

MHKO050005232017 	<u>ORDER BELOW EXH. 40 IN REG. CIVIL SUIT</u> <u>NO. 52/2017</u>
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1. Perused the application.
2. This is an application filed by plaintiff as per section 65 of the Indian Evidence Act to grant permission to lead secondary evidence.
3. The plaintiff has submitted that, the present suit is filed claiming relief of permanent and mandatory injunction. The relief of mandatory injunction is claimed regarding sale deed dated 30/09/1991. The suit is also filed claiming the relief to insert the names of plaintiff's predecessor and plaintiff to the 7/12 extract of the suit property. The defendant has filed his counter claim and prayed to grant the declaration that, the sale deed dated 30/9/1991 bearing registration No. 2906 be declared as null and void. Moreover, considering these pleadings issues have been framed. The plaintiff has pleaded in the plaint that, the said original sale deed was handed over to the defendants for making necessary entries to the 7/12 extract. Hence, the plaintiff has filed an application below Exh.13 to direct the defendants to produce the sale deed. But the defendants have filed their say and denied the production. The plaintiff has produced the certified copy of the disputed sale deed along with Exh.31. But considering defendant's counter claim the original sale deed is necessary to be come on record. As the defendants have denied to produce the original sale deed, hence, the certified copy of the same be read as secondary evidence. It is necessary to pass such order. If the certified sale deed would be

treated as secondary evidence then the defendants will not suffer any loss. Moreover, it would be helpful for the final adjudication of the suit on merit. Lastly, the plaintiff has prayed to allow the application.

4. The defendants have filed their say at Exh.42. The defendants have contended that, The application is filed with intention to cause delay the proceeding and to waste the precious time of this court. The application is against the provisions of law. The plaintiff never complied Order XII Rule 8 of the Code of Civil Procedure. Hence, the application is not maintainable. Lastly, the defendants have submitted to reject the application.

5. Perused the record. Heard both the Ld. Advocates at considerable length. Ld Advocate for plaintiff has submitted that, the original sale deed is in the possession of defendants. Therefore, the plaintiff has filed an application at Exh.13 to direct the defendants to produce the sale deed. But, defendants have denied the production. The sale deed is necessary to come on record for final adjudication of the suit on merit. The document is in possession of the defendant but they are not producing the same. Therefore, it is necessary to grant permission to lead secondary evidence regarding the sale deed as prayed in the application.

6. On the contrary, Ld. Adv. for defendants has argued that, the plaintiff has not complied necessary statutory provisions hence, the application is not maintainable in the eyes of the law. He has further argued that the plaintiff did not complied Order XII Rule 8 of Code of Civil Procedure. Unless and until the compliance of Order XII Rule 8 is made the present application cannot be taken into

consideration. There is no need to lead secondary evidence as prayed. Hence, the application may kindly be rejected.

7. As stated above, perused the record. It reveals from record that, the plaintiff has filed an application as per Order XII Rule 8 of the Code of Civil Procedure to direct the defendants to produce the original sale deed on record. The defendants have filed their say to that application at Exh.15 and denied the contentions of the application. Moreover, the defendants have contended in their say that, such kind of sale deed was never existed between the parties. Therefore, that cannot be produced.

8. I have also perused the documents on record. The plaintiff has produced on record the certified copy of the sale deed dated 30/09/1991 bearing registration No. 2906 at Exh. 3/5. It reveals from that document, the sale deed was registered. Considering the pleadings of the parties the sale deed is necessary for deciding the actual dispute between the parties on merit. If the present application would be allowed then the defendants will suffer no loss. On the contrary, the plaintiff will suffer irreparable loss. Moreover, the plaintiff would not get a fair opportunity to prove his pleadings. The plaintiff has already complied the provision of Order XII Rule 8 of C.P.C. vide Exh.13. Hence, it cannot be concluded that, the plaintiff did not followed necessary statutory provisions. The original document is unavailable hence, its registered copy can be permitted to read as secondary evidence. The questions regarding the validity, genuineness and bindingness of the documents cannot be considered at this stage. Those facts are part of final decision after the evidence of the parties. So the questions regarding the validity, genuineness and bindingness of the sale deed are kept open. Only permission to lead secondary evidence regarding the sale deed can be granted due

to unavailability of Original sale deed. In the result I pass following order.

ORDER

1. Application is allowed.
2. Permission is granted to lead secondary evidence regarding the registered sale deed dated 30/09/1991 bearing registration No. 2906.
3. Parties to bear their own Costs.

(Dictated and pronounced in open court.)

Ichalkarnji

Date:- 06/1/2021

(A. S. Jadhav),
4th Jt. Civil Judge (J.D.),
Ichalkarnji.

-- C E R T I F I C A T E --

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

Name of stenographer	R. D. Jadhav
Name of Court	Sou. A. S. Jadhav, 4 th Jt. Civil Judge Jr. Div., Ichalkarnaji.
Date of Dictation	06/01/2021
Order signed by P.O. on	06/01/2021
Order uploaded on	08/01/2021