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**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
JMFC., ANKOLA, AT: ANKOLA**

Dated this the 03rd day of April, 2025.

PRESENT:

Sri. Manohara M. LL.M.
Senior Civil Judge, Ankola.

ORIGINAL SUIT No.20/2022

Plaintiff: Smt. Jaysheree Mahesh Bhat

-Vs-

Defendants: Jagdish Dhananjaya Hegade and another

I.A.No.XV

APPLICANT: Jagdish Dhananjaya Hegade
defendant No.1

V/s

RESPONDENT: Smt. Jaysheree Mahesh Bhat

ORDER ON IA No.XV

The defendant No.1 filed I.A.No.XV under Section 65(B) of Indian Evidence Act to lead secondary evidence.

2. In support of this application, the defendant No.1 sworn to an affidavit stating that the plaintiff with his mother filed suit for partition, and his mother sold areca nut cultivated in the suit schedule property to Omkar trading Company, Yellapur from 01.04.2017 to 21.11.2022, and his mother has got saving account pass book transaction in the said Omkar Trading Company. He filed the application to produce the said documents and the said application was allowed and this Court directed to produce the same, and the Manager of said Omkar Trading Company filed a false document stating that there is no savings account and deposit account in the name of defendant No.2. The defendant No.2 gave copy of transaction to him prior to filing of this suit and the said copy regarding savings account No.636 is prayed to be exhibited in evidence as a secondary evidence. If this application is allowed, the defendant No.2 and plaintiff will not be put to any loss. On the other hand, if the application is not allowed, he will be put to great loss and hardship. Hence, this application.

3. The counsel for the plaintiff submitted that the plaintiff has no objection to I.A.No.XV.

4. Having heard both side and having perused the plaint, IA No.XV and other materials following points arise for consideration.

1. Whether the defendant No.1 made out ground to lead secondary evidence as prayed for?

2. What order?

5. My answer to the above points are as under:-

Point No.1 : In the **affirmative**

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

REASONS

6. **Point No.1:** Admittedly, the defendant No.1 filed this suit against defendants for partition and separate possession. In the affidavit it is stated that his mother sold areca nut cultivated in the suit schedule property to Omkar trading Company, Yellapur from 01.04.2017 to 21.11.2022, and his mother has got saving account pass book transaction in the said Omkar Trading Company, and he filed the application to produce the said documents, and the said application was allowed, and this Court directed to produce the same, and the Manager of said Omkar Trading Company filed a false document stating that there is no savings account and deposit account in the name of defendant No.2; the defendant No.2 gave copy of transaction to him prior to filing of this suit, and the said copy regarding savings account No.636 is prayed to be

exhibited in evidence as a secondary evidence.

7. In a decision reported in ILR 2006 Kar 169, Gafarsab @ Safi Gafar sab Vs. Ameer Ahamed, the Hon'ble High Court of Karnataka held as under:

“Chapter V of the Indian Evidence Act, 1872 (for short "the Act") deals with documentary evidence. Section 61 of the Act deals with proof of contents of documents. The contents of documents may be proved either by primary or secondary evidence. Primary evidence means the document itself produced for inspection of the Court whereas the secondary evidence means and includes certified copies of public documents, copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies, copies made from or compared with the original; counter parts of documents as against the parties who did not execute them and oral accounts of the contents of a documents given by some person who has himself seen it. It is clear as a rule documents must be proved by primary evidence. If the primary evidence is not available for the reasons set out in Section 65 of the Act only then secondary evidence is admissible. Therefore, before secondary evidence is adduced, a proper foundation is to be laid for not producing the primary evidence. Only after the non-production of the primary evidence is satisfactorily accounted for, the secondary evidence would be permitted to be adduced.

6. A party to the proceedings is not expected to file any application requesting the Court to permit him to lead the secondary evidence. All that is expected of him is to step into the witness box and lead evidence setting out the circumstances under which he is unable to produce the primary evidence. If the Court is satisfied from such evidence that a case is made out for production of secondary evidence, it can permit the party to adduce secondary evidence subject to Sections 63 and 65 of the Act. However, when such permission is granted to the party by the Court to lead secondary evidence, it is open to the opposite party to object to the production of such secondary evidence, in which event the Court has to mark the document subject to the objections and decide the objections at the time of final disposal of the suit on merits. In the event the objection is upheld the said documents and the evidence adduced in respect of the said documents may be ignored while deciding the case

on merits. If the objection is over-ailed, the said documents and the evidence given in respect of the said documents can be taken into consideration while disposing of the case on merits. But, on the ground that the party who proposes to adduce secondary evidence has not disclosed from where, which authority he got the documents and whether the said documents are coming from a proper custody, the document cannot be refused to be received in evidence. It is totally irrelevant consideration at the time of admitting the documents in evidence.”

It is clear as a rule documents must be proved by primary evidence. If the primary evidence is not available for the reasons set out in Section 65 of the Act only then secondary evidence is admissible. From the above decision it is very clear that before secondary evidence is adduced, a proper foundation is to be laid for not producing the primary evidence. Only after the non-production of the primary evidence is satisfactorily accounted for, the secondary evidence would be permitted to be adduced. A party to the proceedings is not expected to file any application requesting the Court to permit him to lead the secondary evidence. All that is expected of him is to step into the witness box and lead evidence setting out the circumstances under which he is unable to produce the primary evidence. If the Court is satisfied from such evidence that a case is made out for production of secondary evidence, it can permit the party to adduce secondary evidence subject to Sections 63 and 65 of the Act. However, when such permission is granted to the party by the Court to lead secondary evidence, it is open

to the opposite party to object to the production of such secondary evidence, in which event the Court has to mark the document subject to the objections and decide the objections at the time of final disposal of the suit on merits. In the event the objection is upheld the said documents and the evidence adduced in respect of the said documents may be ignored while deciding the case on merits. Hence, the defendant No. 1 has got opportunity to lead secondary evidence. Consequently, I answer **point No.1 in the affirmative.**

8. **Point No.2:** In view of my reason on Point No.1, I proceed to pass the following:

ORDER

**I.A No.XV filed under
Section 65 B of Indian
Evidence Act is allowed as
under:**

**The defendant No. 1 is
permitted to lead secondary
evidence subject to Sections
63 and 65 of the Indian
Evidence Act.**

(Directly dictated to the Stenographer, corrected and revised by me and then pronounced in the open court on this **3rd April, 2025**)

sd/-

(Manohara M.)
Senior Civil Judge, Ankola.