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'Secondary Evidence' – A Scrutiny of its admissibility under BSA, 2023.

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Abstract:-

To prove facts and guarantee equitable reliefs in court proceedings , the courts need evidence. The New amended Indian evidence act (i.e) Bharatiya Sakshya Adhiniyam ,2023, has widened the concept of proving facts by secondary evidence. Chapter V of the BSA , under sections 56 to 93 deals with the topic of documentary evidence.When original documentary evidence is not able to be produced by a party as under section 59 of Adhiniyam , then he is permitted to produce secondary evidence subject to the fulfillment of conditions in section 60 of Adhiniyam. The parties in a court proceeding will be having the intention of winning the case by all legal means. If the circumstance of a case makes a party to produce secondary evidence and if that party is not unable to produce primary evidence , then the court shall presume its genuineness subject to the production of proof by the presenting party. There are many Judgments delivered by High Court and Supreme court in determining the validity of secondary evidence over certified copies , tape recorded evidence and other related evidences. Now in this digital age , electronic evidence plays a major role in the establishment of a fact.The Electronic records evidence are dealt under section 61 , 62 and 63 of Adhiniyam. The Banks are mostly depending upon the electronic evidence for proving their facts and claims. In this article I am going to analyse the various Judgments validating the secondary evidence.

Key words: Facts , Secondary Evidence, kinds , Admissibility , Judgments.

1.Introduction

In the scenario of proving facts , secondary evidence is an evidence that can be presented when the better evidence that the law mandates be presented first is not available, provided that a valid reason is provided. Since Section 58 of Adhiniyam states that secondary evidence "means and includes" five varieties of secondary evidence, the definition is comprehensive.

The Evidence by Secondary means includes-

(i) certified copies given under the provisions hereinafter contained;

(ii) copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies; (iii) copies made from or compared with the original;

(iv) counterparts of documents as against the parties who did not execute them;

(v) oral accounts of the contents of a document given by some person who has himself seen it;

(vi) oral admissions;

(vii) written admissions;

(viii) evidence of a person who has examined a document, the original of which consists of numerous accounts or other documents which cannot conveniently be examined in Court, and who is skilled in the examination of such documents[1].

If the original document is deemed inadmissible due to the shortcomings of the party submitting it to establish its validity, that same party cannot present secondary evidence regarding its contents. The Party who proposes to produce secondary evidence shall first prove the absence of production of primary evidence.

Photo copies Admissibility:

Pertaining to the case of Smt. J. Yashoda vs Smt. K. Shobha Rani[2] , where the learned First Additional Chief Judge, City Civil Court, Secunderabad , had permitted to file photo copies of a document and it was permitted to be marked as Exhibit B1 to B8 in OS No. 30 of 1999 during trial. The learned Single Judge of the Andhra Pradesh High Court allowed the civil revision petition filed against the order of permitting secondary evidence. The Learned Single Judge determined that the documents intended to be submitted and recognized as secondary evidence are photocopies. It was acknowledged that while the original documents may not be in the possession of the parties, the stipulations of Section 63 of the Indian Evidence Act, 1872 (Now Section 58 of BSA) require that a document can only be accepted as secondary evidence if the copies are certified or fall under the other categories specified in that section.The Honourable High Court Held that photocopies cannot be accepted as secondary evidence under Section 63 of the Act and should not have been admitted as such. Given that the documents in question were acknowledged to be photocopies, there was no opportunity to compare them with the original documents. As a result, the Civil Revision was granted. Hence against that Appeal before Supreme court has been filed. Secondary evidence is generally permissible only when primary evidence is unavailable. If the original document is deemed inadmissible due to the failure of the party presenting it to establish its validity, that party cannot subsequently introduce secondary evidence regarding its contents. In essence, secondary evidence serves as a substitute when the superior evidence mandated by law is not available, provided there is an adequate explanation for its absence. Section 63 offers a comprehensive definition, stating that secondary evidence "means and includes" various forms, which are

[1] Section 58 of BSA 2023.

