

MHKO050019182009



ORDER BELOW EXH.212 IN
REGULAR CIVIL SUIT NO.18/2010
(Passed on 23. 11. 2023)

This is an application for grant of permission to adduce secondary evidence as per Section 65 of the Indian Evidence Act, 1872.

02. Perused the application and reply thereon. Heard learned counsel for both sides.

03. Learned counsel for the defendants submitted that plaintiffs failed to produce the sale deeds which were executed by their predecessor in title namely Pundlik Mahajan despite of application filed at Exhibit No.171. As such, defendants have produced on record certified copies of those sale deeds. Hence, it is prayed to grant permission to adduce secondary evidence in respect of above mentioned sale deeds which are filed at Sr. Nos.1 and 2 below list of document at Exhibit No.182 and Sr. Nos.4 to 8 and 12 below list of document at Exhibit No.199. To fortify his submissions, he relied upon authority of Hon'ble Apex Court in the case of *Jagmail Singh and another Vs. Karamjit Singh and others* reported in (2020) 5 SCC 178.

04. Application is resisted by the plaintiffs vide their reply at Exhibit No.213. It is submitted that in natural course the alleged sale deed would be in the possession of vendee and not the

predecessor in title of the plaintiffs i.e. Pundlik Mahajan. Therefore, defendants ought to have issued notices to the vendee whose names are appearing on the sale deeds for production of original copies of the sale deeds in respect of which defendants are seeking to adduce secondary evidence. However, defendants have not made any attempt to produce the original copies of the sale deeds by issuing notice to the above said persons. Therefore, according to him, present application is not maintainable as defendants have failed to comply the requirement of Sec.65(a) of the Indian Evidence Act, 1872 for seeking the permission to adduce secondary evidence as prayed. Hence, it is prayed to reject the application. To fortify his submissions he relied upon following authorities :

<u>Sr. No.</u>	<u>Name of the Parties</u>	<u>Mode of Citation</u>
1)	<i>Rambhau Jatkar Vs. Tryambak Satbharkre</i>	: <i>2006(2) Mah.L.R.486</i>
2)	<i>Shiolalsing Vs. Shankar</i>	: <i>AIR 1984 Bom.19</i>
3)	<i>Lakhi Baruah Vs. Padma Kanta Kalita</i>	: <i>AIR 1996 SC 1253</i>

05. Sec.65(a) of the Indian Evidence Act, 1872 provides that secondary evidence may be given of the existence, condition or contents of a document when the original is shown or appears to be in 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 Sec.66, such person does not produce it.

06. In view of afore-said provision of Sec.65(a) of the Indian Evidence Act, 1872 it is clear that for adducing secondary evidence in respect of a particular original document it must be shown that the person, who is in possession of the said original document, has refused or failed to produce the same despite of notice given to him to that effect.

07. In the present matter defendants are seeking to adduce the secondary evidence in respect of sale deeds which are executed by Mr. Pundlik Mahajan, who was the predecessor in title of the plaintiffs. Therefore, in natural course he or his successor i.e. plaintiffs cannot be said to have the possession of the sale deeds which were executed by him. As such, in natural course the possession of the original sale deeds would be with the vendee in whose favour Mr. Pundlik Mahajan has executed the sale deeds. Therefore, defendants ought to have issued notices as per Sec.66 of the Indian Evidence Act, 1872 to the vendee of those sale deeds for production of the above said original sale deeds. However, it is undisputed that defendants have not issued notices to those persons. Moreover, there is nothing on record to show that those persons are out of reach of, or not subject to, the process of the court. Resultantly, the requirement of Sec.66(a) of the Indian Evidence Act, 1872 cannot be said to be complied with by the defendants. Therefore, it is clear that defendants have failed to lay the basic foundation for adducing the secondary evidence in

respect of above mentioned sale deeds. Consequently, defendants are not entitled for the grant of permission to adduce secondary evidence in respect of above mentioned sale deeds.

08. I have carefully gone through the authority relied upon by learned counsel for the defendants. It is significant to note that facts of the present application are different from the facts of the authority cited supra. Therefore, with due respect to the ratio laid down in the authority relied upon by learned counsel for the defendants, I hold that it is not helpful to the defendants at this stage.

09. In view of aforesaid discussion, application is liable to be rejected. Hence, I pass the following order :

ORDER

1. Application at Exh.212 is hereby rejected.
2. Cost in cause.

Sd/-

Ichalkaranji
Date :- 23. 11. 2023

(H. A. Wani)
Civil Judge Senior Division,
Ichalkaranji