

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Suit No. 2643 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGES
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1. For orders on CMA No.18526/2023 (U/A 76 QSO).
2. For final disposal.

12.02.2025

Mr. Nadir Khan Burdi, Advocate for the plaintiff.

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1. This application has been moved by learned counsel for the plaintiff on the ground that only secondary evidence is available in reference to the WILL which has been attached along with the plaint and affidavit-in-evidence. It is alleged that the primary evidence in relation to the same has been misplaced by the previous counsel appearing on behalf of the plaintiff and she has filed her affidavit in support of the instant application in which she has clearly reiterated the contention that the WILL was given in her safe custody by the plaintiff at the relevant time. However, the same has been misplaced by her.

It is settled law that production of primary evidence is a norm under Article 75 of the Qanun-e-Shahadat Order 1984 (“**Order**”), unless exceptions under Article 76 apply. For the sake of convenience, the said article is reproduced as under: -

“75. Proof of documents by primary evidence: Documents must be proved by primary evidence except in the cases hereinafter mentioned.” (Emphasis added)

The plaintiff whilst arguing the application relies upon Article 76 (c) of the Order and prays for this court to exercise discretion vested in it. For the sake of convenience, the said article is reproduced as under: -

“76. 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: —

(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;” (Emphasis added)

Bare perusal of the Article reveals that this court is vested with the discretion to allow secondary evidence in the absence of primary evidence subject to the conditions being met under Article 76 of the Order. The specific condition pertaining to the case at hand is that the Plaintiff must prove the “loss” of primary evidence and show their best efforts to locate the lost document in its primary/original form. The Honourable Supreme Court of Pakistan in the case of *Mst. Akhtar Sultana versus Major (retired) Muzaffar Khan Malik*¹ held as under: -

“ In fact, the Petitioner was to first produce evidence to account for non-production of the original and establish that the original had in fact been lost, as required under Article 76(c) of the Qanun-e-Shahadat.”

It is evident from the affidavit of the learned counsel that due efforts have been made to locate the WILL, however the efforts have failed. Moreover, the application is also supported by the affidavit of the counsel who has quite categorically admitted to losing the document in question.

In light of what has been discussed above, there is no impediment to permit the plaintiff for producing secondary evidence of the WILL in terms of Article 76(c) of the Order. Accordingly, the application is allowed as prayed.

2. To come up on 26.02.2025 on which date the plaintiff shall appear for examination.

JUDGE

¹ Civil Petition No. 3249 of 2015.

Nadeem Qureshi "PA"