

IN THE HIGH COURT OF BOMBAY AT GOA
SECOND APPEAL NO.151 OF 2013

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| 1. | Shri Mahalaxmi Shikshan Samiti,
A Society registered under the
Societies Registration Act, 1860,
Having its Head Office at Honda,
Sattari, Goa,
Represented by its Chairman,
Shri Pratapsingh M. Nimbalkar,
Major of age,
Resident of House No.1876,
Desai Nagar, Sankhali-Goa |]
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| 2. | Shri Pratapsingh M. Nimbalkar,
Major of age,
Resident of House No.1876,
Desai Nagar, Sankhali- Goa |]
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| 3. | Smt.Shashikala K. Rane,
widow of Krishnarao Rane,
major of age, housewife,
resident of Saleli,
Honda, Sattari, Goa |]
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- .. Appellants**

VERSUS

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| 1. | Shri Manikrao Krishnarao Dessai,
Major of age,
Residing at "Shram-Safaly"
Khadpaband, Ponda-Goa. |]
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| 2. | Shri Venkatesh Desai,
Major of age,
Resident of Honda-Tisk,
Honda, Sattari, Goa. |]
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| 3. | Shri Mahalaxmi Shikshan Samiti
A society registered under the
Societies Registration Act, 1860,
Having its Head Office at Honda, |]
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Sattari, Goa,]
 Represented by its Managing]
 Committee.] .. Respondents

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Mr.J. Godinho, Advocate for the Appellants.

Mr.Shivan Desai, Advocate for the Respondent No.1.

Mr.J.A.Lobo, Advocate for the Respondent No.2.

Ms.M. Viegas, Advocate for Caveator.

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CORAM : BHARATI DANGRE, J.

RESERVED ON : 05th MARCH, 2021
PRONOUNCED ON : 08th APRIL, 2021

JUDGMENT :-

1. On 04/12/2014, the present appeal was admitted, by framing the following substantial question of law.

“Whether the reliance by the First Appellate Court on the document marked at Exhibit 76 is erroneous when the contents of such document were not proved and such document was exhibited in the cross examination of PW 1 which is not permissible in law in the facts of the case?”

2. The said substantial question of law has its foundation in the judgment and decree passed by the District Court, North Goa at Panaji in Regular Civil Appeal No.159 of 2011, which has partly decreed the suit in favour of the plaintiffs.

3. ‘Shri Mahalaxmi Shikshan Samiti’ is a society registered under the Societies Registration Act, 1860 and one Mr.Manikrao Krishnarao Dessai in the capacity as Chairman

of the above society, filed a suit for declaration, permanent injunction and other consequential reliefs. The society, being registered on 30/12/1975 in the office of the Registrar of Societies of the Goa, Daman and Diu, pleaded to have been formed for organizing and conducting Marathi Medium Schools and High Schools as well as to establish libraries and study circles with a perspective of enabling learners to develop their personality and imbibed in them a sense of responsibility.

4. The society compartmentalised its members in four distinct categories; (a) Members elevated from the public with high moral and cultural values, (b) Patrons who becomes members by donating Rs.500/- or more to the 'Society', (c) Life Members donating Rs.125/- or more to the 'Society' and (d) Associated Members, on payment of Rs.10/- as admission fee and annual contribution of Rs.6/- only. The bye-laws contemplated that the persons desirous of becoming society members shall apply in writing in the prescribed form and the membership should be proposed by one member and seconded by two associate members, enjoying full rights. It also contemplated payment of prescribed admission fee and the first annual contribution, which only will make him eligible to be enlisted as member of the society and then he would be bound to abide by the rules governing the said society. The Executive Body of the 'Society' as per bye-laws comprised of a Chairman, a Secretary and a Treasurer, who will be assisted by three more Members. The tenure of the Executive Committee was fixed as three years, but permitted its extension. Plaintiff No.1-Society, founded a school known as 'Honda High School'

in village Honda in Taluka Sattari, which is governed by the Goa School Education Act, 1984. Plaintiff No.2 is enrolled as Patron Member of the society on 10/02/1982 alongwith other 5 members. In the subsequent years, more members were admitted, bringing the total number of members to 13. In the General Body meeting of the society held on 23/4/1982, new Committee of 7 members came to be elected as Executive Committee and plaintiff No.2-Manikrao Desai being its Chairman and Mr.Krishnarao Rane being its Vice Chairman. The minutes of the meeting were annexed with the plaint.

