



ORDERS ON IA No. 10 FILED
UNDER SECTION 63 OF EVIDENCE
ACT R/W SECTION 151 OF CODE
OF CIVIL PROCEDURE

Counsel for plaintiff filed an application under Section 63 of Evidence Act R/w Section 151 of CPC seeking for production of photocopy of agreement of sale by way of secondary evidence. In the memorandum of facts annexed to the application, it is stated that the original agreement of the sale which was with the plaintiff was given to the earlier counsel for the production in the said case but the same was not produced by the earlier counsel. When the matter came to the present counsel through NOC, he verified the file and the said original agreement was not found. The same was informed to the plaintiff and he approached his earlier counsel many times seeking for original agreement of sale but it could not be

found. As such it is necessary to mark the photocopy of agreement of sale in the plaintiff's evidence. Hence prayed to allow the application.

2. Counsel for defendants files his objections stating that the application is not maintainable in the eye of law as it is not supported by the affidavit of the plaintiff as required under Civil Rules of Practice. Further, the contents of the application is denied as false. It is contended that the xerox copy of agreement of sale cannot be marked in evidence. Hence prayed to reject the application with costs.

3. Heard on both sides.

4. The following points would arise for my consideration:

1. Whether the plaintiff has made out sufficient grounds for allowing the application?

2. What Order?

5. My findings to the above points are as follows:

Point No. 1: In the Negative

Point No. 2: As per final order for the following;

REASONS

6. **Point No. 1:** Suit is filed for the relief of specific performance of agreement of sale deed dated 21/1/2006 against the defendants. The plaintiff has sought for production of photocopy of said agreement of sale on which he is claiming relief in this suit. On perusal of the application and memo of facts annexed to the application, there is no recital regarding what are the efforts made by the plaintiff to get the original agreement of sale from his earlier counsel apart from stating that he visited his earlier counsel's office many times. Further, no affidavit is filed by the plaintiff or no documents produced by the plaintiff to show his efforts made in securing the said agreement of sale. No foundation is laid out by the plaintiff to produce secondary

evidence. Secondary evidence of the contents of a document cannot be admitted without the production of the original being first accounted for in such manner as to bring it within one or other of the cases provided for in Section 65 of Evidence Act. In the present case on hand, the plaintiff has not stated about the efforts made by him in securing the original agreement of sale. No reasonable grounds made out to allow the application. Hence I answered point No. 1 in the Negative.

7. Point No. 2: For the above said reasons, I proceed to pass the following:

ORDER

The application filed under Section 63 of Evidence Act R/w Section 151 of CPC is hereby dismissed.

For Plaintiff's Evidence

Sd/-

(SMT. SAROJA. M)

**II Addl. Civil Judge & JMFC
Belagavi**