

R. C. S. No. 63/2017.
Kalpana & Ors. Vs. Dattatray & Ors.
MHKO0150003412017.

ORDER BELOW EXH – 70.

Plaintiffs have given this notice to the defendants U./sec 64 of B. S. Adhinyam to produce original *Partition Deed* dated 19.01.1995 in form of an application. It is contention of plaintiffs that, the partition deed had been executed between Ganpati, Dattatray and their father on 19.01.1995 in presence of witness Govind Harane and Bacharam Sawant. They have filed copy of partition deed vide Exh. 3 on record. It bears signature of defendant no. 1 and its original copy in his possession. They intent to examine witnessess in respect of original deed. In absence of original deed they would not able to prove the same. The deceased Ganpati had been resided at Mumbai and that time Bhima as a P.O.A. holder act in his behalf in legal proceedings. Therefore, prayed to direct defendants to produce the original deed on record.

2. Defendants filed their say at Exh. 73 and strongly opposed. They denied content of the application in toto. They contented that, through their written statement they have denied existence of alleged deed. They filed this application to prolong the proceeding. Hence prayed to reject the same.

3. I have heard counsels for both sides on consecutive date of proceeding. The counsel for plaintiffs submitted that, though these defendants denied execution of document, these plaintiffs have filed xerox copy of partition deed on record. Defendants to denied their liability prayed to reject the application. Per contra counsel for defendants vehemently submitted that, these plaintiffs intent to direct them to produce document on record which is neighter in existence nor

executed. They trying to create existence of alleged deed on imaginary ground to create platform for adducing secondary evidence. Thus, prayed to reject the same.

4. This court gone through the record. It shows that, plaintiffs filed this suit for partition and specifically pleaded execution of partition deed dated 19.01.1995. They have filed xerox copy of deed on record. The existence and execution denied by these defendants. In such condition it is duty and burden cast on the plaintiffs to prove their claim. Defendants refused to produce alleged deed on record by denying its existence therefore they have been barred from relying over above deed in future without leave of the court and if required adverse inference would be drawn against them. Hence, an opportunity to prove the execution of deed need to be granted to the plaintiffs as per law. Thus, in result of above discussion this court pass following order,

ORDER

1. Plaintiffs having liberty to prove partition deed dated 19.01.1995 as per law.
2. Defendants are hereby restrained in this proceeding from relying over alleged partition deed in their defence.
3. Parties to take note and proceed further.

Place - Ajara.
Date – 11.02.2026.

(R. P Thore)
J. O. Code- MH02897
Civil Judge, Junior Division,
Ajara.