5. On 6/8/1982, a change was effected in the constitution of the Managing Committee and Mr.Krishnarao Rane was made a Chairman whereas plaintiff No.2 become the Vice Chairman. Thereafter the elections to the Executive Committee were not held for a considerable period of time, as a consequence, Mr.Krishnarao Rane continued to be the Chairman of the society. A General Body meeting of the Society was held on 30/06/2006 and the registration of the Society was resolved to be renewed and further, the new Executive Body of the Society for a period of 3 years to be constituted. It is this meeting, which later on happened to be the bone of contention between the parties, the version of the plaintiffs being in the said meeting 2 members on evincing their intention to join the Society as Associate Members were introduced. This included, Mr.Pratapsingh Nimbalkar (defendant No.1), who is son-in-law of Mr.Krishnarao Dessai and one Mr.B.D.Dessai, who is the father-in-law of the son of Mr.Krishnarao Dessai. It is pleaded by the plaintiff that it was resolved to admit two of them as

permanent members of the Society, subject to the stipulation that the membership fee should be paid by them in the accounts of the Society. The plaint pleaded that in a meeting held on 30/5/2006, Mr.B.D.Dessai, Mr.Pratapsing Nimbalkar and Mrs.Shashikala Rane, wife of Mr.Krishnarao Rane were allowed to participate, though she was never admitted as Member of the Society nor has preferred any application as such. Not only this, Mr.B.D.Dessai and Mr.Pratapsingh Nimbalkar came to be purportedly elected as Members of the Executive Committee. Since they had not paid the necessary fees in terms of the resolution, the plaintiffs averred that their participation in the affairs of the Society is null and void. The plaint then proceed to state that the said persons continued to pose as Members of the Society and held themselves as Members of the Executive Committee under the cover of protection of Mr.Krishnarao Dessai. In the meeting of the Society held on 3/10/2007, Mr.Krishnarao Rane declared that he was not keeping good health and unable to carry out the responsibilities and duties of the post of Chairman and requested plaintiff No.2 to officiate as Chairman. This was consented to by all the Members but the allegation is, Mr.Krishnarao Rane got himself relieved from precarious situation created by him on account of mismanagement of the affairs of the Society and that is how, he stepped down. He is alleged to have expired on 06/11/2007 and the members of the Society objected to the illegal interference by the defendants and other non-members in the affairs of the Society.

6. In the meeting, which was convened on 28th November,

2007 to pay condolence on demise of Krishnarao Rane, it was verified that 12 members had duly paid their fees, but the defendant and one S.Tendulkar, who were falsely representing themselves as members were not in fact enrolled as members as their names did not feature in the Register of Members and they were asked to produce evidence, failing which they were liable to be declared as non-members. The defendants were given opportunity to prove, but they miserably failed to produce any proof about their membership. Further allegation is that on 15/12/2007, defendant Nos.1 and 2 unlawfully trespassed into the premises of the School and interfered with the stationary and property of the School, including stamps and letter heads, which resulted into a complaint being lodged in the Police Station of Sattari at Valpoi on 18/12/2007. The defendants continued their act of misdemeanor and went to the extent of informing the staff of the school by pasting a notice on the notice board that plaintiff No.2 has been removed from the Managing Committee of plaintiff No.1 and also withdrawing of his powers by addressing a letter to him.

7. On account of the impression created by the defendants that they are in-charge of affairs of the society, the District Magistrate was compelled to write to the police that defendant No.1 was a Chairman of the Society for the term 2006-2007 and though the renewal of the Society's registration was due, it was not renewed and it became an unregistered Society. On 12.02.2008, the plaintiffs through its President submitted an application for renewal of certificate of registration accompanied by Schedule-I and the copy of the Resolution of

the General Body held on 28/11/2007, copies of receipts in respect of fees paid by the Members of the Society, list of members of the Society, audited accounts of the Society and statement in Schedule-II. The registration was renewed till 11/06/2010 by an order passed on 27/02/2008. Alleging that the defendants are interfering in the working of the Society though none of them is a member and they are not admitted to the Membership of the Society nor paid their admission fees or the yearly subscription, but the lawful Committee of the Society is the one, which has been elected by the Society in its meeting held on 28/11/2007, comprising of 9 members, the attempts on part of the defendants to represent themselves to be the members of the Managing Committee of the Society was sought to be declared as illegal and unlawful. The cause of action was pleaded to have arisen on 6/12/2007 when the Chairman of plaintiff No.1 received a notice for conduct of extraordinary meeting and when a suspension order was issued by defendant No.1, suspending the Headmaster.

