 100.Rupees five.

For every Rs. 50, or fraction thereof above Rs. 100.Two rupees and eight annas.

Section 91 of the Rajasthan Stamp Act of 1998 :

91. Repeal and Savings.- (1) The Indian Stamp Act, 1899, as adapted in Rajasthan under the Rajasthan Stamp Law (Adaptation) Act, 1952 (Act No. 7 of

1952), except in so far as it relates to documents specified in entry 91 of List I in the Seventh Schedule to the Constitution of India, is hereby repealed and the provisions of the Rajasthan General Clauses Act, 1955 (Rajasthan Act 8 of 1955), shall apply to such repeal :

Provided that the repeal hereby shall not affect,-

(i) any right, title, obligation or liability already acquired, accrued or incurred or anything done or suffered;

(ii) any legal proceeding or remedy in respect of any such right, title, obligation or liability; under the provisions of the enactment hereby repealed and any such proceeding may be instituted, continued and disposed of and any such remedy may be enforced as if this Act had not been passed.

(2) Any appointment, notification, notice, order, rule or form made or issued under the enactment hereby repealed shall be deemed to have been made or issued under the provisions of this Act, in so far as such appointment, notification, notice, order, rule or form is not inconsistent with the provisions of this Act and shall continue in force unless and until it is superseded by an appointment, notification, notice, order, rule or form made or issued under this Act."

Section 65 of the Evidence Act :

65. Cases in which secondary evidence relating to documents may be given.- Secondary evidence may be given of the existence, condition or contents of a document in the following cases :-

(a) when the original is shown or appear to be in the possession or power- of the person against whom the document is sought to be proved; or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it,

and when, after the notice mentioned in Section 66, such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect produce it in reasonable time;

(d) when the original is of such a nature as not to be easily moveable;

(e) when the original is a public document within the meaning of Section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in (India) to be given in evidence;

(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

14. On the basis of the pleadings of the parties and the provisions referred and quoted herein above, the following questions emerge for consideration of this Court :

(1) Whether when the original document is inadmissible in evidence on account of insufficiently stamped and unregistered conveyance of sale, secondary evidence can be allowed.

(2) In case the aforesaid question is answered in negative, then whether a photocopy of the unstamped and unregistered document can be considered for the purpose of impounding the document and further considered for the collateral purposes.

(3) Whether the circumstances and conditions of Section 65 of the Evidence Act permit them to give secondary evidence for the present writing of the year 1929.

15. Before answering the aforesaid questions with reference to the facts of the present case, I would first like to refer the legal position settled by this Court and Supreme Court in this regard. In the year 1951 in the case of *Champalal v. Pannalal*, reported³ in this Court had considered the question of leading secondary evidence of lost document executed on unstamped or insufficiently stamped paper and has held that in case it is insufficiently stamped, then its contents cannot be proved by secondary evidence. The relevant portion of para 2 of which is as follows :-

"2. It is settled law that the contents of a document which is required to be executed on a stamp, if not stamped or is insufficiently stamped cannot be proved by secondary evidence. (*The Rajah of Bobbili v. Inuganti China Sitarasami Guru*).⁴ It is the original document which, if unstamped or

insufficiently stamped, can be validated by payment of stamp duty and penalty under Section 35 of the Stamp Act. If such document is lost, the penalty cannot be levied. Section 65 of the Evidence Act which permits production of secondary evidence in respect of lost documents presupposes that but for one or two more of the barriers to its production stated in the section, the document would have been capable of proving its contents under Section 64 of the Evidence Act."

(Emphasis supplied)

16. As regards unregistered document and secondary evidence, this Court in the case of *Sawa v. Kuka*, ⁵ considered the legal aspect of leading of secondary evidence in case of a unregistered document and has held that the law is well settled that if the original document is inadmissible in evidence owing to its being unstamped or unregistered, secondary evidence is inadmissible. The relevant portion of para No. 2 of the aforesaid judgment is as follows :-

"2.The law is well settled that if the original document is inadmissible in evidence owing to its being unstamped or unregistered, secondary evidence is inadmissible vide *Janardhan Kashinath v. Janardhan Vishwanath*, ⁶ Evidence Act presupposes that but for one or more of the barriers to its production stated in the section, the document would have been capable of proving its contents under Section 64 read with Section 62. It would, therefore, be a manifest absurdity to hold that secondary evidence may be given to establish a fact, proof whereof by primary evidence is forbidden. Under no circumstances can secondary evidence be admitted as a substitute for inadmissible primary evidence."

