

ORDERS ON I.A. NO.2

The applicant/plaintiff has filed the present application under Sec.63 and 65 of the Indian Evidence Act r/w. Section 151 of Code of Civil Procedure with a request to accept the secondary evidence of the documents at annexure A, B and C furnished with plaint stating that original of the said documents are possessed by the defendant for the reasons assigned in the accompanied affidavit stating that he is an Advocate having office at the address mentioned in the cause title of the suit property i.e., the schedule premises. Further, it is arrayed the defendant claimed to be the owner of the schedule premises had leased schedule premises in favour of the plaintiff for a monthly rent of Rs.12,000/- and has received an advance amount of Rs.1,20,000/-, the rental agreement is dated 25.05.2011. The original rental agreement dated 25.05.2011 is with the defendant and the plaintiff is given a photo copy.

Further, it is arrayed that the defendant approached the plaintiff and demanded that he is in need of money and wished to mortgage the schedule premises stating that plaintiff should pay the mortgage and convert the existing rental agreement

of the schedule premises into a mortgage, accordingly plaintiff agreed and paid mortgage amount of rupees eight lakh and mortgage deed dated 13.12.2012 was executed by the defendant in favour of the plaintiff. The mortgage was for three years commencing from 01.12.2012, in consideration for the mortgage amount paid by the plaintiff the possession of the schedule premises was given by way of mortgage to the plaintiff and the original mortgage deed dated 13.12.2012 is with the defendant and the plaintiff is provided with the photo copy.

Further, it is averred that the defendant approached the plaintiff and demanded for an additional mortgage amount in order to renew the mortgage of the schedule premises in favour of the plaintiff. The plaintiff agreed for the renewal and paid additional rupees of four lakh in favour of the defendant. The defendant totally received twelve lakhs rupees towards the mortgage of the schedule premises and executed extension of mortgage dated 21.01.2016 in favour of the plaintiff and was extended for four years till the end of the year 2019 and the original document is with the defendant. On these grounds prayed for allow the application.

Records reveals that though the defendant filed objection to other interim applications and written statement but objection statement available in the file dated 22.12.2020 mentioned as statement of objection

of defendant No.2 to I.A. No.2/2020 which pertains to I.A.,NO.3 filed by the plaintiff seeking leave to file replication which came to be dismissed on 30.01.2021. So the defendant did not file objections to I.A. No.2

Heard and perused the written arguments along with material on record.

The point that arises for my consideration is:

Whether the plaintiff is entitle to adduce secondary evidence as sought for under I.A.No.2 filed under Sec.63 and 65 of Evidence Act r/w. Sec.151 of CPC?

My answer to the above point is in the affirmative.
for the following:

REASONS

Admittedly, the plaintiff has filed the above numbered suit against the defendant landlord for the relief of permanent injunction stating that, he was inducted into the possession of schedule premises as per rental agreement dated 25/05/2011 on basis of monthly rent and thereafter continued to be in the possession of the same based on mortgage deed dated 13/12/2012 and extension of mortgage dated 21/01/2016 till the month of December 2019 subject to repayment of security deposit/mortgage amount of

Rs.12,00,000/- along with expenses as per the terms of the aforesaid deeds. In this regard it is the case of the plaintiff that without repayment of the said amount the defendant making hectic efforts to dispossess him from the lawful possession and enjoyment over the suit schedule property.

Records reveal that after having heard on I.A. No.1 filed under order 39 Rule 1 and 2 by the plaintiff it came to be allowed on 30.01.2021 and case was posted for plaintiff's evidence. But in view of specific recitals in the aforesaid rent agreements and mortgage deed regarding possession of the originals with the defendant, the plaintiff filed notice under Order 12 Rule 8 of CPC seeking direction to the defendants to produce the same before this Court, but it appears that in spite of giving sufficient opportunities the defendant failed to comply the same.

It is not the case of the defendant that he is not having originals of the documents sought under notice referred supra, but he has neither produced the originals as sought for under notice issued by the plaintiff nor filed objections to the present application or addressed arguments before this Court. So the material on record shows that the plaintiff is able to establish the fact he is entitle to adduce secondary evidence relating to the copies of documents at Annexure A, B and C furnished with the plaint. Therefore having regard to the facts and

circumstances of the case I am of the opinion that ia No.2 is deserves to be allowed. Hence, I answer the Point raised for consideration is in the affirmative and proceed to pass the following:

:ORDER:

I.A. No.2 filed under Sec.63 and 65 of Indian Evidence Act r/w. Sec.151 of CPC by the learned counsel for plaintiff is hereby allowed and permitted to adduce secondary evidence a sought for.

No order as to costs.

For plaintiff's evidence.
Call on 05.01.2022

V ADDL.CITY CIVIL & SESSIONS JUDGE
BENGALURU

