

Shri. Raghunath Chavan Vs.  
Shri. Aba Chavan & others.

**ORDER BELOW EXHIBIT NO.391 IN**  
**REG. CIVIL SUIT NO. 350/1996**

By this application, defendant no.6 and 8 have prayed to allow them to lead secondary evidence in respect of the document filed below Exhibit No.328/6 i.e. sale deed dated 17/12/1982 registered at serial No.2855/1982, as the original sale deed has been misplaced.

02. In this application, it is contended that the original sale deed dated 17/12/1982 registered at serial No.2855/1982 has been misplaced by them. Therefore, they have filed certified copy of the said sale deed 17/12/1982 below Exhibit No.328/6. Therefore, by this application, the defendants are seeking permission to lead secondary evidence in respect of this document.

03. The plaintiff has objected the instant application mainly on the ground that defendant failed to give particulars as to when and where document has been misplaced. It is further submitted that, they have not filed any missing complaint about said document. Thus, the application is filed only in order to prolong the matter. Therefore, plaintiff has prayed to reject the application.

04. I have heard the learned advocate for respective parties at length. Ld. Advocate for plaintiff has relied upon ***Karthik Gangadhar Bhat Vs. Nirmala Namdeo Wagh and another, Writ Petition No. 11151/2017***, wherein Hon'ble Bombay High Court pleased to held that, there is no necessity to file application for leave to lead

secondary evidence. The requirement of section 65 is satisfied then court shall allow parties, even without filing application for leave, to lead secondary evidence.

05. It is seen that the plaintiff has filed the present suit for partition and separate possession of suit properties. According to defendants, the original sale deed dated 17/12/1982 registered at serial No.2855/1982 has been misplaced. It is seen that they have filed certified copy of the said sale deed dated 17/12/1982 along with the list of document at Exhibit No.328/6. Section 65 of the Indian Evidence Act provides that the cases in which the secondary evidence relating to the documents may be given. **Claus [C] of Section 65 provides** :- when the original has been destroyed or lost, or when the party offering evidence of its contents can not, for any other reasons not arising from his own default or neglect, produce it in reasonable time, in this case the secondary evidence may be given.

06. On this background, if this application is considered, it is seen that the defendants have satisfactorily established that the original sale deed dated 17/12/1982 has been misplaced. The instant application Exhibit No.391 is supported by an affidavit. So far as the ratio laid down in ***Karthik Bhat's*** case is concerned, it is supporting to the defendants and not to the plaintiff, because Hon'ble Court pleased to held that, after satisfaction of requirement of section 65, there is no necessity of leave required to lead secondary evidence. In this case also defendants satisfy that, the original sale deed is lost. Therefore, considering the peculiar facts and circumstances of the instant case, I am of the opinion that the application deserves to be

allowed. Hence, I proceed to pass the following order.

**-: ORDER :-**

1. Application Exhibit No.391 is allowed.
2. Defendant No.7 and 8 are permitted to lead secondary evidence in respect of document filed below Exhibit No.328/6.

(Dictated and pronounced in open Court)

Ichalkaranji.  
Date: 01/11/2019.

Sd/-  
( P.M.Mane )  
5<sup>th</sup> Jt. Civil Judge, Junior Division,  
Ichalkaranji.

I affirm that the contents of this P.D.F. file Judgment/Order are same, word to word, as per the original Judgment/Order.

Name of stenographer	R. D. Patil.
Name of Court	P. M. Mane, 5 <sup>th</sup> Jt. Civil Judge Jr. Dvn. and Judicial Magistrate First Class, Ichalkaranji.
Date of Dictation	01/11/2019
Order signed by P.O. on	01/11/2019
Order uploaded on	01/11/2019