

ORDER BELOW EXH.31 In R. C. S. NO.45/2017
Narayan Vs. Malanbai
(CNR NO.:MHAU110004552017)
(Dated :23/10/2023)

1. This is an application filed on behalf of plaintiff u/sec. 63 of Indian Evidence Act, for lead secondary evidence. That the plaintiff has filed the present suit for declaration and injunction.

2. Plaintiff further contended that, the present suit is posted for evidence. That the plaintiff further contended that, after sale deed plaintiff filed an application to the Tahasildar Phulambri on 28/12/2016. Plaintiff also filed application to Collector, Aurangabad on 30/12/2016. he contended that, he filed xerox copies of application to Tahasildar and Collector at the time of filing of the suit. That the plaintiff further contended that, He want to file original copies of that application on record but same are lost. Therefore, plaintiff prayer be permitted to adduce secondary evidence in respect of xerox copies of applications as per section 63 of Indian Evidence Act, 1872.

3. The defendant has filed her say on the back leaf of the application. She submitted that, the duty of plaintiff to maintain his document,

therefore at this stage this application not maintainable. This document is private document therefore, application may kindly be reject.

4. Heard both Ld. Advocate.

5. Perused the application and say filed by the defendant. Plaintiff has filed at Exh.4 Sr. No.3 a xerox copy of application dated 28-12-2016 and Sr. No. 4 xerox copy of application dated 30/12/2016.

6. Ld. Advocate of the plaintiff argued that, As per section 65 (f) of the Indian Evidence Act, 1872 he prays to permit to lead secondary evidence.

7. It is appropriate to me go through the provision of section 65 (f) of the Indian Evidence Act, 1872 ;

(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 ;

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

8. After going through the provisions laid down section 65 of Indian Evidence Act, 1872, if, the case of parties covered under section 65 (f), then it is settled principle of law as laid down in Act itself parties lead their secondary evidence by filing certified copies of that document. No other kind of secondary evidence is admissible. The case in hand, its cleared that, the plaintiff filed xerox copies of the applications filed by him at public office it means Tahasildar and Collector office. This copies filed by plaintiff are not a certified copies. They are not secondary evidence in respect of section 65 (f) of Indian Evidence Act, 1872. Moreover, it is settled position of law that, xerox copy of certified copies are not secondary evidence for certified copies.

9. Therefore, considering above facts, the foundation of the plaintiffs suit is not based on secondary evidence since the beginning. The prayer of the plaintiff in my view as well as the settled position of the law is not tenable. The plaintiff has not been completed all requirements as per Indian Evidence Act. which is required to lead secondary evidence . Moreover, plaintiff filed this application after filing evidence affidavit of

the plaintiff. Due to this application, the suit is prolonged unnecessarily. Therefore, it is appropriate to impose costs on the plaintiff. Hence I pass following order.

ORDER

1. Application is rejected with costs of Rs.500/-
2. Costs be paid to defendant till next date and lead his evidence.

sd/-

Place : Phulambari (Dhananjay S.Deore)
Date : 23/10/2023. Jt.Civil Judge (J.D.), Phulambri.

CERTIFICATE

Affirm that the contents of this P.D.F. File order are same, word to word, as per the original order.

Name of the Stenographer : S D.Chavan

Name of the Court : Jt. C.J.J.D. & J.M.F.C.,
Phulambri

Date of order : 23.10.2023

Original copy of order signed by

the presiding officer on : 23.10.2023

PDF copy of order uploaded on : 23.10.2023