

R. C. S. No. 44/2008.  
Housabai & Ors. Vs. Dnyanoba & Ors.  
MHKO0150000442008.

**ORDER BELOW EXH- 281.**

The defendant no.3 to 8 have filed this application for granting permission to lead secondary evidence in respect of registered partition deed dtd. 08.03.2021. It is contention of defendants that, they have filed certified copy of above partition deed at Exh.263 and therein reference of partition of Block No.362, 132, 153 & 142 of suit properties. They have issue witness summons to Laxman Tejam for producing original partition deed on record. However, he denied its possession and therefore prayed to allow their application.

2. Plaintiffs by filing their say at Exh.283 & 284 strongly opposed. They specifically contended that, defendant no.3 to 8 contended false in their application. The copy of partition deed presented by Gundu Tejam before the Sub-Registrar, Ajara. He neither assign whereabouts of this deed nor defendant no.3 to 8 comply necessary requirements for the same. Except Laxman Tejam, these defendants did not inquire about original partition deed. No evidence on record whether it lost or destroy. The W. S. of defendant no.3 to 8 at Exh.78 and W. S. of defendant no.4 at Exh.22/1 nowhere they contended about alleged partition deed. They have filed this application to prolong the case. No prejudice caused to the defendants if their application rejected. Hence, prayed to reject the same.

3. I have heard counsels for both sides and perused record. Herein pertinent to note that, Hon'ble Bombay High Court in

*Parasanbai Jain & Ors. Vs. Sundar Jadhav*<sup>1</sup> specifically held that, there is no requirement for application to lead secondary evidence. The trial court is to consider that, evidence, viz., the reason given for not leading direct evidence and the secondary evidence lead and is to then decide whether the secondary evidence lead is sufficient.

4. In present case, the defendant no.3 to 8 nowhere in their W. S. whisper about the execution of alleged partition deed and its relevancy with their rights. These defendants in their W. S. specifically contended that, the suit property of Block No.132, 153 & 142 neighbor transferred from the predecessor of Babu Tejam or defendant no.1 and therefore not entitled for partition. Further record shows that, suit is pending for evidence of these defendants. They have examined six witnesses to support their claim. These defendants have examined defendant no.4 at Exh. 239 and therein she remain silent on point of alleged partition deed.

5. It is settled law that, no evidence could be lead beyond pleadings<sup>2</sup>. In present case, these defendants nowhere pleaded relevancy of above partition deed in respect of suit properties. Further, the partition deed executed between Gundu Tejam and ors. having no concern with this suit. The plaintiffs through their say specifically pointed out the same. Thus, present application devoid merits. Therefore, in result of above discussion this court pass following order;

### ORDER

1. Application stands rejected.

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1. (Civil Rev. Appli. 82/2016)

2 Shrinivas Desai (d.) Vs. Uma Wamanrao & Ors. 2024 INSC 165.

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2. Cost in cause.

Place- Ajara.  
Date- 24.03.2026.

**(R. P Thore)**  
J.O.Code No.MH02897  
Civil Judge, Junior Division,  
Ajara.

