

MHKO110017402017



**Reg. Civil Suit No. 115/1996.**  
(CNR No.MHKO110017402017)

**Order Below Exh.177.**

01. The present application is made on behalf of the defendants vide Order XLVII, Rule 1, of Code of Civil Procedure (in short C.P.C.)

02. It is further contentions of the defendant that he made an application vide **Exh.175**, with the prayer to assign the exhibit to the document i.e. registered sale-deed bearing no.361/1992, produced at **Exh.78/26**. He refer the said registered sale-deed in the evidence of defendant at **Exh.115**, page no.09. It is further contentions of the defendant that, as per section 74(2) of Indian Evidence Act the said document is a public document. So, the same has to be exhibited and shall be read as an evidence. But, this Court erred while deciding the application vide **Exh.175** and the same was rejected without considering the provision of section 74(2) of Indian Evidence Act. Hence, he made the instant application with the prayer to review the order passed vide **Exh.175**.

03. Plaintiffs filed their say vide **Exh.178**. They submitted that, present application is not maintainable in the eyes of law. Defendants has to made an separate application to review the order. He shall not make this application to review the order passed vide **Exh.175**. They further submitted that, no erred was committed by this Court while deciding the application vide **Exh.175**, dated 23/11/2023. They further submitted that, the objections put forth in the instant application are not legal one. They finally submitted to reject the application.

04. Perused the application. Heard to both the parties.

05. By considering the rival pleading following points arise for my consideration. I am recording my finding along with reasons as follows.

| <u><b>Sr.<br/>No.</b></u> | <u><b>Points</b></u>                                                                                                                                         | <u><b>Findings</b></u>                |
|---------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|
| 1.                        | Whether the defendants bring on record that, an erred appeared on the face of the record was committed while passing the order on application vide Exh.175 ? | <u><b>In Negative</b></u>             |
| 2.                        | What order ?                                                                                                                                                 | <u><b>As Per Final<br/>Order.</b></u> |

### **REASONS**

#### **AS TO POINT NO.1 AND 2 -**

06. Point No.1 and 2 are interlinked with each other. So to avoid repetition, I taken up them together for discussion.

07. learned advocate appearing for the defendants Shri. D.M.Jadhav vehemently submitted that, registered sale-deed bearing no.361/1992, produced by him vide **Exh.78/26**, is a public document as per section 74(2) of Indian Evidence Act. So it has to be exhibited. Per-contra, learned advocate Shri.M.N.Bindge appearing for the plaintiff submitted that, only the document is public document, will not dispense with the circumstances provided under section 65 of Indian Evidence Act before leading the secondary evidence and exhibiting the same. Learned advocate appearing for the defendant placed his reliance on judgment of Hon'ble supreme Court in **Appaiya Vs. Andimuthu (2023 Supreme (SC) 974, 2023 INSC 835)**,

08. No doubt it is evident from the record that, the document i.e. registered sale-deed bearing no.361/1992, is a registered deed. But, as I already mentioned while passing the order on application vide **Exh.175** that, only the document is a public document, is not sufficient to exhibit the same. Because, as per section 65 of the Indian Evidence Act, before proving the contents of any document the concern party has to satisfy to the Court, any of the circumstances as led down under section 65 of the evidence act. Without bringing on record the circumstances which entitled to the party to lead the secondary evidence the same shall not be read as an evidence. On this point learned advocate Shri. D.M.Jadhav appearing for defendant submitted that, if the document is public document, Court can presume its jejuneness as per section 79 of Evidence Act and shall exhibit the same. On this point, I would like to attract the attention of both the parties towards the judgment of Hon'ble Supreme Court in **Roman Catholic Mission Vs. State of Madras**, in which Hon'ble Supreme Court held that,

“ i. *Production and Marking of a certified copy as secondary evidence of a public document under section 65(e) need to be preceded by laying of any foundation of acceptance of secondary evidence. This is the position even in regard to certified copies of entries in Book I under registration Act relation to a private document copied therein.*

ii. *Production and marking of a certified copy as secondary evidence of a private document (either a registered document like a sale deed or any unregistered document) is permissible only after laying the foundation for acceptance of secondary evidence under Clause (a), (b) or (c) of section 65.*

iii. *Production and marking of an original or certified copy of document does not dispense with the need for proof of execution of the document. Execution has to be proved in a manner known to law (Section 67 and 68 and ensuing sections in chapter V of Evidence Act. ”*

09. On perusing of above judgment of Hon'ble Supreme Court, before exhibiting any registered or unregistered sale-deed the same has to be proved as per the Indian Evidence Act which is led down under section 65 and section 69. In the present case in my hand, the document i.e. registered sale-deed bearing no.361/1992, even though is a public document the same shall not be read in evidence before proving the same as per the provision led down in Indian evidence act. In the present case in my hand, defendants or plaintiffs are not executing or attesting party to the said document. So, I have already held that, the said document vide **Exh.78/26** shall not be exhibited and read in evidence, only the same is a public document. Hence, considering above discussion, I am of the candid opinion that no error appearing on the face on the record was committed by this court while deciding the application vide **Exh.175**. Hence, I answered point no.1 in negative and to answer point no.2, I proceed to pass the following order.

**ORDER.**

1. Application vide Exh.177, stands rejected.
2. Application vide Exh.177, is disposed off accordingly.

**Sd/-**

**( L. M. Pathan )**

Civil Judge Junior Division,  
Peth-Vadgaon

Date : 30/11/2023.