



**ORDER Below Exh.42.**  
**MHLA150004782016**

The present suit is filed for partition and possession. The plaintiff has filed on record his evidence affidavit and matter is kept for cross examination of plaintiff. On this background now the plaintiff has moved the present application and prayed to grant permission to lead secondary evidence in respect of sale-deed day book no. 533/2020 dated 06.03.2020, 532/2020 dated 06.03.2020, 1186/2009 dated 13.08.2009, 531/2020 dated 06.03.2020, 2594/2020 dated 27.11.2012.

2. It is contended in application that, the all above mentioned sale deeds are in the possession of defendant and plaintiff asked for them, then defendant said that they are lost. Therefore, to the extent of sale deeds plaintiff be permitted to lead secondary evidence.

3. My learned predecessor passed order on 02.03.2021 below Exh.42 and directed the plaintiff to produce on record the office copy of notice given to the defendant to produce original sale deed mentioned above in their custody till then application kept in abeyance. However, after passing the order, on 15.06.2021 plaintiff filed on record another application below Exh. 42/1 praying to issue notice to concerned defendants to produce original document. However, despite giving sufficient opportunities defendants failed to file their say on that application. So also they have not filed on record the



original sale deeds. Hence, my learned predecessor passed order on that application below Exh.42/1 that “ Defendant failed to produce sale deed as mentioned in the application, so plaintiff is directed to take further necessary steps in this matter.” Thereafter plaintiff again pressed the application below Exh. 42 and prayed that to the extent of sale deeds plaintiff be permitted to lead secondary evidence.

4. Despite giving sufficient opportunities defendants failed to file their say on application below Exh. 42. Hence, application is decided on merit without their say.

5. Perused the application. Heard learned advocates for plaintiff. As per the contents in application the alleged sale-deeds are in possession of defendants. After issuance of notice to produce to defendants u/sec. 66 of Indian Evidence Act, defendants failed to produce original sale deeds on record. Further, the plaintiff has filed on record the certified copies of said sale-deeds. So, as per Section 65 (a) if the original document is shown or appears to be in possession or power of the person against whom the document is sought to be proved of any person out of reach, or not subject to process of court or of any person legally bound to produce it and when after notice mentioned u/sec. 66 of Indian Evidence Act, such person does not produced it, then the secondary evidence of such document can be given of it's existence, condition or contents. In present case after issuance of notice to produce to defendants u/sec. 66



of Indian Evidence Act, defendants failed to produce original sale deeds on record. So, in view of the provision contained in Section 65(a) the present application deserves to be allowed.

6. In present case Dattatraya Chanderam Kamble is not the defendant. So far as the production of original sale deed day book no.1186/2009 dated 13.05.2009 is concerned, already notice was issued to Dattatraya Chanderam Kamble to produce original sale deed day book no.1186/2009 dated 13.05.2009. However, till date notice is not served to him Hence, further order will be passed in respect of original sale deed day book no.1186/2009 dated 13.05.2009. Hence, I proceed to pass the following order.

**ORDER**

- 1) The application is partly allowed.
- 2) The plaintiff is permitted to lead secondary evidence of sale-deed day book no. 533/2020 dated 06.03.2020, 532/2020 dated 06.03.2020, 531/2020 dated 06.03.2020, 2594/2020 dated 27.11.2012.
- 3) Re-Issue notice to Dattatraya Chanderam Kamble to produce original sale deed no. 1186/2009 dated 13.05.2009.

Date :- 30/11/2024

(M.S. Luniya)  
Jt. C.J.J.D., Chakur



**C E R T I F I C A T E**

I affirm that the contents of this P. D.F. file order are same word for word as per original order.

Name of Steno : M.B. Pathan  
Court Name : M.S. Luniya, Jt. C.J.J.D., Chakur  
Order Date : 30/11/2024  
Order signed by presiding officer on : 30/11/2024  
Order uploaded on : 30/11/2024