[2] AIR 2007 SC 1721.

enumerated in five specific categories.It was further observed that to allow a party to present secondary evidence, it is essential for that party to demonstrate both the existence and execution of the original document. According to Section 64, documents should be presented through primary evidence. However, Section 65 allows for the introduction of secondary evidence regarding the existence, condition, or contents of documents under specified circumstances. The conditions outlined in this section must be satisfied before secondary evidence can be accepted. Furthermore, secondary evidence concerning the contents of a document cannot be admitted unless the non-production of the original is adequately justified in accordance with the provisions of the section. Considering all relevant factors, the High Court determined that the appellant had not established a sufficient basis for presenting secondary evidence in the form of the Photostat copy. We see no errors in the High Court's ruling that would warrant intervention by this Court. The established facts in this case indicate that the original document was in the possession of one P. Srinibas Rao. Documents can only be accepted as secondary evidence when the conditions outlined in Section 65 of IEA[3],1872 are met. In this instance, clause (a) of Section 65 has not been fulfilled. Consequently, the High Court's decision is free from any errors that would justify interference. The appeal is therefore rejected and dismissed.

Certified copies Admissibility:

The Public documents can be proved by its certified copy. A certified copy of a public document, as prepared in accordance with Section 76 of the Act (S.77 BSA), is permissible as evidence under Section 77(S.78 BSA) of the same Act[4]. Such a certified copy can be accepted in evidence without the necessity of proving it through witness testimony.

In a recent Judgment of Honourable Supreme Court in Appaya Versus Aaandimuthu @ Thangapandi[5] , the court has reaffirmed the acceptability of certified copies of original sale deeds as valid evidence in legal matters, addressing a significant issue frequently encountered in property disputes.

This decision, rendered by Justices B.R. Gavai and C.T. Ravikumar, provides essential clarification on the interpretation of important provisions within the Indian Evidence Act of 1872 and the Registration Act, offering important direction for future legal cases.

The case that prompted this ruling involved a dispute over land ownership dating back to 1928. In a subsequent appeal, the High Court had raised concerns about the admissibility of a certified copy of a registered sale deed presented by the plaintiff, favoring the defendant's claim that only the original sale deed should be considered as evidence. However, the Supreme Court presented an alternative viewpoint as per Sections 65 (S.67 BSA), 74 (S.74 BSA), 77(S.78 BSA) read with Section 79 (S.80 BSA)of the Indian Evidence Act 1872 and Section 57(5) of the Registration Act[6] and made the certified copy of sale deed admissible as secondary evidence.

[3] Indian Evidence Act.
[4] Indian Evidence Act,1872 at present
[5] Civil Appeal No.14630 of 2015 Judgment dated 20.09.2023.
[6] 1908.

Electronic Evidence Admissibility: In today's digital era, electronic evidence plays a crucial role in legal proceedings across the globe, including in India. The advancement of technology and digital communication has made it essential to recognize electronic records as valid evidence in judicial settings. The Indian legal system has adapted to this shift by introducing regulations that outline the importance and applicability of electronic evidence. Section 65A and 65B of the Indian Evidence Act,1872 and Section 61,62,63 of BSA[7] deals with Electronic Evidence.

In Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and Others[8], a case concerning the interpretation of Section 65B of the Evidence Act, 1872, which pertains to the admissibility of electronic records, a three-judge bench comprising RF Nariman, S. Ravindra Bhat, and V. Ramasubramanian, JJ, has determined that the certificate mandated by Section 65B(4) is a prerequisite for the admissibility of evidence in the form of electronic records. This conclusion aligns with the earlier ruling by the 3 Judges bench in Anvar P.V. v. P.K. Basheer[9] and contrasts with the erroneous "clarification" provided by a division bench in Shafhi Mohammad v. State of Himachal Pradesh[10] . Additionally, the Court specified that the certificate required under Section 65B(4) is not necessary if the original document is presented.