(Emphasis supplied)

17. Hon'ble the Supreme Court has held in the case of *Jupudi Kesava Rao v. Pulavarthi Venkata Subbarao*, reported in ⁷ that the definition of instrument given under Section 2(14) of the Stamp Act, 1899 which is *pari materia* to Section 3(12) of the *Jaipur* Stamp Act that the instrument does not cover photocopy of the document for the purposes of Stamp Act and no secondary evidence is admissible in a suit. Para Nos. 13 and 14 of the aforesaid judgement are as follows :-

"13. The first limb of Section 35 clearly shuts out from evidence any instrument chargeable with duty unless it is duly stamped. The second limb of it which relates to acting upon the instrument will obviously shut out any secondary

evidence of such instrument, for allowing such evidence to be let in when the original admittedly chargeable with duty was not stamped or insufficiently stamped, would be tantamount to the document being acted upon by the person having by law or authority to receive evidence. Proviso (a) is only applicable when the original instrument is actually before the Court of law and the deficiency in stamp with penalty is paid by the party seeking to rely upon the document. Clearly secondary evidence either by way of oral evidence of the contents of the unstamped document or the copy of it covered by Section 63 of the Indian Evidence Act would not fulfill the requirements of the proviso which enjoins upon the authority to receive nothing in evidence except the instrument itself. Section 35 is not concerned with any copy of an instrument and a party can only be allowed to rely on a document which is an instrument for the purpose of Section 35. 'Instrument' is defined in Section 2(14) as including every document by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded. There is no scope for inclusion of a copy of a document as an instrument for the purpose of the Stamp Act.

14. If Section 35 only deals with original instruments and not copies Section 36 cannot be so interpreted as to allow secondary evidence of an instrument to have its benefit. The words "an instrument" in Section 36 must have the same meaning as that in Section 35. The legislature only relented from the strict provisions of Section 35 in cases where the original instrument was admitted in evidence without objection at the initial stage of a suit or proceeding. In other words, although the objection is based on the insufficiency of the stamp affixed to the document, a party who has a right to object to the reception of it must do so when the document is first tendered. Once the time for raising objection to the admission of the documentary evidence is passed, no objection based on the same ground can be raised at a later stage. But this in no way extend the applicability of Section 36 to secondary evidence adduced or sought to be adduced in proof of the contents of a document which is unstamped or insufficiently stamped."

(Emphasis supplied)

18. Again the Rajasthan High Court in the case of *Dr. Shiv Kant Pandey v. Ishwari Singh*, reported in ⁸ had an occasion to consider the earlier judgment of this Court in *Champalal v. Pannalal* (supra). The relevant portion of para No. 19 of the judgement

of *Dr. Shiv Kant Pandey v. Ishwari Singh* (supra) is as follows :-

"19. The law on the point may be crystallized thus that a party seeking leave to prove the contents of a document must first establish (1) the existence of documents, and (2) its admissibility. Where the original document is inadmissible as being not duly stamped secondary evidence of its contents cannot be allowed to be received."

(Emphasis supplied)

19. The judgment of the Supreme Court in *Bondar Singh v. Nihal Singh* (AIR 2003 Supreme Court 1905) (supra), relied by Mr. Agrawal, the counsel for the petitioners, in para No. 5 of the aforesaid judgement the execution of unstamped and unregistered sale deed was admitted in the sense its execution is not in dispute. The only defense set up against the said document was that it was unstamped and unregistered, therefore, it cannot convey title to the land in favor of the plaintiffs. There is no reference in the entire judgment to the effect that the said sale deed was a photocopy of the sale deed. Further there is also no reference that an application for allowing to lead secondary evidence was filed. Therefore, it appears that in the said judgment the original sale deed dated 9-5-1931 was on record but here in the instant case, the question is of leading of secondary evidence in respect of unstamped and unregistered sale deed even for collateral purpose, which was not the issue before the Supreme Court. The relevant portion of para No. 5 of the aforesaid judgment is as follows :-

"5. The main question, as we have already noted, is the question of continuous possession of the plaintiffs over the suit lands. The sale deed dated 9-5-1931 by Fakir Chand, father of the defendants in favor of Tola Singh, the predecessor-in-interest of the plaintiffs, is an admitted document in the sense its execution is not in dispute. The only defense set up against the said document is that it is unstamped and unregistered and, therefore, it cannot convey title to the land in favor of the plaintiffs. Under the law a sale deed is required to be properly stamped and registered before it can convey title to the vendee. However, legal position is clear law that a document like the sale deed in the present case, even though not admissible in evidence, can be looked into for collateral purposes. In the present case the collateral purpose to be seen is the nature of possession of the plaintiffs over the suit land. The sale deed in question at least shows that initial possession of the plaintiffs over the suit land was not illegal or unauthorized."

