

	Order below Exh. 86 In Reg. C. Suit No. 147 of 2016 (Passed on this 02nd day of May, 2024) Madhav & Ors. - Vs. - Mahananda & Ors. CNR NO.MHLA060003192016
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01] This is an application is filed by plaintiffs under Order XI Rule 16 of the Civil Procedure Code 1908, (For Short 'the C.P.C.) for directing the defendant No. 01 to produce original sale deed bearing D.B. No. 1572 of 2009 dated 09.05.1995 and 1903 of 2004 dated 19.07.2004 which is allegedly in possession of the defendant No.01.

02] According to the plaintiffs, this suit is filed for perpetual injunction and for declaration of ownership, cancellation of R.C.S. No. 228/2005 and cancellation of sale deeds bearing No. 1572/1995 and 1903/2004. The alleged sale deeds are main dispute in the suit. They have pleaded that, in order to grab the suit property, disputed sale-deeds made, with collusion. Both sale-deeds are fabricated, false and illegal. Hence, for unveiling the truth, original copy of the sale deeds are needed. Therefore, for claiming same, this application is filed.

03] The defendants filed say on overleaf of the application. According to them, out of the sale-deeds, the sale-deed bearing No. 1903/2014 is in the possession of defendant No. 01. They have further contended that, the sale-deed bearing No. 1572/1995 is not in their possession. Thus, the application is tenable in the eye of law. In order to prolonged the matter, plaintiffs intensionally filed present application. Therefore, liable to be rejected.

04] Heard both side. Ld. R. S. Waghmare representing to plaintiffs advance his argument in-consonance with the contents of application. Per Contra Ld. B. V. Kumdale representing to defendants also advanced their argument in-consonance with the say and record of the suit. Therefore, defendant No. 01 can't produce the same.

05] Taking into consideration the provision as enumerated under Order 11 rule 16 of the CPC, the court has ample powers to order any party to the suit to produce such documents, in the possession or power of such party or person in the suit, relating to any matter in question in such suit. As matter of record plaintiffs have adduced certified copy of said sale-deed. As per section 63 of the Indian Evidence Act, the certified copy of sale-deed is secondary evidence. Thus, in order to prove the contents of document, original copy sale-deeds are necessary

06] Now in this suit, as per allegations of the plaintiffs, the sale deeds required to produce in question, is joint family property. It shows that it is not in his possession. Taking into consideration the nature of suit and allegations of the plaintiffs against the defendants, oral argument of the defendant No. 01 does not appear to be genuine, say of the defendant is not clear as to exact whereabouts of the original sale deeds. By mere oral submission of defendants, it is possessed, the defendant No. 01 can't evade her liability, as according to the plaintiffs, they are alleged that, the sale deeds in common property.

07] As squeal above discussion, an opportunity as per the above provision time should be given to the defendant No. 01 to produce the documents or if failed to produce then for answering her inability to produce the same. In view of this following order is passed :-

:-ORDER:-

- 1.** Instant application below (**Exh.86**) is allowed.
- 2.** Issue notice to the defendant No. 01 to produce the sale-deeds bearing No. 1572 of 2009 dated 09.05.1995 and 1903 of 2004 dated 19.07.2004 in question or her explanation as to her inability to produce the same on or before next date.

(Dictated and pronounced in open Court)

Place :- Ahmedpur,
Date :- 02.05.2024.

(Shyam S. Tondchire)
IIInd Joint Civil Judge (Jr.Dn.)
Ahmedpur.