

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,  
SEDAM

**PRESENT:**

Sri SAGAR GURUGOUDA PATIL  
B.A., LL.B(Spl.)  
Senior Civil Judge & JMFC, Sedam

Dated: 12.02.2026.

**O.S. No.49/2022**

Plaintiff/s :  
Vijaykumar  
(Smt/Sri V.J.M. Advocate)

VS

Defendant/s :  
Poornima and Another  
(D.1 Smt/Sri S.S.A. Advocate)  
(D.2 Smt/Sri T.V.P. Advocate)

**RANK IN IA 15**

Poornima : Applicant/s/Deft.No.1

VS

Vijaykumar : Opponent/s/plaintf.

i.	Provision under which the application is filed	U/Sec.63 & 65 of Indian Evidence Act/Sections 58 and 60 of BSA
ii	Relief sought for	Suit for specific performance of contract
iii	The date on which the application is filed	18-07-2025
iv	Number of application	One

v	The date on which the objections are filed by different opponents	01-08-2025
vi	The date on which the orders were passed on the said application	12-02-2026

**ORDERS ON IA 15**  
**Under Sec.63 and 65 of Indian Evidence Act/Sec.58 and 60 of BSA**

The defendant No.1 has filed this application under Order Sec.63 and 65 of Indian Evidence Act/Sec.58 and 60 of BSA and sought to permit defendant No.1 lead secondary evidence of document dated: 28.12.2020 i.e., attested notarized copy of agreement of sale.

2. The SPA holder of defendant No.1 has sworn to an affidavit and support of IA and stated that the defendant NO.1 has produced document dtd: 28.12.2020 which is material document pertaining to the suit property. The document is necessary to prove the case of the defendant No.1. The said document is attested copy of agreement of sale executed by both defendants No.1 and 2. The original of agreement of sale dtd: 28.12.2020 is with defendant No.2 and this defendant is having attested copy. The defendant No.2 deliberately did not produce the original document. Therefore it is just and necessary to permit the defendant No.1 to give secondary evidence of the document dtd: 28.12.2020. Hence, prays to allow the I.A.

3. The defendant No.2 has filed objections to I.A. and denied the entire contents of the affidavit filed in support of the I.A. She has submitted that the defendant No.1 and her husband came to house of this defendant with one typed and notarized agreement of sale to get it signed by the defendant No.2. After verifying agreement of sale the defendant No.2 refused to put her signature stating that the consideration amount shown in the document is not agreement upon. On perusal of the document the defendant No.2 came to know that the signature of her husband on the document is forged one and one of the witnesses. Since the defendant No.2 did not agree to put her signature on the document datd: 28.12.2020 the defendant No.1 and her husband went back stating that they will bring another agreement of sale. The defendant No.2 never visited the notary nor she put her signature on the alleged document. The defendant No.1 and her husband took photo copy of alleged notarized agreement of sale dtd: 28.12.2020 and put signature of defendant No.2 by way of forgery on the said document and got it notarized by the Notary.

4. The agreement of sale produced by defendant No.1 is not a true extract of the original. In the original agreement of sale the defendant No.2 did not sing the said document and the document produced by defendant No.1 bears forged signature of defendant No.2. The application is not maintainable in th eyes of law. Hence, prays to dismiss

the I.A.

5. On the basis of the above facts the following points arise for my consideration:

1) Whether the defendant No.1 has made out a grounds to lead secondary evidence of the document i.e., agreement of sale dtd: 28.12.2020?

2) What order?

6. Perused the records. Heard arguments.

7. My answer to the above points are as under:

1) IN THE NEGATIVE.

2) AS PER THE FINAL ORDER

for the following:

### **REASONS**

8. **POINT No.1**: It is the case of defendant No.1 that the defendant No.1 has produced document dtd: 28.12.2020 which is material document pertaining to the suit property. The document is necessary to prove the case of the defendant No.1. The said document is attested copy of agreement of sale executed by both defendants No.1 and 2. The original of agreement of sale dtd: 28.12.2020 is with defendant No.2 and this defendant is having attested copy. The defendant No.2 deliberately did not produce the original document. Therefore it is just and necessary to permit the defendant No.1 to give secondary evidence of the document

dtd: 28.12.2020.

9. The defendant No.2 has submitted that the defendant No.1 and her husband came to house of this defendant with one typed and notarized agreement of sale to get it signed by the defendant No.2. After verifying agreement of sale the defendant No.2 refused to put her signature stating that the consideration amount shown in the document is not agreement upon. On perusal of the document the defendant No.2 came to know that the signature of her husband on the document is forged one and one of the witnesses. Since the defendant No.2 did not agree to put her signature on the document dtd: 28.12.2020 the defendant NO.1 and her husband went back stating that they will bring another agreement of sale. The defendant No.2 never visited the notary nor she put her signature on the alleged document. The defendant No.1 and her husband took photo copy of alleged notarized agreement of sale dtd: 28.12.2020 and put signature of defendant No.2 by way of forgery on the said document and got it notarized by the Notary.