A declaration was, therefore, sought to the effect that neither the defendants are the members or office bearers of the Society and by permanent injunction, they were sought to be restrained in interfering with the affairs of the Society or in any manner holding themselves out as members of the Society.

8. The defendants filed a written statement denying the averment in the plaint that no General Body meeting was held on 30/05/2006 and, therefore, there was no question of three defendants being allowed to participate in the alleged meeting and so called purportedly elected on the Executive Committee

of the Society. It is also alleged that the Minutes of the meeting dated 3/10/2007 (Exhibit 'F') annexed to the plaint is a false and fabricated document and the averment in the plaint about what transpired in the meeting of 3/10/2007 is dubbed as false and misleading.

9. It is pleaded that Krishnarao Rane expired on 6/11/2007 while holding the office of the Chairman of the Society and since his widow-Smt.Shashikala Krishnarao Rane was one of the office bearers and members of the Society and also Secretary of the School Managing Committee, the process was started for electing the new Chairman and the Managing Committee. A specific plea is raised to the effect that the plaintiff No.2 created false documents of the General Body meeting dated 3/10/2007 to confer himself the membership of plaintiff No.1, however, other constituents remained unchanged and in fact he attempted to introduce his family members, including a daughter and son-in-law. The list of the members and membership receipts forming part of Exhibit 'V' to the plaint were pleaded to be false and forged. The plaintiff were thus held not to be entitled for any relief as defendant No.1 claimed to be lawful Chairman of the Society.

An additional written statement also came to be filed denying the allegation of misrepresentation of the amount of the Society for personal gain.

10. It is in this backdrop, the suit came to be decided on the basis of the evidence brought before the trial court. The plaintiffs in support of the case examined plaintiff No.2 and

produced the certified copy of the bye-laws alongwith the various letters from the Directorate of Education and the Membership Register of plaintiff No.1-Society. The Membership Receipt Book was also exhibited through the said witness. The true copy of an application dated 12.02.2008 for renewal of the Society alongwith Schedule I, Accounts in Schedule IV, true copy of Resolution and Schedule of Employees were collectively exhibited as Exhibit 76.

11. One Raghunath Gawas was also examined as P.W.2 and produced the notice issued by the Chairman of the Honda High School dated 19.6.1998 alongwith the letter dated 16.7.1998 issued by the Chairman of plaintiff No.1-Society. Other four witnesses were also examined by the plaintiffs.

12. The defendants examined defendant No.1, who produced letter from State Registrar. Further, the defendants examined the witnesses, who were alleged to have been introduced as members in most contested meetings. The trial court referred to various documents produced during the course of evidence, which included the Register showing the Membership of the Society and the receipt book of membership contribution to the Society of the plaintiff No.1 to demonstrate that the defendants are not the members of the Society. Though the membership receipts were produced and marked 'X-1' for identification, since no steps were taken by the plaintiffs to prove the said receipts, they were not exhibited. Recording that in order to prove that the defendants are not the members of the Society, best document could have been the minutes of

meeting held on 30/06/2006 and merely producing Membership Register of plaintiff No.1-Society at Exhibit 71 was not sufficient since it is the case of the defendants that they were allowed to participate in the General Body meeting and were also elected as Executive Members of the Society. Further, the Membership Receipt Book, which was produced at Exhibit 72 was also found to be incomplete since the Register started from receipt No.122. Further, the audit reports at Exhibit 76 for the aforesaid period, were signed by P.W.1 posing himself as the President of the Society. However, in the cross-examination, he deposed that he was not aware as to how the accounts books were maintained. Deliberating on issue Nos.1 to 4 collectively as to whether plaintiff No.2 proves that the defendants are not the members of the Society and that they have no right, title or interest of whatsoever nature to interfere with the affairs of the Society, the trial court answered the issue Nos.1 and 4 in the negative since the plaintiffs had failed to produce any document, which would oust the defendants from the status of "Member".

