

Order No. 84, Dated 23.12.2025

Today is fixed for passing order in respect of petition dated 11/06/2025 filed by the plaintiff.

Both the parties file the representative Hazira's through their Ld. Advocates.

Defendant file written objection against the instant petition.

Ld. Advocate of the plaintiff submitted before this Court that plaintiff have already filed two certified copy of sale deed before this Court and both of them are kept with the record as 'X' and 'Y' for identification and according to the plaintiff both the deeds should be marked as Exhibit as per proposition of law without call for the volume book from the Registrar office and plaintiff has already took initiative to call for the volume from the Registrar office but in reply the concerned informed that both the volume books of the alleged deeds are misplaced and in this circumstances the plaintiff prayed before this Court to mark those two deeds as Exhibit otherwise this plaintiff will suffer loss.

Ld. Advocate of the defendant raised strong objection and submitted that when the Registrar office has already informed that the volume book of both the deeds are misplaced why not the plaintiffs try again to call for the volume book from the Registrar office and he also submitted before this Court that production of certified copy of a document does not prove the execution of the document and mere registration does not prove the execution of the deed and he cited AIR 1955 Cal 398 59 CWN 757 as reference. The defendant submitted that in his defence the defendant contended that the alleged deed of gift was never acted upon and the plaintiff has never got the possession of the suit property on basis of any deed so the execution of the original deed must be proved by the plaintiff but the plaintiff did not file the original deed of gift before this Court and intentionally try to avoid to call for the volume of the said alleged deeds before this Court and as per law the execution of the deeds can not be proved by the certified copy of deeds and prayed for the rejection of the instant petition.

Heard & considered.

Perused the case record and it transpires that plaintiffs has filed this suit for a decree of declaration of the ½ share of the suit property and he claimed that his mother namely Nityabala Dasi had purchased the property from Bhutram Das and Muchiram Das and after that she executed one deed of gift infavour of the plaintiff and the defendant and the plaintiff got ½ share of the suit property and the defendant got ½ share of the suit property and according to the plaintiff he is not such a knowledgeable person in respect of the property matter and the original deeds kept in the custody of the defendant and now the defendant is denying the plaintiff's right, title, interest and possession in the ½ portion of the suit property and to prove plaintiff's title over the suit property plaintiffs filed the certified copy of the two deeds before this Court and both the deeds are kept with the record as 'X' and 'Y' for identification. In between two deeds one is sale deed and another is gift deed and by this gift deed the plaintiff derived the title of the ½ portion of the suit property. As per law to proof his title the plaintiff has to proof the execution of the deeds by the attesting witness and for this the original is need to be presented before this Court but plaintiff contended that original is within the custody of

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the defendant. **Section 60 of Bharatiya Sakshya Adhiniyam , 2023** says the situation when secondary evidence of any document may be given and one of the ground of stated in the section is when the document is in possession of the other party. The plaintiff alleged that the two deeds are in the possession of the plaintiff and so the certified copy of the two deeds must be Exhibited from the side of the plaintiff. In this present case, the plaintiff claimed the title of the ½ portion of the suit property on the basis of the two alleged deeds and the plaintiff could not shift his burden to prove his documents by stating that the documents are not in his possession. Moreover,the plaintiff has to prove the execution of the two deeds by which he derived the title of the ½ portion of the suit property and to prove the execution of the said deeds the original deeds must be produced before this Court. There fore , if it is not possible for the plaintiff the he has to call for the Volume Books of those two deed before this Court to proof the genuineness of the execution of the two deeds because the defendant is challenging the execution of the two deeds and not the contents. According to **Section 60 of Bharatiya Sakshya Adhiniyam , 2023** , it is the discretion of the Court , when it allows the secondary evidence in respect of any document and in this present case the plaintiff has to substantiate his case by his own to established his contention and this Court opined that the plaintiff should call for the Volume book of the two alleged deeds before this Court to establish his case. Hence, it is

ORDERED

that the petition dated 11/06/2025 filed by the plaintiff be and the same is hereby rejected on contest.

Next date **29.01.2026** for evidence of **P.W. 4 .**

D/c by me

Civil Judge Jr. Div Additional
Court, Garhbeta.