

<u>MHAM180001022005</u>	R.C.S.60/2005
	Pradip Ukandrao Patil + 1 - Vs - Ashwini Rameshrao Bankar

ORDER BELOW EXH. 147

(1) The present application filed by the defendant for permission to lead the secondary evidence under section 65 of the Indian Evidence Act.

(2) The defendant contended that on 06/11/2003 the defendant has filed original receipt on record. At the time of leading the evidence the said receipt is not found. The roznama does not reflect that the said document is filed on record. The defendant has supplied the xerox copy to the plaintiff's advocate. The original document is not found on record. Therefore, the defendant prayed to lead the secondary evidence for possession receipt.

(3) The plaintiff filed the say and contended that the plaintiff or deceased Ukandrao has not executed the said document. The defendant was not possessing any such documents. Therefore, the defendant has not filed the said document on record. There is no reference of said document in written statement and evidence of defendant. Therefore, plaintiff prayed for rejection of the present application.

(4) In Suresh S/o Shrikrishna Pandharipande Vs. Parag S/o Padmakar Pandharipande. cited in 2016(2) Mh.L.J., 437, the Hon'ble Bombay High Court has held that if party wants to lead secondary evidence, two things are required to be proved; (i) there must be evidence of the existence of the original documents, and (ii) there must be evidence of their loss. The two things contemplated cannot be proved unless party concerned is permitted to enter the witness box and/ or examine the witnesses who are also subjected to cross-examination by adversarials.

(5) In Satish S/o Ramdas pant Bhamburkar Vs. Pramod S/o Ramdas pant Bhamburkar, cited in 2017(6),Mh.L.J., 711 the defendant has not produced the partition deed after service of notice to produce in such fact and circumstances the Hon'ble Bombay High Court has granted the permission to lead the secondary evidence.

(6) Heard, perused record. There are two Civil suits bearing Nos. R.C.S. No. 6/2006 and R.C.S. No. 60/2005 is pending between the parties. The defendant has not brought on record the material to show that the original possession receipt was in existence and said document is lost. The defendant has not sought permission to lead evidence to prove the existence of said document. Therefore, the ratio laid down in Suresh supra can not be made applicable the case in hand. Moreover, the facts and circumstances in Satish supra are different from the facts

and circumstances of the case in hand. Hence, the ratio laid down in Satish supra can not be made applicable the case in hand.

(7) The contention of the defendant in present application are not supported by record. The defendant has not brought on record the material to show that the defendant was in possession of original possession receipt and said document is lost. Hence, such facts and circumstances I pass following order.

:: ORDER ::

- 1) The application stands rejected.
- 2) No order as to costs.

Date : 02/01/2025

(A. B. Katte)
Civil Judge (Jr. Dn.)
Warud

C E R T I F I C A T E

I affirm that the contents of this PDF file are word to word as per original Judgment/order.

Name of Steno : Sudhir R. Mukwane,
Stenographer Grade-III
Court : CJJD & JMFC Court No.1, Warud
Judgment/order signed by the P.O. : 02/01/2025
Judgment/order P.D.F on : 02/01/2025
Judgment/order uploaded on : 02/01/2025