

**CNR NO MHBU13-000323-2016**

**Order below Exh.30 in R.C.S. No. 19/2016.**

**Pravin Maind and others**

–V/s–

**Namdeo Maind and others**

Present application is filed by plaintiff supported with affidavit thereby seeking the permission to lead secondary evidence in respect of the certified copy of registered partition-deed dated 02/01/2006. It is contended that, by filing instant suit plaintiff has sought the relief of declaration that, the partition-deed dated 02/01/2006 is not binding on his right for declaration that, the partition-deed dated 03/04/2006 is the valid document. It is contended that, on 02/01/2006 defendant No.1 has illegally effected the partition in favour of defendant No.2 and 3 by way of registered partition-deed illegally. As on today original partition-deed is in the custody of defendant and plaintiff has produced on record the certified copy of that partition-deed. Moreover, plaintiff has given notice to produce the original partition deed before the Court and to admit the certified copy of partition-deed but defendant has not complied both the notices. As it is necessary for the plaintiff to prove the partition-deed dated 02/01/2006, he may be allowed to lead secondary evidence in respect of the certified copy of registered partition-deed.

02) Despite of having ample opportunities defendant failed to file their say to present application, hence application is proceeded without say.

03) Heard learned Adv. for plaintiff. Record and proceedings is perused.

04) Following points arises for my determination, I have recorded my findings thereon for the reasons discussed below.

| <u>Sr. No.</u> | <u>Points</u>   | <u>Findings</u>         |
|----------------|---|-------------------------|
| 1)             | Whether plaintiff can be permitted to lead secondary evidence in respect of the certified copy of registered partition-deed ? | In the Affirmative.     |
| 2)             | What order ?  | Application is allowed. |

**REASONS**

**AS TO POINT NO 1 :-**

05) Instant suit is filed for declaration that, the registered partition-deed dated 02/01/2006 executed by defendant No.1 in favour of defendant No. 2 and 3 is not binding on plaintiff's right. Plaintiff has also sought relief of partition and separate possession. Moreover, plaintiff has also sought the relief that, partition dated 03/04/2006 is the valid partition. According to the plaintiff one registered partition-deed was executed by defendant No.1 in favour of his brother, the original partition-deed is in possession of defendant No.1. It seems that, the certified copy of registered partition-deed dated 02/01/2006 is filed on record. As per notice below Exh. 27 and 28 initially plaintiff has intimated defendant to admit the contents of certified copy of registered partition-deed and thereafter sought to produce the original partition-deed before the Court. But defendant have not

complied both the notices. As the certified copy of registered partition deed is filed on record there is a reason to believe that, original partition-deed was executed by defendant No.1 in favour of defendant No. 2 and 3. In the natural course of conduct the original partition deed is in the custody of defendant No.1, despite of taking positive steps in accordance with the Indian Evidence Act, defendant failed to produce the original partition-deed on record. As the partition-deed is under challenged, it is just and necessary for the plaintiff to prove it in his evidence. In such circumstances I am of the opinion that, plaintiff has properly laid down the foundation for leading secondary evidence in respect of the certified copy of registered partition-deed dated 02/01/2006. Hence I am of the opinion that, plaintiff is entitled to lead secondary evidence as prayed therefore, I answer point No.1 in the affirmative.

**AS TO POINT NO. 2 :-**

06) Considering all these aspects, I proceed to pass following order.

**ORDER**

- 1) Application is allowed.
- 2) Plaintiff is permitted to lead secondary evidence in respect of the certified copy of registered partition-deed dated 02/01/2006.

Date :- 07/03/2018.  
Place :- Chikhli

**(A. A. Khandale)**  
Civil Judge Junior Division,  
Chikhli.

Certificate

I affirm that the contents of this PDF file  
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