

Shri. Laxman Genu Mhais (Mali)

V/s

Smt. Chandrabhagabai Raghu Mhais (Mali)

**Order Below Exh.106**

**(Dt. 28/11/2016)**

01. By way of this application measurer witness called by defendants Shri. A.K.Chinde moved this application for grant of permission to lead evidence by way of secondary evidence.

02. Measurer submitted that, he has received suit summons and called upon to adduce evidence in respect of Measurement case no.312/2003 and 305/2003 which was effected on 20/02/2003 and 28/01/2003 at mauje Gondegaon, tq. Shrirampur, Dist. Ahmednagar. In that measurement boundaries of Gat no. 355 & Gat no. 400 was to be fixed and report of measurement about encroachment is to be submitted. When he inquired from his office about original record, as it was more-than five years old, office by way of letter reported that said record was destroyed.

03. Therefore he submitted that, in view of report of office, original file is destroyed. Therefore ss certified copy placed on record, he be permitted to adduce secondary evidence to that effect. The record and that copy was duly certified by office Superintendent and department of land Revenue record along-with his signature. Therefore he has knowledge of that record. Therefore he be permitted to

adduce secondary evidence to that effect.

04. Say of plaintiff was called. Plaintiffs counsel Adv. Shri. S.T.Kote opposed application and submitted that, application is not legal. On what basis certified copy are provided are not explained. Therefore that cannot be read in evidence. Hence permission cannot be granted for secondary evidence.

05. Heard Adv. Shri. E.J.Aher for defendants and Adv. Shri.S.T.Kote for plaintiff. Perused application and say.

06. This is suit for declaration and perpetual injunction. Defendants have contested suit. Evidence of plaintiff and defendants is over and defendants prayed for examination of measurer Shri. A.K.Chinde who measurement dt. 28/01/2005 and 20/02/2003 is not disputed wherein property Gat no. 400 and Gat no. 355 came to be measured.

07. Said application was allowed and witness measurer Shri. A.K.Chinde was summoned to adduce evidence along-with record. On appearing before the court vide Exh. 105 he filed report along-with copy supplied by office that Measurement Case no. 312/2003 and 305/2003 was destroyed being time barred. Therefore now securing presence of original record is beyond control of witness.

Therefore certified copy is placed on record which may help him to prove his measurement.

08. Therefore as record is already destroyed beyond control of witness to be produced u/s 65 of Indian Evidence Act, about destruction of record needs to be permitted which may help witness to adduce evidence so as to support court commission of defendant and claim put forth by plaintiff. However matter remains to be adjudged on merit. Subject to its proof. Hence witness is permitted to adduce secondary evidence on record whatever record available with him which are duly certified. In such circumstances, no order to costs. Therefore I proceed to pass following order.

**Order**

01. Application Exh. 106 for adducing secondary evidence by measurer Shri. A.K.Chinde about his office record which was already destroyed is allowed.
02. Witness is directed to appear on 19/12/2016.
03. Issue suit summons to witness.
04. Both side to take note of the order.
05. No order to costs.

Date. 28/11/2016.

(Abhijeet A. Nandgaonkar)  
Civil Judge, Senior Division,  
Shrirampur.