

तारीख हुक्म	हुक्म या कार्यवाही मय इनिशियल्स जज  Ravi Shanker Vs. Prabhu Singh Revision No.5041/2012/TA/Bikaner	नम्बर व तारीख अहकाम जो इस हुक्म की तामील में जारी हुए
06.7.2012	<p style="text-align: center;"><b><u>S.B.</u></b> <b>Shri Pramil Kumar Mathur, Member</b></p> <p><b><u>Present:</u></b> Shri Ajeet Lodha, counsel for the petitioners. Shri Ashok Nath, counsel for non-petitioners no.1 &amp; 2. Shri Ramsukh Choudhary, Dy.Govt.Advocate for the State. - - -</p> <p>In this revision petition filed under section 230 of the Rajasthan Tenancy Act, 1955, petitioners have prayed for quashing the order dated 11.6.2012 passed by the Assistant Collector Bikaner, moderately to a point by which learned trial court has refused to mark exhibit on the photo copy of the document produced by the petitioners.</p> <p>I have heard the arguments of learned counsels for both the parties and learned Dy.Govt.Advocate for the State at the admission stage and with their connivance, matter is being decided on merit at threshold.</p> <p>Learned counsel for petitioners has submitted that Board of Revenue by order dated 19.4.2012 has issued directions to the learned trial court for taking the photo copy of the document (written in Samvat 2014) on record submitted along with the application filed under Order 7 Rule 14 read with Section 151 Code of Civil Procedure and Section 65 of Indian Evidence Act by the petitioners. The learned trial court by the impugned order dated 11.6.2012, though has taken the document on record as secondary evidence but has refused to mark exhibit being the photo copy of original and listed the case for final argument. He further submitted that when the document was taken on record and the application for secondary evidence has been allowed, then it is imperative on the part of the court to afford an opportunity to prove that document, otherwise the purpose of production of that document will not be sub-served.</p>	

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	<p>On the contrary, learned counsel for the non-petitioners has submitted that petitioners have filed this revision petition with the purpose to prolong the litigation unless original manuscripts were produced before the court, the permission to mark exhibit and prove that document could not be granted.</p> <p>Learned counsel for the State has requested to decide the matter on merits.</p> <p>I have given thoughtful consideration to the rival contentions and scanned the matter carefully.</p> <p>In the order passed by the learned trial court on 11.6.2012, it is specifically observed that learned trial court has consented for production of the questioned document as secondary evidence. Even earlier the learned Single Judge of the Revenue Board has allowed the application on 19.4.2012 filed under Order 7 Rule 14 Code of Civil Procedure and under Section 65 Indian Evidence Act and has given the liberty to the trial court to approbate or reprobate the document on the basis of the evidence produced before him.</p> <p>Under the law of evidence, it is necessary that contents of documents are required to be proved by primary or by secondary evidence. Contents of the document cannot be proved merely by filing it, in the court. Section 65 of the Indian Evidence Act enumerates the different situations when the permission of secondary evidence can be given including the provision that, when the original has been destroyed or lost, this fact can be taken into consideration while allowing the application for adducing secondary evidence. Though the learned trial court has observed in the impugned order that exhibit cannot be marked on the photo</p>	

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	<p>copy, but as per the provision of Section 65 when the application for secondary evidence has been allowed and it has been specifically mentioned in the application that original is not traceable; in such a situation, the only option left with the petitioners as well as with the trial court is to avail the concession as enshrined in Section 65 of the Indian Evidence Act. Hence when application for secondary evidence has been allowed distinctly and as per established principle of law, mere filing of a document does not dispense with its proof, then refusal to mark photo copy as an exhibit is not valid and it amounts to have failed to exercise jurisdiction vested in the trial court resulting injustice to petitioners. Consequently, the learned trial court has fallaciously listed the case for final arguments; rather in the interest of justice, an opportunity ought to have been provided to the petitioners for proving the document in question. Thus on the whole, I am satisfied that the impugned order is liable to be modified accordingly and the matter requires to be remanded to the trial court.</p> <p>Consequently, the impugned order dated 11.6.2012 passed by the Assistant Collector, Bikaner is modified accordingly with the liberty to the petitioners to prove the instrument and the learned trial court is directed to mark an exhibit on the document in question within one month from the date of receipt of the certified copy of this order. This revision petition is accordingly decided at the admission stage.</p> <p>Pronounced.</p> <p><b>(Pramil Kumar Mathur)</b> Member</p>	