(Emphasis supplied)

20. This Court in the case of *Rahim Bux v. Illahi Bux*, reported in ⁹ while considering the earlier judgment of this Court in *Sawa v. Kuka* (AIR 1951 Rajasthan 66) (supra) and *Lachhmi Narain v. Kalyan*, ¹⁰ has held that when primary evidence of unregistered document is receivable for collateral purpose then secondary evidence of unregistered document is permissible and admissible for collateral purpose when condition for receiving such evidence exists. In the said case only question of unregistered mortgage deed was involved and there was no question of deficit stamp duty. Para No. 8 of the aforesaid judgment is as follows:-

"8. It will be observed from the above that in spite of the mortgage document being inoperative for want of registration the same can be availed of for the purpose of showing the character and nature of possession, if the possession has been transferred under the document. When the question of possession is to be considered the intention of the person holding the possession would be relevant. Once the primary evidence of an unregistered document is receivable for the collateral purpose of proving the nature of the possession and with what intention the possession was held then if the necessary conditions for adducing secondary evidence of such document exist when I should think the secondary evidence of the document for the self-same purpose namely, that of showing the nature and character of the possession and with what intention the possession was held can be adduced. The learned District Judge has, therefore, reached the correct conclusion."

(Emphasis supplied)

21. Secondary evidence of unregistered document was allowed for collateral purpose of showing the nature and character of the possession.

22. In *Mangilal v. Purshottam and others* (supra), this Court has held that the circumstances and condition prescribed under Section 65 of the Evidence Act for permitting the secondary evidence must be satisfied. The relevant para No. 8 of the aforesaid judgment is as follows :-

"8. In the instant case the plaintiff petitioner failed to show and also does not appear that the original document dated 27-2-1979 is in possession or power of the defendants. The defendants have not admitted in return the existence, conditions and contents of the document concerned. On the contrary, the defendants came with specific case that the document sought to be placed on

record to give secondary evidence is forged and fabricated document. The application preferred by the plaintiffs under Section 65 of the Act of 1872 apparently does not satisfy the circumstances and conditions for permitting them to give secondary evidence."

(Emphasis supplied)

23. Here in the instant case, there is no mention of the said document of the year 1929 in the plaint and further no FIR was lodged for loss of the same and the case of the defendants-respondents is that the same is forged.

(1) Whether when the original document is inadmissible in evidence on account of insufficiently stamped and unregistered conveyance sale, secondary evidence can be allowed to prove title:

24. There is no dispute between the parties that as per the law in existence in the calendar year 1929 when the aforesaid transaction was reduced in writing for transfer of immovable property, it was required to be stamped as per Entry No. 13 of Schedule I of the *Jaipur* Stamp Act, which came into force on 1-3-1927 and the same is not stamped as per the said Act. Further the said document was also required to be compulsorily registered but the same was not registered under Hidayat No. 22 and *Jaipur* Registration Act, 1944. Under the Stamp Law of *Jaipur* Stamp Act, the definition of instrument under Section 3(12) and the definition of instrument under Section 2(14) of the Indian Stamp Act, 1899 is same. As per the provision of law existed at the relevant time, the document in question was required to be stamped and compulsorily registered but the same is insufficiently stamped and unregistered, therefore, in view of the aforesaid position of law, settled in *Champala v. Pannalal* (supra); *Sawa v. Kuku* (AIR 1951 Rajasthan 66) (supra); *Jupudi Kesava Rao v. Pulavarthi Venkata Subbarao* (AIR 1971 Supreme Court 1070) (supra) and *Dr. Shiv Kant Pandey v. Ishwari Singh* (AIR 1997 Rajasthan 155) (supra) that when the original is inadmissible in evidence and no secondary evidence can be allowed to be led. Therefore, in my view, the trial Court has not committed any kind of error in rejecting the application for leading secondary evidence to prove title.

