



ORDER BELOW EXH. 38

This is an application by plaintiff praying for permission to allow him to adduce secondary evidence. As per plaintiff he has filed on record the certified copy of sale deed on 01/08/1978 bearing registration No. 389. However, the original sale deed is in custody of defendants. Vide notice dated 06/02/2018 plaintiff has called upon the defendants to produce the original sale deed on record. However, defendants have replied the said notice with contention that they could not find the original document. The suit is for permanent injunction. It is necessary to bring on record the sale deed in order to decide the real dispute of parties on merits. Hence, this application to allow plaintiff to adduce secondary evidence in respect of the sale deed dated 01/08/1978.

2. Vide his say the ld. Advocate for defendants have strongly combated the application contending that the moment defendants find out original document they will produce the same on record immediately. Thus, if permission as prayed is granted the question would arise as to the admissibility of document. Because the original as well as secondary evidence would then on record.

3. Heard both sides. 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: 07/06/2019

(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	07/06/2019
Order signed by the P.O. On	07/06/2019
Order uploaded on	10/06/2019