

MHKO050001451996

Shri. Raghunath Chavan Vs.
Shri. Aba Chavan & others.**ORDER BELOW EXHIBIT NO.395 IN**
REG. CIVIL SUIT NO. 350/1996

By this application, defendant no.7 and 8 have prayed to allow them to lead secondary evidence in respect of the document filed alongwith list Exhibit No.397 at serial no.2 i.e. certified copy of sale deed dated 30/10/1996 as the original sale deed has been misplaced.

02. In this application, it is contended that the original sale deed dated 30/10/1996 registered at serial No.4049/1996 has been misplaced by them. According to defendants, various proceeding are pending in court in respect of suit property. Said proceeding was conducting by defendant no.3, recently he was died. Therefore, it could not possible for defendant no.7 and 8 to search the original sale deed. 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 vide say Exhibit No.396. According to him, the defendants have not explained as to how said document is relevant in present proceeding. Therefore, he cannot be permitted to lead secondary evidence unless proper explanation from them. It is further submitted that, the reference of said document is not given in the written statement of defendants.

Therefore, they are not entitled to lead secondary evidence in respect of certified copy of sale deed dated 30/10/1996. Hence, plaintiff has prayed to reject the application.

04. I have heard the learned advocate for respective parties at length.

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 30/10/1996 registered at serial No.4049/1996 has been misplaced. It is seen that they have filed certified copy of the said sale deed dated 30/10/1996 along with the list of document at Exhibit No.397/2. 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. Moreover, in view of clause (b) of section 65, when the existence, conditions or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representatives in interest, in that case also secondary evidence can be allowed.

06. On this background, if this application is considered, it is seen that the defendants have contended that, various litigations are pending in court in respect of suit property. Therefore, it could not

possible to them to search said original documents in each and every proceeding as it was conducted by the deceased defendant no.3. Accordingly, I have gone through the record, the defendants alongwith list Exhibit No.397 has filed the one of the original sale deed dated 05/07/1985, the endorsement made on said sale deed shows that, previously it was filed in R.C.S. No. 207/1985, the defendants got the original copy from that proceeding and filed in this case. This circumstances shows that, there are various litigations are pending in respect of suit property. Thus, the defendants satisfactorily established that, original sale deed dated 30/10/1996 has been misplaced. The instant application Exhibit No.395 is supported by an affidavit. Therefore, there is no reason to disbelieve the contentions of the defendants that, original sale deed has been misplaced.

07. Moreover, the present case is also come under the clause (b) of the Section 65, because plaintiff in plaint para 5 admitted the execution of sale deed. Dispute between the parties is not about the execution, but it is about that whether said properties were purchased from the joint family nucleus or from the independent income of defendant no.3. Thus, existence of the said sale deed is not at all disputed between the parties. Therefore, I found it appropriate to give opportunity to defendants lead secondary evidence in respect of certified copy of original sale deed dated 30/10/1996 as they satisfied the ingredients of section 65 (b) and (c). Hence, I proceed to pass the following order.

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R.C.S No. 350/1996

CNR NO. MHKO050001451996

-: **ORDER** :-

1. Application (Exhibit No.395) is allowed.
2. Defendant No.7 and 8 are permitted to lead secondary evidence in respect of document filed below Exhibit No.397/2.

(Dictated and pronounced in open Court)

Ichalkaranji.
Date: 27/11/2019.

Sd/-
(**P.M.Mane**)
4th 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 th Jt. Civil Judge Jr. Dvn. and Judicial Magistrate First Class, Ichalkaranji.
Date of Dictation	27/11/2019
Order signed by P.O. on	27/11/2019
Order uploaded on	27/11/2019