



ORDER BELOW EXH. 21

This is an application by plaintiff praying for permission to allow him to adduce secondary evidence in respect of the documents produced on record by him at Sr. Nos. 1 to 3 of list Exh. 16. The document at Exh. 16 Sr. No. 1 is a copy of resolution No. 7 passed by village panchayat. The document at Sr. No. 2 and 3 are the copies of notices dated 28/06/1993 and 17/02/1993. The original resolution is in control and custody of village panchayat i.e. defendant 1 and the notices at Sr. No.2 and 3 are copies of the public documents i.e. notices issued by Tahasildar, Radhangari. Despite repeated requests by plaintiff defendants have not produced the aforementioned documents on record. Further, the office copy and original of the notices are in control and in custody of Tahasildar Radhangari. However, when plaintiff inquired with the office of Tahasildar, Radhanagari, he came to know that these documents are not appearing in the record of said office. Hence, this application.

2. Say of defendants was called. However, they have failed to reply the application.

3. Heard. Perused record. Considering the specific provisions of Indian Evidence Act, it is always open to the parties to lead

secondary evidence without having to file such an application. In Karthik Gangadhar Bhat V/s Nirmala Namdev Wagh Writ Petition No. 11151 of 2017 decided on 03/11/2017 the Hon'ble Bombay High Court has pleased to held that the party desiring to lead secondary evidence must do so before the judge recording the evidence. It is the judge recording evidence who must decide if any objection is raised, whether or not to admit the secondary evidence in evidence. If evidence is lead before the commissioner, the objection to secondary evidence naturally can only be recorded and not decided by the commissioner. It is then the judge hearing the suit who decides the objection. The Hon'ble High Court has further observed that for adducing secondary evidence it is necessary for party to prove existence and execution of original document and that conditions in section 65 must be fulfilled before secondary evidence can be admitted.

4. Thus, in view of the afore cited observations by Hon'ble Bombay High Court it is clear that the parties are always at liberty to adduce secondary evidence as provided under provisions of Indian Evidence Act. Thus, following order is passed :-

ORDER

The plaintiff is at liberty to adduce secondary evidence within the parameters of Indian Evidence Act.

Date: 06/02/2020.

(M. H. Shitole)
C. J. J. D. Radhanagari
Kolhapur

I Affirm that, the contents of this P.D.F. file Order are same, word to word, as per the original Order.

Name of the Stenographer	U.S.Telang
Name of Court	Civil Judge, Junior Division & Judicial Magistrate, First Class, Radhanagari.
Date of Dictation	06/02/2020.
Order signed by the P.O. On	06/02/2020.
Order uploaded on	06/02/2020.