

MHAU060007032009

**ORDER BELOW EXH.144 IN RCS NO.65/2009**

1. The defendant has filed this application for exhibition of documents filed by him along with Exh.135 dated 6.07.2023. It is contended that the defendant has filed documents under the list exhibit 135 (hereinafter referred as the said document). Out of the said documents the document No. 1 to 9 and 12 to 17 are original documents in terms of section 61 of the Indian Evidence Act. The provision of section 61 of the Act doesn't say that the document must be public for accepting in evidence. The provision doesn't mandate that the contents of only of the public document can be proved. Had it been so it would amount as if only public documents can be accepted in evidence and private document cannot be accepted in evidence even if they are original.

2. The term public or private are considered and classified for the sake only of original or certified documents. The document No. 1, 2 and 10 are online receipts and every online copy of them is original as per section 62 along with explanation 1 and 2 of evidence Act. In the context of the fore stated elucidation the said document No. 3 to 9 and 12 to 17 are original and primary evidence in terms of section 62 and so their contents stands proved as per section 61 and 64. Primary evidence is best evidence. The only question that remains is whether they related to prove the fact or not. The registration Act is not applicable for proving the documents mention in supra para No. 1. The requirement of registration is for documents viz. sale deeds, wills, relinquishment deeds etc. whose

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execution can only be considered if they are registered one as per section 17 of the registration Act. Similarly section 68 of the evidence Act has no bearing on these documents, because they don't need any attestation. The objection was raised that the said documents are not public documents. There is no law that private documents can never be accepted in evidence even if they are original. That is why section 74 and 75 of the evidence Act has made classification of these documents as public and private respectively.

3. It is contended that the document No. 7 and 13 which are passbook issued by National banks and the objection was raised that they are not original. The document No. 7 and 13 are not the xerox of the original nor carbon copies made from the original passbook kept in the bank. There are lakhs of pass books issued by the bank to the people. It is unimaginable that millions of original passbooks are dumped in all the banks and their copies are issued to the people. The objection to the document No. 15 on behalf of the Plaintiff was that it is not a public document and that on whose demand it was issued and to whom such objection cannot be sustained because it is an regional document and its opinion about the serial No. 108. The question of valuation of evidence of the document is a point for argument. If private document, original in particular are not accepted in evidence, section 74 and 75, 61, 62 and 64 of Evidence Act will be rendered dead letters. Even the explanations 1 and 2 of section 62, though not against the defendant have also got no bearing on his case. Hence, prayed to accept and exhibit the same in the interest of justice.

4. The Plaintiffs have filed their written say below exhibit 145 and strongly objected the application. The Plaintiffs contended that the

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application is misconceived and not at law. The defendant has not come with clean handheld court and therefore is not entitled for the relief as sought. The defendant has nowhere mentioned the provision of law under which he has filed application. The defendant during his further chief examination has already dealt with the said document and the necessary objections were taken by Plaintiff on the alleged documents. The defendant, however, cannot as of right get the documents exhibited without adopting the due process of law. The defendant, if intends to rely upon the alleged documents then you should adopt proper mode required for proving the alleged documents and the mode which is adopted by the defendant cannot be the mode for proving the alleged documents. The analogy by the defendant in the sub-paragraph of paragraph No. 2 is total misinterpretation of the provision and the defendant cannot interpret the same as per his whims and wish. The stage of exhibit of the documents has passed away and now the defendant is facing the cross-examination hence now he cannot have any right to move such application. The defendant is at liberty to adduce the evidence by adopting due process of law and can call necessary witnesses on the relevant documents. It is contended that, there is no any pleading in the written statement so to support the alleged documents to be accepted in the evidence and therefore the application deserves to be rejected. The application is filed only to prolong the matter. The defendant always moved frivolous and vexatious applications. Considering all the above facts and circumstances the application deserves to be rejected with heavy cost.

5. Perused the application, say and documents filed along with exhibit 135. Heard learned advocate Shri. R. H. Siddiqui for the defendant and advocate Shri. P. K. Nikam for the Plaintiffs at length.

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6. The suit is filed for permanent injunction to restrain the defendant from causing any objection to the possession of the Plaintiff on the suit property. The defendant has filed his written statement and objected the suit. The Plaintiffs have concluded their evidence and the suit is now pending for further cross examination of the defendant witness No. 1 at Exhibit 74. The defendant filed his affidavit of examination in chief below Exhibit 74 on 14.07.2016 and his further examination in chief has completed on 8.06.2023 and the case is posted for cross-examination of the DW No.1 on 6.07.2023. At the time of cross-examination the defendant has filed 19 documents along with list at Exhibit 135. Out of the said documents the certified copy of judgment at serial No. 18 and digital 7/12 extract of Gat No. 108 at Sr. no.19 are exhibited as public documents. On the same day the learned advocate for the Plaintiffs conducted part cross examination of the defendant witness No. 1. Thereafter, on 17.08. 2023 further cross examination of the defendant witness No. 1 was conducted on behalf of the Plaintiff and part cross has been deferred as per the order below exhibit 141. Thereafter, the defendant has filed this application on 5.10.2023.

