

Order Below Exh.115-A in RCS 05/2010

CNR No.MHAK07-000150-2010

1. The defendant has prayed for permission to provide secondary evidence regarding Document No. 1 from the list of document at Exh No. 115/1 (a copy of an estimate), filed on 25/01/2010. The claim is that the original estimate document is held by the defendant Grampanchayat Sangavi Jomdeo, but despite searching, it was not found in the grampanchayat office. This document is crucial, and its absence would be a significant loss for the defendant. Since the original cannot be located, permission is sought to provide secondary evidence. The plaintiff opposes this application, arguing that a photocopy of the estimate cannot be considered secondary evidence. Therefore, he prayed for rejection of application.

2. Perused the application, say, and the case record, and I have heard both parties' arguments.

3. In the case of **Surinder Kaur Vs Mehal Singh, decided on 04/12/2013, CR No.4696 of 2013** The Hon'ble Punjab-Haryana High Court guidelines were established for the admissibility of photocopies as secondary evidence:

a) Photocopies may be used as secondary evidence when the original document is unavailable.

b) The party presenting a photocopy must prove the existence of the original and its loss, not merely assert it.

c) Objections regarding foundational facts must be promptly raised.

d) The authenticity and accuracy of the photocopy must be independently confirmed, especially if there are doubts, and sworn testimony may be necessary for verification.

4. Therefore, it is clear that photo copies can be admitted as secondary evidence only when the original document is unavailable due to loss, destruction, or possession by an unwilling party, and their probative value must be independently assessed by court. Therefore, the burden rests on the defendant to establish the authenticity of the claimed document, following the guidance provided by the Hon'ble High Court.

5. The as of now, there is no reason to disbelieve the ground stated by the plaintiff on oath. The situation is squarely covered by provisions of section 65(c) of the Indian Evidence Act, 1872. Similarly, such permission would be necessary to decide the controversy between the parties at once on merits and to avoid multiplicity of litigation. Accordingly, the application is allowed and permission to lead secondary evidence in respect of a copy of an estimate (Exh-115/1) is hereby granted to the defendant.

(Typed and pronounced in open court)

Date : 25/08/2023.

(Vishnu D.Gite)
Jt. Civil Judge Junior Division,
Balapur.