13. The application was moved by the plaintiffs to produce the documents enlisted at Sr.Nos.6, 7 and 8 in the list of documents by way of secondary evidence and these documents were the proceedings of General Body dated 25/5/2006, 30/6/2006, 3/10/2007, 28/11/2007 and 25/4/2008. The allegation was that the defendants had taken forcible possession of the record of the plaintiff-Society. The said application was opposed by the defendants by stating that the documents, which were sought to be produced as secondary

evidence were the extract of the single bounded register, which was in possession of plaintiff No.2 and in fact during the course of hearing on the application for temporary injunction, plaintiff No.2 had produced the minutes of the meeting dated 24/4/2008, which were in the same Register and, therefore, the story that the defendants had forcibly taken possession was not accepted by the trial court.

14. The minutes of the meeting held on 30/6/2006 being not produced on record by the plaintiffs, the claim of the plaintiffs that defendants are not the members of the Society was declined. About the issue as to whether the registration of the Society was at the instance of plaintiff No.2, based on the evidence of D.W.8, the Registrar of the Government Department, who deposed that an application was made by plaintiff No.2 on 12/2/2008 for renewal of registration and an application was also made by Krishnarao Rane on 10/1/2007 for renewal of registration and it was on the application of Krishnarao Rane, the registration of plaintiff No.1-Society was renewed upto 11/6/2010 and plaintiff No.2 was informed accordingly. Issue Nos.3, 6 and 7 were determined together and the burden of proving that the Committee appointed on 28/11/2007 is a lawful Committee was cast on the plaintiffs by producing the minutes of the meeting dated 28/11/2007 and the minutes of the subsequent meeting to show that the minutes of the meeting held on 28/11/2007 were confirmed. But, since there was failure on the part of the plaintiffs to produce the same, the issue was answered in the negative.

15. On the contrary, defendants, who had examined one Uday Rane (D.W.7), who is shown as Secretary of the Managing Committee of the plaintiffs appointed in the very same meeting dated 28/11/2007, has deposed that he has not attended any meeting and even he was not aware of the names of any other members and that he had not done anything to become a member and thereby supported the case of the defendants that no such meeting was held on 28/11/2007. This is further corroborated by D.W.4-Narendra Rane, D.W.5-Anandrao Rane and D.W.2-Narayan Gaonkar. Since the plaintiffs were not able to establish their claim that the defendants are not the members of the society, the suit came to be dismissed and the injunction was refused.

16. It is this finding reversed by the First Appellate Court, on following points of determination. :-

(i) Whether the defendants are members of plaintiff No.1-Society?

(ii) Whether plaintiff No.2 had authority to file the suit?

(iii) Whether defendants can take any action in connection with the society or in any manner interfere with the functioning of the said Society?

(iv) Whether the plaintiffs established that Krishnarao Rane and defendant No.3 misappropriated an amount received as maintenance?

Point Nos.(i), (iii) and (iv) were answered in the negative by

the First Appellate Court by recording that plaintiff No.2 was enrolled as a patron member of the Society. The Appellate Court further concluded that there was no evidence to show that defendant was Member/Patron of the Society since he had not complied with the condition laid down in the Resolution passed on 30/6/2006 either by paying a membership fee or making any donation on or after the said date and, therefore, he could not have been elected as President of the Society. The deposition of D.W.8 that defendant No.1 was Legal Advisor, the Appellant Court holding that there is no provision for appointment of Legal Advisor to constitute the executive body and, therefore, it is of no relevance. On the point of membership, seven other defence witnesses were not believed by the First Appellate Court as they had deposed about their status as member of plaintiff No.1-Society and have not made statement in respect of the membership of the defendants.