7. By way of this application the defendant contended that he has filed 19 documents along with exhibit 135. Out of the said documents the document No. 1 to 9 and 12 to 17 are original documents. In terms of section 61 of the Indian evidence Act the contents of documents may be proved either by primary or by secondary evidence. This provision doesn't say that the document must be public for access to any evidence the document No. 1, 2 and 10 are online receipts and every online copy of them is original as per section 62 along with explanation 1 and 2 of evidence Act. *"Section 62- Primary Evidence means the document itself produced for the inspection of the court.*

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*Explanation 1 – Where a document is executed in several parts, each part is primary evidence of the document, Where a document is executed in counter part, each counter part being executed by one or some of the parties only, each counter part is primary evidence as against the parties executing it.*

*Explanation 2 – Where a number of documents are or made by one uniform process, as in the case of printing lithography or photography each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the original”.*

8. The learned advocate for the defendant submitted the document No. 3 to 9 and 12 to 17 are original and primary evidence in terms of section 62 and so stands proved as per section 61 and 64. Primary evidence is best evidence. The only question that remains is whether they related to prove the facts or not. Further, as per bankers books evidence Act every document issued by bank must be read in evidence. Private document can be produced in evidence. There will be no hardship to the Plaintiff if the documents are exhibited. Evidential value of the said documents can be considered at the time of final argument

9. I have go through the above submissions. There is no dispute that the primary evidence means the document itself produced for the inspection of the Court. It does not bifurcate the public and private document. The provision doesn't say that the document must be public for accepting in evidence. In order to prove the documents original document is to be produced. However, mere production of document is not enough to prove the same. The document produce on record must be proved according to law. Contents of it are to be proved so also signature on the

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same has to be proved. It is settled law that mere marking of a document cannot be said to be the proof of said document. The document has to be proved in accordance with the law and the same has to be appreciated in order to ascertain the genuineness of the document with other material available on record. Normally, any party who wants to prove the contents of the document is required to lead evidence by production of the original document before the court through its author. Under section 61, the original document can be presented before the court through the author, who created the document and it can be proved. The legal position is not in dispute that mere production and making of a document as exhibit by the court cannot be held to be due proof of its contents. Its execution has to be proved by admissible evidence, that is, by the evidence of those persons who can prove it. A document is required to be produced and proved according to law to be called evidence. Whether such evidence is relevant, irrelevant, admissible or in admissible, is a matter of trial.

10. Thus, as discussed above there is no hurdle to allow the production of original documents whether private or public on record as evidence. However, the said document must be proved in accordance with law to be called evidence. Mere production of document is not enough to be called evidence.

11. Moving ahead, in the case in hand the defendant has filed his affidavit of examination in chief below exhibit 74 on 14.07.2016 at the time he has not filed the documents filed with list exhibit 135. Thereafter, as per order of Hon'ble High Court the defendant has conducted his further examination in chief on 8.06.2023. However, on that day also the defendant has not produced the said documents. Thereafter, on 6.07.2023 the defendant produced the said documents when the learned advocate

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for the Plaintiff conducted part cross-examination of the defendant. The documents filed with list at Exhibit 135 are neither referred in affidavit of examination in chief nor in the further examination in chief of defendant conducted in Court as per order of Hon'ble High Court. The documents are surprisingly produced on record during the cross-examination of the witness. In such circumstances the said documents needs to be proved according to law. As discussed above mere production of original document on record is not enough to mark the said document and read it in evidence. It is also pertinent to note that the evidence of defendant is yet to be concluded, therefore he may take necessary steps to prove the said documents according to law.

12. In the light of above discussion I'm of the considered view that the documents produced by the defendant along with list Exhibit 135 needs to be proved according to law, therefore, mere production of said documents is not enough to exhibit the said documents and read them in evidence. Therefore, the application deserves to be rejected. Hence I pass following order.

**ORDER**

1. The application is rejected.
2. No order as to costs.

Place : Kannad  
Date : 7.12.2023

*P. M. Kolse*  
7/12/2023  
( P M. Kolse )  
Civil Judge. J. D., (Court No.1)  
Kannad.