

**ORDER BELOW EXH. 85 IN R.C.S. No. 129/2011**  
**( Ahemad and others Vs. Laxman and others )**

The application is moved by the plaintiffs for permission to lead secondary evidence in respect of sale deed bearing D.B. No. 2850, dated 14/9/1978. It is their contention that the suit is filed for possession of the land block no. 220 of village Bhokramba, Tq. Renapur, Dist. Latur. The said land was purchased by the mother of the plaintiffs Sharubee Vazir Shaikh on 14/9/1978 vide D.B. No. 2850 and the mutation of the same effected vide mutation entry no. 58, dated 3/12/1978. Their mother was in cultivating possession of the same, but due to her old age the defendants in collusion forcibly dispossess the old aged mother of the plaintiffs. Lateron, the mother of the plaintiffs expired on 27/2/2006. The plaintiffs are the legal heirs of late Sharubee as per the Mohemeddan Law and succeeded the suit property as a tenant in common.

2. Late Sharubee was the custodian of the original sale deed. But after her demise the said sale deed is not traceable. The plaintiffs have been taken the sincere efforts to search out the said sale deed but could not find it. The certified copy of the same is already filed on record. Hence, prayed for the permission to lead the secondary evidence.

3. The defendants resisted the application by filing say on 3/9/2015. As per their contention the application is not maintainable. The certified copy of the document is not a primary evidence. The loss of document needs to be strictly proved. There is no pleading in the plaint regarding the loss of document and what efforts made for searching the same by the plaintiffs. All these facts are not reflected in the plaint. Therefore, the application being devoid of merit be rejected. They further submitted that the provision of permission to lead secondary evidence very rarely be pressed into service mostly in exceptional circumstances. Such circumstances are not brought on record by the plaintiffs. So application be rejected.

4. Heard the learned counsel for the plaintiffs and the defendants. Perused the record.

5. It is not disputed that the suit is filed for possession of the property bearing block no. 220 on the basis of the ownership vide sale deed D.B. No. 2850 dated 3/12/1978. The certified copy of the sale deed is already filed on record. To lay the foundation for secondary evidence, the plaintiffs have filed the documents vide list Exh. 90. The document no. 1 below Exh. 90 shows the completion certificate of the house of Shaikh Ahmed Wajir, who is plaintiff no. 1. His name appears in the list of beneficiaries, affected by earthquake occurred in the village Bhokramba. The said list issued by the Sub-Divisional Engineer, Latur. The rehabilitation of the plaintiffs carried out by the Government by providing the house. This fact shows that the plaintiffs were affected by the earthquake and their house has been demolished. Furthermore the document of which the plaintiff sought the permission to lead the secondary evidence is a registered one and the certified copy of the same is available. The sale deed stands in the name of the mother of the plaintiff, who was the old aged lady and now no more. So, the reason quoted for losing the original document appears to be convincing one. The contention of the defendants that the reasons for permissions to lead secondary evidence of the document and efforts made by the plaintiff requires to be mentioned in the plaint and unless such pleadings are there no such permission could be granted under Sec. 65(c) of the Indian Evidence Act for leading the secondary evidence. This submission does not appear to be convincing. If the plaintiffs are succeeded in establishing that the original document is lost and after making necessary searches, it could not be traceable, the permission could have been granted to lead the secondary evidence.

6. The plaintiffs relied on *Rajesh Yadav and others Vs. Balbir Singh and others, decided in CR.No. 2359/2008, dated 6/5/2014, by the Hon'ble Panjab and Haryana High Court.* The said citation appears to be filed on record by down loading the copy of the same through the website of Indian Kanoon, in which it was held that the permission to lead secondary evidence can be granted when the pleading of loss of original document and certified copies thereof already been produced by the plaintiff in their own evidence. The plaintiff also relied on "*Harihar Pal and others Vs. Sudhir Kumar Pal and others, [AIR 1988 Calcutta 68 ]*", in which the Hon'ble High Court held that the loss of original

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documents and the non production thereof is not due to default or neglect of the plaintiff. The certified copy of the same may be received as secondary evidence of original under Section 65(c) of the Indian Evidence Act.

7. In the present matter the plaintiffs specifically contended that the original sale deed is lost and not traceable, though sincere efforts were taken by them. The custody of the original document lies with their mother. Thus, there is no default or neglect on the part of the plaintiff for non producing the original sale deed. Thus, they have laid the foundation by producing the certified copy of the document for non availability of the original one for the mentioned reasons. Under Sec. 65 (c) of the Indian Evidence Act, the permission can be granted to produce the certified copy of the original document as the secondary evidence, if the original one is lost. As the plaintiffs have established that the original sale deed is lost and considering the ratio laid down in above referred two judgments, the permission can be granted for leading the secondary evidence of the same. Therefore, the application will have to be allowed. Hence, the following order.

**ORDER**

1. The application is allowed.
2. The plaintiffs are permitted to lead the secondary evidence in respect of sale deed bearing Day Book No. 2850 dated 14/9/1978.

**Date 20/10/2015**

**( V. J. Dongre )  
Civil Judge, Jr. Division,  
Renapur.**