


MHJN020005472013 	R.C.S.No.221/2013 Nilawati & Ors-Vs-State & Ors
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ORDER BELOW EXH.145
(Order passed on 02.12.2024)

1. Plaintiffs have filed present application for permission to lead secondary evidence on sale-deed no.544/1993.

2. Plaintiffs submit that,they have filed certified copy of sale-deed no.544/1993 dated 11.04.2023 on record. The original copy was sending for scanning by Sub-Registrar Office,but the said copy has not been received back to the plaintiffs. Hence, plaintiffs have not file the original copy of sale-deed on record.

3. Plaintiffs submit that,as per sale-deed no.544/1993,Gut no.244 Adm.44R land has been sold to the plaintiff by Patilba Mainaji Dongre. But original owner Patilba Dongre and witness on the sale-deed namely Ganesh Taur have been died and due to mental illness, Karbhari Kanhere could not appear in court. As the original copy is not with the plaintiff,they have filed application in the concerned office and obtained a certified copy of sale-deed.

4. Plaintiffs submit that,the Sub-Registrar Office have custody of registered sale-deed as per rules and the record of registration is available in Sub-Registrar Office. From the said record, the concerned office has issued the certified copy of sale-deed bearing no.544/1993. Lastly plaintiffs prays that, permission may be granted to

them for leading secondary evidence,hence this application.

5. Defendant no.8 has filed his reply vide Exh.147 and strongly objected on the grounds that,permission to lead secondary evidence can only be granted if loss of original document or its destruction or non availability has been clearly mentioned in the plaint, which is a foundation of the seeking relief of secondary evidence as per Section 65 of Evidence Act. But no such contention is appearing in the plaint,hence,permission to lead secondary evidence cannot be granted.

6. Defendants no.1 to 7 & 9 have not filed their say on the present application,hence application is proceeded without say against them.

7. Perused application and say.

8. Heard.

9. After perusal of record it appears that,present matter is kept for evidence,but the plaintiff's contention is based on the sale-deed no.544/1993. Therefore,plaintiffs have filed certified copy of sale-deed no.544/1993 on record. The original copy was sending for scanning by Sub-Registrar Office,but the said copy has not been received back to the plaintiffs. Hence, plaintiffs have not file the original copy of sale-deed on record.

10. As per contention of plaintiffs,the sale-deed no.544/1993, Gut no.244 Adm.44R land has been sold to the plaintiff by original owner Patilba Mainaji Dongre. But original owner Patilba Mainaji

Dongre and witness on the sale-deed namely Ganesh Taur have been died and another witness namely Karbhari Kanhere is mentally illness, he cannot appear before the Court. The original copy is not with the plaintiff,they have filed application in the concerned office and obtained a certified copy of said sale-deed.

11. As per contention of plaintiffs that,the sale-deed is available in Sub-Registrar Office. From the said record,the concerned office has issued the certified copy of sale-deed no.544/1993. Secondly,it is only prayer of plaintiffs for permission to lead secondary evidence. No prejudice will be caused to defendants,if such permission be solicited,because they have every right to cross-examine the witness/witnesses on the point of lost of document in question. Application filed by plaintiffs are according to provisions of Law. Accordingly, order follows :

ORDER

1	Application vide Exh.145 is allowed.
2	Plaintiffs are permitted to lead secondary evidence as prayed.

Date:- 02.12.2024

(Dilip S. Thorat)
Civil Judge (Sr.Divn.)
Jalna

CERTIFICATE

I stated that the contents of this PDF file are word to word as per original

Order.

Name of Steno : Shirish D.Deshmukh.
Name of Court : Civil Judge(Sr.Divn.),Jalna
Date of PDF : 04.12.2024.

Steno(M.)