17. About the capacity of plaintiff No.2 to present the suit for or on behalf of the Society, reference was made to the General Body meeting of the Society dated 3/10/2007 when Krishnarao Rane on account of his ill-health and unable to carry out the responsibilities and duties as Chairman had stepped down and passed on the baton to plaintiff No.2 to officiate as Chairman. Said Krishrao Rane died on 6/11/2007 and an Extraordinary General meeting was convened on 28/11/2007 where it was resolved to accept Prafulla Dessai as a Treasurer in place of defendant No.1, Mr.V.A.Dessai as a Member in place of Sadanand Tendulkar and Mr.Narendra Rane as a Member in place of Mr.Bhimrao Desai and

Mr.Narayan Gaonkar in place of defendant No.3. Appellate Court referred to the cross-examination of P.W.1 where it is elicited that he had made an application on 12/02/2008 for renewal of registration of plaintiff No.1 and he has deposed that he had produced all documents alongwith the said application and when he was shown the entire set, he admitted to be produced at the time of renewal. These documents are collectively marked as Exhibit 76 and one of the document is the minutes of the meeting held on 28/11/2007, which bestowed the post of Chairman upon plaintiff No.2 (P.W.1). The First Appellate Court held that since the documents Exhibit 76-C Collectively show that plaintiff No.2 was elected as President of the Society and which fact was also corroborated by D.W.6 and since the defendants had failed to prove that it is the fraudulent document, plaintiff No.2 had the capacity to file the suit. The appeal was, therefore, partly allowed and the suit was partly decreed with a declaration that defendant Nos.1, 2 and 3 are neither the members nor office bearers of Shri Mahalaxmi Shikshan Samiti and they were permanently enjoined from interfering in any manner with the management and affairs of the Society.

18. The decision of the First Appellate Court being adverse to the interest of the defendants, they had approached in Second Appeal. By the amendment being carried out in terms of the order dated 9/7/2014, 'Shri Mahalaxmi Shikshan Samiti' was transposed as respondent No.3, resulting that the appeal is instituted by Pratapsingh Nimbalkar (Defendant No.1) and

Smr.Shashikala K. Rane (Defendant No.3).

19. During the pendency of the appeal, certain important events have been transpired and same were sought to be brought on record by filing an application for production of documents under Order 41 Rule 27 of the Code of Civil Procedure (“CPC”), which was kept pending and directed to be heard at the time of final hearing in terms of the order dated 16/6/2016. The documents attempted to be placed on record are the orders passed in the Writ Petition instituted by “Shri Mahalaxmi Shikshan Samiti’ against the Director of Education and the order passed by the Director of Education on 14/6/2012 when the at the request of the Chairman of ‘Shri Mahalaxmi Shikshan Samiti’, Honda, the Government decided to hand over the Honda High School, Honda Sattari to ‘Shri Mahalaxmi Shikshan Samiti’ in the interest of students and directed it to be managed by the School Managing Committee from the date of the order. The Deputy Director of Education (Academic) on 3/7/2012 handed over the management to the School Managing Committee, which comprised of defendant No.1 as its Chairman and defendant Nos.2 and 3 as its Members. The said Committee managed the Honda High School for a period of three years commencing from 1/2/2012 to 31/1/2015 and pertinent to note that a Petition filed by plaintiff No.2 in this Court challenging the said order is admitted on 8/4/2013 with no interim relief being granted.

20. Though it is settled position of law that the application filed under Order 41 Rule 27 of the CPC can be allowed only in

the circumstances existing in the said order and though , these documents which have been sought to be produced on record, are the public documents and are reflective of the subsequent events, which have transpired after the suit was filed. The parameters for applicability under Order 41 Rule 27 of the CPC about due diligence being not established, they need not be looked into for the decision of appeal, without the application being allowed at this stage of appeal.

21. Learned Counsel Mr.Godinho had specifically averred to the said question of law in the backdrop of the facts and stated that the First Appellate Court was not justified in relying upon the documents at Exhibit 76 collectively when the contents of the documents were not proved. Pertinent to note that P.W.1 (plaintiff No.2) was confronted with certain documents while being under cross-examination. The other documents may not be of any concern as the question of law revolve around the bunch of documents marked as Exhibit 76 collectively. With reference to an application being made on 12/2/2008 for renewal of the registration of the society, certain documents were annexed alongwith the application, which included Schedule I, Accounts in Schedule IV, true copy of Resolution and Schedule of Employees and all the documents were deposed to have been annexed with the application, which reflect in the examination-in-chief. The witness was shown the true copy of the entire set, which he admits and the bunch is collectively marked as Exhibit 76. The deponent i.e. P.W.1 not deposed about the contents of the documents and that is why the substantial question of law.

