

MHJN080002822015



ORDER BELOW EXH.44
(Passed on 30/10/2025)

The plaintiff has filed present application for seeking permission to lead secondary evidence in respect of sale-deed bearing no.1473/1982, dated 29.04.1982.

2) It is contended that he is owner and possessor by way of registered sale deed bearing No.1473/82, dated 29.04.1982. He filed certified copy of said sale-deed. He filed suit for possession on the basis of legal ownership and possession. The defendants have no right over the suit property. They denied ownership and possession of the plaintiff. Therefore, the plaintiff wants to prove his ownership by way of said sale-deed. The plaintiff is original resident of Bodlapuri, Tq.Ghansawangi. But since long time he went to Mumbai for his work. In that time, sale-deed was lost. Despite sufficient efforts to find out sale-deed, but sale-deed is not found. Therefore, the plaintiff prayed for to lead secondary evidence.

3) The defendants filed their say over leaf the application and contended that the plaintiff has been examined one witness of said sale-deed at Exh.36. Therefore, this application is not tenable in the eyes of law. Hence, he prayed for rejection of the application.

4) Perused the application and say. Heard both sides. Perused documents filed on record.

5) As per section 61 of The Indian Evidence Act,1872 (**for short the act**) the contents of documents may be proved either by primary or by secondary evidence. Section 65 of the act provides the cases in which secondary evidence relating to documents may be given. It provides that, secondary evidence may be given of the existence, condition, or contents of a documents in the following cases:-

(a) When the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is public document within the meaning of section 74;

(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 40[India] to be given in evidence ;

(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in court and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

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

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

6) From the plain reading of section 65 of the Act, it is clear that the party proving the documents must have used all reasonable means to obtain the original. The pre-conditions for leading secondary evidence are that such original documents could not be produced by the party relied upon such documents in spite of best efforts, unable to produce the same which is beyond their control. The party sought to produce secondary evidence must establish for the non-production of primary evidence. At the same time, the party has to lay down the factual foundation to establish the right to give secondary evidence where the original document cannot be produced.

7) The secondary evidence of an ordinary document is admissible only and only when the party desirous of admitting it has proved before the court that it was not in his possession or control of it and further, that he has done what could be done to procure the production of it. Thus, the party has to account for the

non production in one of the ways indicated in the section 65 of the Act.

8) The Hon'ble Supreme Court in the case of **Dhanpat Vs. Sheo Ram (deceased) through his Lrs., Civil Appeal no.1960 of 2020 decided on 19 March 2020**, observed that there is no requirement that an application is required to be filed in terms of section 65 (c) of the Evidence Act before the secondary evidence is led. A party to the lis may choose to file an application which is required to be considered by the trial court but if any party to the suit has laid foundation of leading of secondary evidence, either in the plaint or in evidence, the secondary evidence cannot be ousted for consideration only because an application of permission to lead secondary evidence was not filed.

9) From the application it is revealed that, the plaintiff is unable to produce the original sale-deed on record as it is lost. In the plaint and said application supported by affidavit at Exh.51, the plaintiff has narrated the said fact. The plaintiff has laid foundation for leading secondary evidence. In view of ratio laid down in **Dhanpat (Supra)** it is crystal clear that, no prior permission of the court to lead secondary evidence is necessary. As per objection of the defendants that the plaintiff has examined witness on namely Vishnupant Unde at Exh.36. Therefore, application is not tenable. On perusal of Exh.36, it appears that said sale-deed is not proved by this witness. Moreover, the defendants have denied title and possession of the plaintiff. In these circumstances, the plaintiff has to bring on record of the proof of the ownership and possession over the suit property. However, the original sale-deed has been

lost. To prove ownership and possession of the plaintiff over the suit land, the sale-deed must be proved by the plaintiff. Considering all these factors, the application of the plaintiff needs to be allowed. Thus, I pass following order.

ORDER

1	The application is allowed.
2	The plaintiff is at liberty to lead secondary evidence in respect of sale-deed bearing No.1473/1982,date 29.04.1982

Date - 30/10/2025
Ghansawangi.

Sd/-
(Smt. L. N. Panchal)
Civil Judge Junior Division,
Ghansawangi.