In Tomaso Bruno Vs. State of UP[11] , the prosecution alleges that two foreign nationals murdered another foreign national during their visit to India as tourists. The incident reportedly occurred within the confines of the hotel room where both the appellants and the deceased were staying, suggesting that only the appellants had the opportunity to commit the crime. The appellants contend that they had left the room at the relevant time and, upon their return, discovered their friend in a critical condition. They claim to have immediately notified the hotel manager and, with the help of hotel staff, transported him to the hospital. Based on the evidence presented, the lower courts convicted the appellants under sections 302/34. However, upon appeal, it was determined that the absence of crucial CCTV footage, which is considered the best evidence, raises significant doubts about the prosecution's case. The lower courts failed to recognize the shortcomings in the investigation and the lack of strangulation signs in the medical reports. The circumstances and evidence provided by the prosecution do not establish a definitive link to the guilt of the accused. Consequently, the appellants were granted the benefit of the doubt, and the conviction was overturned. The admissibility of electronic records, particularly CCTV footage, is emphasized, as it serves as a vital piece of evidence in murder cases.

Judgments for other modes of Secondary Evidence :

In Vijay Vs Union of India[12] A two-Judge Bench of the Supreme Court, consisting of Justice Abhay S. Oka and Justice Sanjay Karol, issued an Order Civil Appeal No. 4910 of 2023. The Court annulled the decisions made by the Review Court and the High Court of Madhya Pradesh, asserting that the document submitted as

[7] Bharatiya Sakshya Adhiniyam ,2023
[8] [2020] 7 S.C.R.180
[9] (2014) 10 SCC 473
[10] (2018) 2 SCC 801
[11] 2015 Cr.L.J.1690.
[12] Supreme court on 29.11.2023.

secondary evidence by the Plaintiff-Appellant was not subject to stamp duty at the time of its execution. Consequently, there were no restrictions on its admissibility as secondary evidence in a Suit for Specific Performance of Contract.

In ICICI Bank Ltd. Vs. Surbhi Gupta[13] Held , the account statement of the bank is properly supported by a certificate in accordance with Section 65B of the Evidence Act (Section 61 and 63 of BSA). The Plaintiff bank's witness, PW-1, has presented his testimony before the Court. There is no basis to doubt his statements. The evidence on file clearly indicates that the Defendant took out a loan and has defaulted on a portion of the repayment. Therefore, the account statement is permitted as secondary evidence.

In Prakash Chand Jain versus Sumati Chand Bajaj[14] , if a registered document cannot be located, then the aggrieved party in the court should file a complaint with the police to obtain a Lost Document Report (LDR), often referred to as a non-traceable certificate. Subsequently, the party can approach the relevant Sub-Registrar Office to request a Certified Copy of the lost document, along with an Encumbrance Certificate. In the case of Aher Rama Gova & others versus State of Gujarat[15] The original document has been misplaced. Nevertheless, the Magistrate took the stand and verified the photocopy of the document in question (the dying declaration. Magistrate confirmed that he had provided the original dying declaration to the Head Constable, who also corroborated this fact. Given these circumstances, the document was accepted as secondary evidence by the Court.

6.Conclusion:

Secondary evidence is an important evidence in the absence of primary evidence. It helps the court to give a fair Judgment . There are numerous instances in which a party offers a document not acceptable by the court for misleading information. So the court shall insist mostly on primary evidence . The above analysis clearly shows that in the chapter of documentary evidence (i.e) Section 61 to 73 A of Indian Evidence Act , 1872 and Sections 56 to 73 of BSA , 2023 , for a reasoned Judgment the court also permitting to prove the contents of a document by secondary evidence. The motto behind admitting secondary evidence is that , a genuine case should be getting comprehensive Justice , by this relaxation of production of original documents.

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[13] Delhi High Court 31.01.2018.

[14] Madhya pradesh High Court on 5th Sep 2017.

[15] AIR 2000 SC 2629