

R.C.S. No. 34/2011.
Jayjayram Vs. Kamlabai (D.) heirs & Ors.
MHKO150001622011.

COMMON ORDER BELOW EXH- 222 & 223.

The defendant no.2 to 4 have filed an application at Exh. 222 for granting permission to lead secondary evidence in respect of sale deed dtd. 26.03.2008 and at Exh.223 for issuing witness summons to scribe. It is contention of defendants that, vide application at Exh. 138 they have prayed to direct the witness Maruti Tuppatt to produce above sale deed on record. However, he is no more and therefore vide an application at Exh.195, they have prayed to direct his wife to produce above sale deed on record. The wife of Maruti namely Sushila present before the court and informed to court that, the claim sale deed by defendant did not filed her. Therefore, prayed to allow their application.

2. Counsel for plaintiff filed his say at the backside of the application and strongly opposed. He submitted that, defendants have not adduced evidence in respect of loss of alleged sale deed. They have filed this application to prolong the case. Hence, prayed to reject the same.

3. I have heard counsels for both sides at considerable length. I have verified the record. As per pursis filed by witness namely Sushila Tuppatt at Exh.216, she did not find original copy of alleged sale deed with her. It is case of defendant that, plaintiff had sold his share in suit property Block No.330 vide registered sale deed to Maruti Tuppatt. Defendants intend to prove the same which specifically not averred by the plaintiff.

4. Herein pertinent to note that, Hon'ble Bombay High Court in *Parasanbai Jain & Ors. Vs. Sundar Jadhav*¹ specifically held that, there is no requirement for application to lead secondary evidence. The trial

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

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. In present case, execution of sale deed in dispute and the possessor of deed filed pursis at Exh.216 that she did not find the same. These defendants have filed certified copy of above sale deed on record.

5. As per section 65 of Indian Evidence Act, when the original document has been destroyed or lost or when the party offering evidence of its contents for any other reason not arising from his own default or neglect produce it in reasonable time. In such situation the court may permit party to lead secondary evidence relating to the documents may be given.

6. In present suit, these defendants relied over the sale deed which they could not able to produce due to above reasons. Now, suit is for defendant's evidence. The difficulty of these defendants to produce document is justifiable cause. Further, by allowing present application no prejudice would be caused to the defendants. Hence, in result of above discussion this application deserved to be allowed. In result of allowing this application an application filed by these defendants vide Exh.223 for issuing witness summons deserved to be allowed. Thus, I pass following order;

ORDER

1. Application stands allowed and defendant no.2 to 4 are permitted to lead secondary evidence of sale deed dtd.26.03.2008 as per rule.
2. Issue witness summons as per Exh.223 to the witness subject to witness bhata be payable on arrival or deposited in court.

3. Parties to take note and proceed further.

Place- Ajara.

Date- 23.12.2025.

(R. P. Thore)

J.O.Code No.MH02897

Civil Judge, Junior Division,
Ajara.

