

MHKO150001442016**R.C.S.No. 43/2016
Ganpati V.s. Antu****ORDER PASSED BELOW EXH. 45**

This is an application filed by plaintiff for permission to lead secondary evidence in respect of agreement dated 08/05/1995.

2. According to plaintiff, the defendant has executed agreement dated on 08/05/1995 in his favour. That agreement was taken by plaintiff in court on 14/09/2017. That day, original agreement dated on 08/05/1995 was lost. This court by order passed below Exh. 45 has ordered for impounding that document. But the original document is not found. The plaintiff has produced photocopy of agreement dated on 08/05/1995. The plaintiff lastly prayed for permission for leading secondary evidence in respect of agreement dated on 08/05/1995 on photocopy of that agreement.

3. The defendant filed his say. He denied all allegation, pleading and prayer of plaintiff. According to him, he has not executed any agreement in favour of plaintiff on 08/05/1995. The plaintiff has not produced original agreement. The court has ordered for impounding agreement, but there was condition

that is the impounding is on original document. The plaintiff has not produced original agreement and not fulfilled the condition which is ordered by this court below order passed in Exh. 45. The defendant further pleaded that, the document is not in existence and not executed. Therefore, the ingredient of leading secondary evidence are not satisfied. He lastly prayed for rejection of application.

4. Heard learned advocate Shri. S. R. Powar for plaintiff and Shri. Kotnis for defendant.

5. Perused application, say and record.

6. On perusing record it appears that, the plaintiff pleaded that the original document lost by him on 14/09/2017. That time the document has taken by him in court, but it was lost. The plaintiff further stated that, the witness of document Shri. Ravindra Raghunath Kavalekar has filed his affidavit at Exh. 31. The witness Ravindra Kavalekar on affidavit stated that, he has seen the original document on the day of affidavit.

7. On perusing order passed below Exh. 45 it appears that, the order was passed by this court for impounding document dated 08/05/1995. In that order this court has found that, the photocopy of agreement dated 08/05/1995 was produced by plaintiff. It means, the original document not produced on record of this court. This court has impounded document subject to condition to produce original document. It

is pertinent to note that before this court, the original document is not produced.

8. On perusing photocopy of agreement it appears that, it is xerox. The document is not registered one. There is no any evidence on record which shows the execution of document or existence of document. The witness Ravindra Kavalekar, on affidavit stated that the document executed on stamp paper of Rs. 10. On perusing the photocopy of document it appears that, the document executed on two stamp papers of Rs. 10. It means, the witness Ravindra Kavalekar not stated about the existence of document which is produced by plaintiff at Exh. 3/3.

9. Considering above discussion, it comes on record that the plaintiff wanted to lead secondary evidence on the photocopy of unregistered agreement dated 08/05/1995. The advocate for defendant relied on ratio of Hon'ble Supreme Court decided in 2007 CJ (SC) 510 J Yashoda v/s K.Shobharani. On perusing the ratio, it appears that the Hon'ble Supreme Court held that for leading secondary evidence it is necessary for party to prove existence and execution of original document. In the case in hand, it comes on record that there is photocopy of agreement. There is no evidence on record which shows that, the existence and execution of original document. In these circumstances, I am coming to conclusion that, plaintiff fails to show the existence and execution of agreement dated on 08/05/1995.

10. The Hon'ble Supreme Court in above ratio confirmed the view of Hon'ble High Court that is, *“the photocopies can not be received as secondary evidence in terms of section 63 of the act and they ought not to have been received as secondary evidence. Since the documents in question were admittedly photocopies, there was no possibility of the documents being compared with the originals.”*

11. Considering the above situation it comes on record that agreement dated 08.05.1995 is executed on insufficient stamp and it is unregistered. The original is not available. The plaintiff has not produced any evidence on record which shows the execution of agreement. There is no possibility of the agreement being compared with the original. Therefore, I am not found any substance in the application. The application needs to be rejected. Hence, I pass following order.

Order

1. The application is rejected.
2. No order as to cost.

Sd/-

Place - Ajara.
Date - 04/10/2021.

(Shri.S.P.Jadhav)
Civil Judge J.D., Ajara.

Certificate

I affirm that the contents of this P.D.F file Judgment/order are same, word to word, as per the original Judgment/order.

Name of the Stenographer	Mrs. Y.S.Chavan.
Name of Court	C.J.J.D. Ajara
Judgment/order Dictated on	04.10.2021
Judgment/order typed on	04.10.2021
Judgment/order signed by the P.O. on	04.10.2021
Judgment/order uploaded on	07.10.2021