



ORDER PASSED BELOW EXH.98
IN REGULAR CIVIL SUIT NO.108/2015

[CNR No.MHKO090004722015]

Perused application and say. Heard Ld. Advocate for the defendants and plaintiff. The application is filed by defendant no.2, praying that defendant no.1 shall be directed to produce memorandum of partition dated 27.10.2014. According to defendant no.2, it is in custody of defendant no.1 and hence he shall file it in the Court. The application is resisted by the plaintiff. According to him, defendant no.1 has not admitted custody of the document. Hence, the application cannot be allowed.

2. I carefully perused pleadings of the parties. Defendant no.1 in his written statement (Exh.43) has specifically pleaded about the said memorandum dated 27.10.2014. I agree with the plaintiff that he has not given any admission regarding its custody. However, contention of other defendants in this regard cannot be discarded at threshold. They say that the said document is with defendant no.1. It has to be believed. It is also important to note here that now Ld. Advocate for defendant no.1 has given no instruction pursis, therefore, it is difficult to ascertain with whom custody of the document is. For this purpose, it is necessary to issue notice to defendant no.1. Without ascertaining this fact, the suit cannot be proceeded further.

3. In case, defendant no.1 submits that the document is not with him, other defendants may take appropriate steps. In that case, they will have to show that such document was executed, the original was given in the custody of defendant no.1 but now he is not producing it. Thus, the application is allowed as follows :-

ORDER

1. Notice be issued to defendant no.1 to inform as to whether custody of the original memorandum of partition dated 27.10.2014 is with him or not. If it is with him, he shall produce it in the Court.

Place : Gadhinglaj.
Date : 17.01.2024.

Sd/-
(G. V. Deshpande)
Civil Judge Senior Division,
Gadhinglaj