

MHKO050001422012 	<u>Regular Darkhast No.50/2012</u> <u>Order below Exh.206</u> <u>Vrishali Trust Vs.</u> <u>Tukaram Rama Nemiste etc.1</u> <u>CNR No.MHKO050001422012</u>
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The instant application is filed by 3rd party applicant under section 65B of Indian Evidence Act read with 151 of Civil Procedure Code praying for permission to tender secondary evidence.

2. Perused the application and reply filed by the decree holder below Exh.207. Heard respective counsel for the 3rd party as well as for the decree holder.

3 It is the case of 3rd party applicant that vide list of documents filed at Exh.202, six documents have been tendered before the court. According to the 3rd party applicant, document no.1 is the paper publication which is more than 30 years old. The learned Adv. Kalaje is also no more. The copy which was available with office of news paper have been filed on record and therefore it is necessary that the same be read into evidence as per the provision of Indian Evidence Act relating to secondary evidence.

3. It is the case of the 3rd party applicant that the documents no.3 to 6 are registered sale deeds which are in possession of respective parties in favour of whom the same have been executed. According to 3rd party applicant, as they are not in possession of said documents, it will take time for issuance of summons and proving

them in evidence. They therefore pray for permission to read these documents as secondary evidence under Indian Evidence Act.

4. Per contra, the judgment debtor has vehemently opposed the instant application on the ground that document at serial no.1 itself not bear requisite seal of the concern. Moreover, the bills also do not bear proper seal and stamp. Similarly, documents at serial no.3 to 6 are not in possession of the 3rd party and therefore no relevance is made out. The judgment debtor accordingly prays for rejecting the instant application.

5. I have carefully gone through the record. Perusal of the same shows that the documents for which permission is sought for tendering secondary evidence is filed below Exh.202. The first document appears to be notice published in news paper "*Pudhari*". However, the same does not bear any sign or stamp or remark. The same is the true copy. There is one endorsement of one Adv. Savita Sagar showing true copy, however, the 3rd party applicant is unable to explain any clarification regarding the same. The paper publication is coupled with the receipt, however, no inference can be drawn about the relevancy of the said receipt. Thus, bare perusal of document no.1 does not reveal any sign or seal or stamp. In my considered view, ingredients of section 65 of the Indian Evidence Act are not made out and therefore document no.1 & 2 itself do not clear the litmus test of secondary evidence.

6. As far as documents no.3 to 6 are concerned, they are

copies of sale deeds. The only reason tendered by the 3rd party applicant for not proving them as per provisions of Indian Evidence Act is that it will take time to do so. In my considered view, the said ground is not a valid and legal ground to tender secondary evidence. The permission to grant secondary evidence has to be given by adhering strictly to the provision of Indian Evidence Act. The instant application being devoid of merits and being in contradiction to the provision of Indian Evidence Act deserves to be rejected. Hence, I proceed to pass following order.

ORDER

- 1] Application stands rejected.
- 2] Matter to proceed further.

Date- 10/07/2023
Ichalkaranji

(S. A. Ingley)
2nd Jt. Civil Judge Junior Division,
Ichalkaranji