

MHKO050019182009



ORDER BELOW EXH. 230 IN
REGULAR CIVIL SUIT NO.18/2010
(Passed on 14. 03. 2024)

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

02. Learned counsel for the defendant nos.1 to 6 submitted that defendants want to rely upon certified copies of sale deeds filed at Sr. No.1 and 2 along with list of document at Exh.182 and at Sr. Nos.4 to 8 and 12 filed along with list of document at Exh.199. All those sale deeds are very old. As such, the legal heirs of the vendee of those sale deeds were called upon to produce the original copies of those sale deeds by way of summons issued to them. Accordingly, they appeared in the court and filed the pursis at Exh.222 to 226 stating therein that sale deeds sought by the defendant are lost and therefore, they are unable to produce the same. Accordingly, it is prayed to grant permission to adduce the secondary evidence in respect of those sale deeds.

03. Application is resisted by the learned counsel for the plaintiff vide her reply at Exhibit No.231. Learned counsel for the plaintiff submitted that there is nothing on record to show that the persons to whom the summons were issued for producing the original copies of the sale deeds are still the owners of the properties mentioned in those sale deeds or not. Therefore, according to him, provision of Sec.66 of the Indian Evidence Act,

1872 cannot be said to be complied with. Therefore, application is not tenable in the eye of law. Hence, it is prayed to reject the application.

04. Section 65(c) of Indian Evidence Act provides that secondary evidence may be given of the existence, condition or contents of a document when the original is lost or destroyed. It is significant to note that the documents i.e. sale deeds in respect of which defendant nos.1 to 6 are seeking to adduce secondary evidence are more than 50 years old. Therefore, possibility of lost of sale deed cannot be ruled out. Moreover, the legal representatives of the vendee of those sale deeds, who are supposed to have the possession of those sale deeds, have filed the pursis (Exh.222 to 226) on record that the original copies of those sale deeds have been lost. It is pertinent to note that it is not the contention of legal representatives of the vendee of those sale deeds that they have handed over original copies of those sale deeds to another person. As such, objection raised by the plaintiff is not tenable in the eye of law. Therefore basic foundation for granting permission to lead secondary evidence in respect of above said sale deeds is laid by the defendants.

05. It is pertinent to note that all that a certified copy does is that it authenticates the genuineness of the original copy. It creates the presumption that the original document had the same contents as the copy. It is significant to note that defendant nos.1 to 6 are also seeking to rely on the certified copies of above-said sale deeds issued by the Sub-Registrar, who is the competent authority

in respect of registration of sale deeds. In these circumstances, I am of the view that defendant nos.1 to 6 cannot be stifled and their right to adduce secondary evidence in respect of above-said sale deeds cannot be crippled by rejecting the permission to adduce secondary evidence at the threshold. Hence I pass following order :

ORDER

1. Application at Exh.230 is hereby allowed.
2. Permission to adduce secondary evidence in respect of Sale deeds referred to in the present application by way of producing their certified copies is hereby granted.
3. Cost on applicant.

Ichalkaranji
Date :- 14.03.2024

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