

MHAH250019822016



ORDER PASSED BELOW EXH. 34 IN R.C.S.NO.717/2016

1. The present application is filed by the defendant nos. 2 and 3 for permission to adduce secondary evidence. They have stated that defendant no. 2 Shivaji Gangale had out of the suit property bearing gat no. 49 purchased a part of the area on 7/10/1992 vide sale deed from Dhondabai Gangale but the said sale deed has been lost by defendant no. 2. He tried to perused the same but he could not find the said sale deed. The certified copy of the said sale deed is produced vide list of documents at Exh. 31 at Sr.no. 2. The said suit is for partition and it is necessary that the said sale deed be produced on record and hence it is necessary in the backdrop above to adduce secondary evidence.

2 The plaintiff has filed his say on the application itself and denied the contentions in the application. He has contended that the application is not maintainable and is not supported by any relevant reason. Hence, he prays to reject the application.

3. Considering the above following points arise for my determination together with my findings along with the reasons as stated below:

<u>Sr. No.</u>	<u>Points for determination</u>	<u>Findings</u>
1.	Whether the defendants are entitled to lead secondary evidence?	<u>Yes</u>
2.	What order?	<u>As per final order</u>

REASONS

AS TO POINT NO. 1:

4. For the purpose of deciding the present application it is necessary that we have for perusal certain provisions under the Act which provide for leading of secondary evidence and when can one lead secondary evidence. Section 63 of the Act provides for secondary evidence which speaks as follows

63. Secondary Evidence - *Secondary evidence means and includes.*

1. Certified copies given under the provisions hereinafter contained;

2. Copies made from the original by mechanical processes which in themselves insure the accuracy of the copy and copies compared with such copies;

3. Copies made from or compared with the original;

4. Counterparts of documents as against the parties who did not execute them;

5. Oral accounts of the contents of a document given by some person who has himself seen it.

5. The defendant through the present application seeks to lead the certified copy of the sale deed dated 7/10/1992. However, it is necessary to see whether the certified copies of a sale deed can be made admissible in absence of original and the reasons behind leading such a certified copy. It is the contention of the defendant that the defendant no. 2 has lost the original sale deed. In such circumstance it is necessary that we peruse the following section of the act which speaks about the steps taken when the original is lost.

64. Proof of documents by primary evidence - *Documents must*

be proved by primary evidence except in the cases hereinafter mentioned.

6. Section 64 of the Act is applicable to the present case in hand because the sale deed dated 7/10/1992 is a document which needs to be proved by primary evidence itself unless and until the parties prove that their case fits into any one of the criteria as provided for under the following section i.e. Section 65 of the Act. The provision of this section is highlighted for our perusal.

65. 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:*

(a) When the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in Section 66, such person does not produce it;

(b) When the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(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;

(d) When the original is of such a nature as not to be easily movable;

(e) When the original is a public document within the meaning of Section 74;

(f) When the original is a document of which a certified copy is permitted by this Act, or by any other law in force in

India to be given in evidence;

(g) When the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collections.

In cases (a), (c) and (d), any secondary evidence of the contents of the documents is admissible.

In case(b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

7. Under section 65(c), secondary evidence may be given of the existence, condition or contents of a document when the original is shown to be lost or destroyed. Where the case falls under s. 65(c), any secondary evidence of the contents of the document is admissible. In order to get the benefit under section 65(c), it has to be shown that the concerned document is to be destroyed or lost.

8. I have perused the record before the Court. The defendant has produced certified copy of the said sale deed dated 07/10/1992 alongwith the list of documents at Ex.21/2. As per the contention of the defendant, the original copy of sale deed has been lost by defendnat no. 2. Hence, the defendant has filed on record the certificate copy of the same. The plaintiff has prayed to reject the present application. The sections discussed above are applicable to the present set of circumstances and the plaintiff can be allowed to lead secondary evidence of the sale deed dated 7/10/1992. In my opinion, in such cases where the sale deed has been lost and it being an old sale deed, secondary evidence maybe given of such document. Also, the sale deed is in relation to gat no. 49 which is the suit property and hence in such

circumstances it is necessary for it to come on record for just and effective adjudication of the case as it being a suit for partition. Hence, in such circumstances it would be expedient to allow defendant nos. 2 and 3 to produce the secondary evidence on record in relation to the sale deed dated 7/10/1992. It would not cause any harm or injustice on the part of the plaintiff. Hence, for the reasons mentioned above I answer point no 1 in the affirmative.

AS TO POINT NO. 2

9. In the gamut of discussion above, I proceed to pass the following order-

ORDER

- 1) Application is allowed.
- 2) Defendant nos. 2 and 3 are permitted to adduce secondary evidence in respect of sale deed dated 7/10/1992 as prayed.

Date – 31/03/2021.

Sd/-
(Uma Arun Borade)
Jt. Civil Judge, Junior Division,
Parner.