

Order Below Exh. 102 in R.C.S. No. 61/2010

01. The defendant has filed the present application seeking permission to lead secondary evidence and to exhibit the agreement executed on 29.07.2008 on a Rs. 100/- stamp paper bearing No. AY190422. The said agreement was notarized before Adv. Abdul Khayyum and was executed in the presence of witnesses. The defendant made efforts to search the original agreement; however, it could not be found and is believed to have been lost. The said agreement is a relevant piece of evidence for deciding the present suit. Therefore, the defendant has prayed for permission to lead secondary evidence.

02. The plaintiff has filed his say below the defendant's application. It is contended that the defendant must first establish the existence and execution of the alleged document before seeking permission to lead secondary evidence. The defendant is required to satisfy all the conditions and ingredients prescribed under Section 65 of the Indian Evidence Act for the admissibility of secondary evidence. It is further submitted that the alleged document has been falsely prepared by the defendant himself. The document is purportedly dated 29.07.2008; however, there is no pleading whatsoever in the written statement regarding the existence or execution of such document. The defendant has fabricated and forged the alleged document with an intention to mislead the Court. Therefore, the plaintiff has prayed that the application for leading secondary evidence be rejected with costs.

03. Perused application, say and record. Heard learned advocates for parties.

04. Section 65 of the Indian Evidence Act provides the circumstances in which secondary evidence may be adduced. In his application, the defendant

specifically stated that he had lost the agreement dated 29.07.2008. Section 65 of the Indian Evidence Act does not require proof of the existence of the document. The photocopy of the document produced along with Exhibit 105 itself demonstrates the existence of the document. Further, the defendant has filed his affidavit along with the present application. In his application, the defendant has also mentioned the name of the advocate before whom the document was notarized. Further, Section 65(c) provides that when the original has been destroyed or lost, secondary evidence may be adduced.

05. Secondary evidence may be adduced to prove the contents of a document when the original has been lost. Therefore, there is no force in the argument advanced by the plaintiff. The defendant has produced an affidavit along with the present application. The plaintiff has opposed the application on the ground that the document is forged. If, during the course of the evidence, the said fact is proved, the plaintiff shall be at liberty to take appropriate action against the defendants in accordance with law.

06. Further, the written statement discloses that the defendant has denied the averments made in the plaint and has contended that the transaction in question was a money-lending transaction. The defendant has not pleaded the execution of the agreement but has specifically pleaded that it was a money-lending transaction. Therefore, the defendant is entitled to lead evidence in support of that pleading.

07. Thus, the arguments advanced by the plaintiff do not survive. On the contrary, having regard to the provisions of Section 65 of the Indian Evidence Act, the present application deserves to be allowed. Hence, I pass the following order.

-: Order :-

01. The application is allowed.
02. Permission is granted to the defendant to lead secondary evidence in respect of the contents of the agreement dated 29.07.2008, executed on a Rs. 100/- stamp paper bearing No. AY190422.
03. The concerned Clerk is directed to exhibit the said document produced along with Exhibit 105.

Renapur
Date :- 05.08.2026

(D. M. Gitte)
Jt. Civil Judge Junior Division,
Renapur