22. In the cross-examination of P.W.1, it has come on record that he made an application on 12/2/2008 for renewal of registration of plaintiff No.1-Society and at that time, he had produced all the documents alongwith the application and while in the witness box, he was confronted with the entire set of documents, which he admitted, that he had produced at the time of renewal. These documents came to be exhibited as Exhibit 76-C collectively and one of the documents, which form part of the documents at Exhibit 76-C collectively, is the minutes of the meeting held on 28/11/2007 to show that plaintiff No.2 (P.W.1) was the Chairman of the Society. The claim of the defendants is that there was no Managing Committee, as alleged, was ever formed and no meetings were held on 03/10/2007 and 28/11/2007 and in fact, the stand of the defendants is that plaintiff No.2 (P.W.1) falsely showed all his family members as members of the Society and that Shri Santobarao R. Desai and Shri Hambirrao K. Desai are brother of plaintiff No.2, Mrs.Sulaksha Desi and Prafulla Desai are his sisters-in-law whereas Smt.Deepali Jadhav is daughter of plaintiff No.2, Mahesh Jadhav is his son-in-law and Mr.Krishnarao Desai is his son. The case of the defendants is Shri Uday Rane was also not a member of the Society and his signature has been falsely obtained though he never participated in the meeting.

23. Exhibit 76-C collectively is accepted as a gospel truth by the Appellate Court and it included one of the documents by which P.W.1 was elected as President of the Society and the burden is shifted on the defendants to show that it is a

fraudulent document. Undisputedly, Exhibit 76-C collectively is the true copy of the entire set as a bunch, which was produced with the application for renewal of the Society, preferred by P.W.1. He admitted that the application was to be accompanied with Schedule I, accounts in Schedule IV, true copy of Resolution, Schedule of employees and that was produced by him when he preferred the application. He was confronted with the entire set of the documents, which was in form of true copy. Reason for production of true copy is that the original documents were not in his possession.

24. Chapter V of the Indian Evidence Act, 1872 relate to documentary evidence and as per Section 61, the contents of documents may be proved either by primary or by secondary evidence. Primary evidence in terms of Section 62 means the document itself being produced for inspection of the Court. Secondary evidence in terms of Section 63 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 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; and (5) Oral accounts of the contents of a document given by some person who has himself seen it. Section 64 of the Evidence Act mandate that documents must be proved by primary evidence except in cases hereinafter mentioned. Section 65 stipulate the conditions in which the secondary evidence relating to documents may be given and

the contingencies are enlisted in the said Section and one of the contingencies being when the original is shown and 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, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it. Section 66 stipulate a notice to be issued to the party in whose possession or power the document is and it is only on issuance of such notice, secondary evidence is permitted to be lead. The foundation is, therefore, to be formed before production of secondary evidence, Further, mere production of the document is no proof of its contents as the legal position is that mere production and marking of the document as exhibit by the Court cannot be held to be due proof of its contents. Its execution has to be proved by admissible evidence, by the evidence of those persons, who can vouch or state the truth of the facts in issue. A document can be proved primarily by examining the person, who has executed or created the document by writing and signing the same, but when such examination is not possible, execution of a document can be proved by examining a person, who saw the document being written and signed. In absence of direct evidence relating to writing and signature on the document, its execution may be proved by examining a person, who is qualified and competent to express his opinion as to the handwriting and signature by acquaintance of otherwise.

25. In *S.Gopal Reddy V. State of A.P.*¹, the Apex Court has held as under :-

“The ordinary method of proving a document is by calling as a witness the person who had executed the document or saw it being executed or signed or is otherwise qualified and competent to express his opinion as to the handwriting. There are some other modes of proof of documents also as by comparison of the handwriting as envisaged under Section 73 of the Evidence Act or through the evidence of a handwriting expert under Section 45 of the Act, besides by the admission of the person against whom the document is intended to be used. The receiver of the document, on establishing his acquaintance with the handwriting of the person and competence to identify the writing with which he is familiar, may also prove a document. These modes are legitimate methods of proving documents but before they can be accepted they must bear sufficient strength to carry conviction.”