10. She has further submitted that the agreement of sale produced by defendant No.1 is not a true extract of the original. In the original agreement of sale the defendant No.2 did not sign the said document and the document produced by defendant No.1 bears forged signature of defendant No.2. The application is not maintainable in the eyes of law.

11. Before touching the factual matrix of the case it is desirable to know the meaning of secondary evidence. Section 63 of Indian Evidence Act deals with secondary evidence, which reads as under;

**63.** Secondary evidence. Secondary evidence means and includes-

- (1) certified copies given under the provisions hereinafter contained";
- (2) copies made from the original by mechanical processes which in themselves ensure the accuracy of of the the copy, and copies compared with such copies;
- (3) copies made from or compared with the original;
- (4) counterparts of documents as against the parties who did not execute them;
- (5) oral accounts of the contents of a document given by some person who has himself seen it.

#### Illustrations

- (a) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.
- (b) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.
- (c) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence, but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original
- (s) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

The provisions of Sec.65 of Indian Evidence Act deals with the cases in which secondary evidence may be given, which reads as under;

**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 appears 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, 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 movable,  
(e) when the original is a public document within the meaning of section

(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.

On careful perusal of the provisions of above sections 63 and 65 it becomes clear that the defendant No.1 has to show that the document produced by the defendant No.1 i.e., attested notarized copy of agreement of sale dtd: 28.12.2020 is photo copy of the original and the original is with defendant No.2.

12. In this case the defendant No.1 has contended that the defendant No.1 and 2 entered into agreement of sale dtd: 28.12.2020 and both put their signatures on the said document and its original is with defendant No.2 and its attested notarized photo copy is with him. On the other hand the defendant NO.2 has contended that the document produced by defendant NO.1 is not photo copy (True extract of the original) of the original agreement of sale dtd: 28.12.2020 as the original produced by her is not signed by her but the alleged photo copy bears the forged signature of defendant No.2. The learned senior counsel for the defendant No.2 has argued that the alleged document is not photo copy of the original and hence the question of giving secondary evidence of the document the original of which is not in existence does not arise.

13. In view of the above rival contentions this court find it just and necessary to refer the recent decision of the Hon'ble Supreme Court in the case of Tharammel Peethambaran and Another Vs. T. Ushkrishnan and Another (SLP (C)) No.11868/2024 dated: 06.02.2026, wherein the

Hon'ble Supreme Court at para 20 of its judgment held as under;

*20. The below parameters summarising the procedure to be followed for 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 65.12 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.*

*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*

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

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

14. In view of the above principle of law in the instant case it is to be examined that whether the defendant No.1 is able to prove that original document actually existed and

was executed and whether the secondary evidence i.e., photo copy of agreement of sale dtd: 28.12.2020 is authenticated by foundational evidence showing that the alleged copy is, in fact, a true copy of the original. The defendant No.1 has produced photo copy of agreement of sale dtd: 28.12.2020 and the same bears alleged signatures of defendant No.1 and 2. On the other hand the defendant No.2 has produced original agreement of sale dtd: 28.12.2020 and on perusal of the same this court find that the defendant No.2 did not sign the document. On perusal and comparison of the original produced by the defendant No.2 and the photo copy produced by defendant No.1 it is found that the document sought to be produced as secondary evidence is photo copy of the original except the variation that the photo copy is signed by defendant No.2 and original is not signed by defendant No.2. The same makes it clear that original itself was not executed by defendant No.2 and the original document itself is not in existence. When the original document itself was not executed and it is not in existence the question of having its photo copy does not arise.

15. The defendant No.1 has contended that she herself and defendant No.2 executed the agreement of sale dtd: 28.12.2020 and original with defendant No.2 and photo copy is with her. The defendant No.2 has produced the original the same revealed that the original document was

not at all executed (Signed) by defendant No.2. The same goes to show that the defendant No.1 has failed to prove that the original was executed and it is in existence and the photo copy is true and original extract of the original. Therefore, in view of the above principle of law laid down by the Hon'ble Supreme Court in this case the alleged notarized photo copy of unregistered agreement of sale dtd: 28.12.2020 sought to be given in evidence as secondary evidence is not admissible in evidence as it is not the true copy of the original and the existence of original is not proved. Hence, I answer point No.1 in the Negative.

16. **POINT No.3**: For the foregoing reasons, the following:

### **ORDER**

The application filed by the defendant No.1 under Sec.63 and 65 of Indian Evidence Act/Sec.58 and 60 of BSA is hereby dismissed with costs.

(Dictated to the Stenographer directly on computer, the same revised, corrected and pronounced in the open court on this the **12<sup>th</sup> day of February 2026**)

(SAGAR GURUGOUDA PATIL)  
Senior Civil Judge & JMFC, Sedam.