(2) In case the aforesaid question No. 1 is answered in negative, then whether a photocopy of the unstamped and unregistered document can be considered for the purpose of impounding the document and further considered for the purpose of seeing the collateral purposes :

25. There is difference with regard to the admissibility of a unstamped and unregistered document of sale of immovable property, unless the original document unstamped or insufficiently stamped is impounded and deficit stamp duty is paid with penalty, the same cannot be taken in evidence. The photocopy of the unstamped or insufficiently stamped document also cannot be impounded in view of the aforesaid judgement of the Supreme Court in *Jupudi Kesava Rao v. Pulavarthi Venkata Subbarao* (AIR 1971 Supreme Court 1070) (supra). The definition of instrument under Section 2(14) of the Indian Stamp Act, 1899 will cover original instrument and not the photocopy of the instrument. The said definition is *pari materia* with the definition of instrument under Section 3(12) of the *Jaipur* Stamp Act. Therefore, under no circumstance a photocopy of the unstamped document can be admitted in evidence but as regards unregistered document, the original of which can be seen for the collateral purposes, then secondary evidence of unregistered document is admissible for collateral purposes as held by this Court in *Rahim Bux v. Illahi Bux* (AIR 1973 Rajasthan 294) (supra) wherein earlier judgements of this Court in *Sawa v. Kuka* (AIR 1951 Rajasthan 66) (supra) and *Lachhmi Narain v. Kalyan*, ¹¹ have been considered on the ground that once primary evidence of unregistered document is receivable for collateral purpose of proving nature of possession, then after necessary condition for adducing secondary evidence of such document exists then the same can be taken.

26. The question No. 2 is answered in the manner that in case photocopy of the document insufficiently stamped cannot be impounded under any circumstances but for unstamped and unregistered document, secondary evidence can be allowed to be adduced for collateral purposes.

27. Mr. R. K. Agrawal, the counsel for the petitioners has also submitted that the provisions of subsequent enactments on the subject be also considered but in my view, the present case is required to be decided on the basis of the relevant provisions which were in existence at the time of execution of the document. Otherwise also, the Indian Stamp Act, 1899 and *Jaipur* Stamp Act which came into force on 1-3-1927 are similar on the legal issues raised in this writ petition and further the provisions of *Jaipur* Registration Act, 1944 and the Indian Registration Act, 1899 are also similar on the legal issues raised in the writ petition.

28. As regards the applicability of the Rajasthan Stamp Act, 1998, proviso to Section 91 refer that the repeal shall not affect (i) any right, title, obligation or liability already

acquired, accrued or incurred or anything done or suffered and (ii) any legal proceeding or remedy in respect of any such right, title, obligation or liability, is not applicable for the reason that the civil suit was filed in the year 1993 and registered as Civil Suit No. 28/1993.

(3) Whether the circumstances and conditions of Section 65 of the Evidence Act permit them to give secondary evidence for the present writing of the year 1929.

29. The trial Judge has considered the fact that the alleged writing and 'patta' issued by Thilkana Shahpura has not been mentioned in the plaint. He also considered that no justification has been given for not filing the original writing. Otherwise also, the defendants have come out with the categorical case that the document in question is forged and the entire story has been concocted to lead secondary evidence. In these facts and circumstances, the present photocopy of the document does not satisfy the requirement of Section 65 of the Evidence Act, therefore, I agree with the findings of the trial Judge.

30. The question No. 3 is answered in the manner that photocopy of the document in question does not satisfy the circumstances and conditions for leading secondary evidence under Section 65 of the Evidence Act.

31. In view of the above, the contentions of the counsel for the petitioners are rejected and the contentions of the counsel for the respondents are accepted as indicated above.

32. Resultantly, the trial Judge has not committed any kind of error in passing the order dated 13-5-2005 and the Court has further acted within its parameters. Therefore, no interference is called for under Article 227 of the Constitution of India.

33. In the result, the writ petition fails and the same is hereby dismissed with no order as to costs.

Petition dismissed.

Cases Referred.

1. (2003) 4 SCC 161: (AIR 2003 SC 1905)
2. 2006 (2) RDD 629 (Raj)
3. 1951 RLW 258
4. 26 I.A. 262
5. AIR 1951 Rajasthan 66,
6. AIR 1927 Nag 214: (101 IC 839). Section 65

7. AIR 1971 SC 1070
8. AIR 1997 Raj 155
9. AIR 1973 Raj 294
10. AIR 1960 Raj 1
11. AIR 1960 Raj 1