The Apex Court in the case of *Kaliya V. State of M.P.*² had highlighted the parameters regarding permissibility of secondary evidence relating to documents. It is observed in paragraph 13 as under :-

"Section 65(c) of the Act 1872 provides that secondary evidence can be adduced relating to a document 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. The court is obliged to examine the probative value of documents produced in court or their contents and decide the question of admissibility of a document in secondary evidence. (Vide: *H. Siddiqui (dead) by Lrs. v. A. Ramalingam*, AIR 2011 SC 1492; and *Rasiklal Manikchand Dhariwal & Anr. v. M.S.S. Food Products*, (2012) 2 SCC 196). However, the secondary evidence of an ordinary document is admissible only and only when the party desirous of admitting it has proved before the court that it was not in his possession or control of it and further, that he has done what could be done to procure the production of it. Thus, the party has to account for the non-production in one of the ways indicated in the section. The party further has to lay down the factual

1 (1996) 4 SCC 596

2 (2013) 10 SCC 758

foundation to establish the right to give secondary evidence where the original document cannot be produced. When the party gives in evidence a certified copy/secondary evidence without proving the circumstances entitling him to give secondary evidence, the opposite party must raise an objection at the time of admission. In case, an objection is not raised at that point of time, it is precluded from being raised at a belated stage. Further, mere admission of a document in evidence does not amount to its proof. Nor, mere marking of exhibit on a document does not dispense with its proof, which is otherwise required to be done in accordance with law. (Vide: [The Roman Catholic Mission v. The State of Madras](#), AIR 1966 SC 1457; [Marwari Khumhar & Ors. v. Bhagwanpuri Guru Ganeshpuri & Anr.](#), AIR 2000 SC 2629; [R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami and V.P. Temple & Anr.](#), AIR 2003 SC 4548; [Smt. Dayamathi Bai v. K.M. Shaffi](#), AIR 2004 SC 4082; and [Life Insurance Corporation of India & Anr. v. Rampal Singh Bisen](#), (2010) 4 SCC 491)."

26. The secondary evidence of an ordinary document is admissible only and only when the party desirous of admitting it has proved before the Court that it was not in his possession or control of it and further, that he has done what could be done to procure the production of it. Thus, the party has to account for the non-production in one of the ways indicated in the section. The party further has to lay down the factual foundation to establish the right to give secondary evidence where the original document cannot be produced. In such a situation where a party gives an evidence, the certified copy of the secondary evidence, without proving the circumstances entitling him to give secondary evidence, the opposite party must raise an objection at the time of admission.

In *M.Chandra V. M. Thangamuthu & Anr.*³, the Apex Court observed as under :-

3 (2010) 9 SCC 712

“We do not agree with the reasoning of the High Court. It is true that a party who wishes to rely upon the contents of a document must adduce primary evidence of the contents, and only in the exceptional cases will secondary evidence be admissible. However, if secondary evidence is admissible, it may be adduced in any form in which it may be available, whether by production of a copy, duplicate copy of a copy, by oral evidence of the contents or in another form. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. It should be emphasized that the exceptions to the rule requiring primary evidence are designed to provide relief in a case where a party is genuinely unable to produce the original through no fault of that party.”

27. Mere admission of a document in evidence does not amount to its proof. Nor, mere marking of exhibit on a document does not dispense with its proof, which is otherwise required to be done in accordance with law. When a document is merely exhibited, while exhibiting the same, it does not finally decide the right of the party or form any opinion or express any opinion on the document. The document will have to be proved qua its contents in terms of Section 61 of the Indian Evidence Act as the said provision contemplate proof of contents of the documents, either by primary or secondary evidence. In absence of such a burden being discharged while exhibiting the documents as Exhibit 76-C Collectively, the Appellate Court has clearly erred in accepting the documents qua its contents, particularly when, no evidence has been adduced on behalf of the plaintiff, throwing any light on its contents and this was the reason why the document came to be exhibited while P.W.1 was being cross-examined.

28. In light of the aforesaid settled position of law, the substantial question of law framed above, is answered in the

affirmative by holding that the reliance by the Appellate Court on the documents marked as Exhibit 76-C collectively as erroneous, since the contents of the documents are not proved and they are exhibited in cross-examination of P.W.1.

The aforesaid question being answered as above, the Second Appeal deserves to be allowed by quashing and setting aside the impugned judgment passed by the Appellate Court and restore the judgment of the Civil Judge, Junior Division Sattari at Valpoi in Regular Civil Suit No.02 of 2008 (Special Civil Suit No.02 of 2009 and Regular Civil Suit No.16 of 2010). Decree be drawn up accordingly.

[SMT. BHARATI DANGRE, J.]