

MHKO130005532013



ORDER BELOW EXH.91 IN RCS No. 123/2013.

(Satyappa Gandugale Vs. Abdulsattar Nadaf & Ors.)

1. This is an application filed by plaintiffs for getting exhibit number to the document annexed with list Exh. 3.

2. It is submitted by the plaintiff that the document annexed with list Exh. 4 i.e. sale deed is notarized document, hence exhibit mark be given to this document.

3. Defendants filed their say and resisted the contents in the application. They submitted that the alleged sale deed is not original true copy. It is not referred in the evidence of plaintiffs. The said copy is incomplete. It is not primary evidence. The plaintiffs have not taken permission to lead secondary evidence. Hence, prayed for rejection of present application.

2. Perused the application and say filed thereon. Heard learned Advocates for both sides. Studied section 65 and 66 of Indian Evidence Act. I have also gone through the document annexed with list Exh. 3/ 4. Upon perusal of said document, it is seen that it is a true copy of unregistered sale deed and said true copy was made by Notary. The plaintiffs have not taken any prior permission to lead secondary evidence in respect of said true copy. Now, it is settled law that prior permission is not required, but witness has to depose about requirements of section 65 of the Indian Evidence Act. It is

deposed by the PW.2 Shankar that the said sale deed was executed by defendant No. 3 in favour of defendant No. 1 and the original copy of said deed is with defendant No. 1. If original document is with opposite party, as per section 65(a) of the Evidence Act, the plaintiffs have to give notice as per section 66 of Indian Evidence Act, and even after said notice, other side failed to produce said document, then the plaintiff has to lead secondary evidence. However, in the present suit, notice required under section 66 of Indian Evidence Act is not given, so proper compliance of section 65 has not made by the plaintiffs. Hence, it is not permissible to treat said document as secondary evidence of original. Therefore, there is no purpose in marking exhibit to said documents for mere identification purpose. Hence, following order is passed.

ORDER

Application is rejected.

Date:-11/09/2019.

(V. H. Khedkar)
Jt. C.J.J.D., Kagal.