

ORDER BELOW EXH. 44
(Passed on 21/06/2019)

The present application is moved by the plaintiff for grant of permission to lead secondary evidence. According to him, the matter is fixed for hearing. He filed certified copy of sale deed no. 3030/1993 dated 15.12.1993 regarding suit land. At the time of sale deed plaintiff was minor, so suit land is purchased by his father in the name of plaintiff from one Manikrao Madhavrao Shinde.

2. The original copy of the above sale deed is lost by plaintiff. So he is unable to produced original sale deed on record. But the above sale deed is necessary to prove in support of plaintiff's case. As the original sale deed is lost and plaintiff placed certified copy of it on record, he prayed for permission to lead secondary evidence in respect of above sale deed. He also filed an affidavit in support of this application.

3. On the other hand, defendant no. 1 to 3 opposed the application on the ground that, the application is not legal. Plaintiff only contended that the original sale deed was lost without giving any particulars of it. Plaintiff not mention, whether original sale deed was in his possession, when and how it was lost. Plaintiff neither make any complaint for loss of sale deed, nor given any evidence in that regard. Hence defendant prayed for rejection of the application.

4. Heard learned advocate for both the sides. Perused record and documents. Present suit is for recovery of possession of alleged encroached ½ R. area and for perpetual Injunction against defendants. Plaintiff pleaded that his father purchased land adm. 2H. 01R. Including 02 R. Potkharab out of land in Gat no. 11/2 situated at Village Tiwatghal Tq. Chakur Dist. Latur in the name of plaintiff from Manikrao Madhavrao Shinde by registered sale deed no. 3030/1993 on dated 15.12.1993 for valuable consideration. Plaintiff has mutated his name over 7/12 extract by sanctioning mutation entry.

5. Plaintiff also pleaded that previously he filed RCS no. 115/2011 Hanmant v/s Mohan and ors. for declaration, possession with mandatory and Perpetual Injunction against western side neighbors of plaintiff's land which is pending. In that suit TILR Chakur was appointed as court commissioner he measure land of Manik Madhav Shinde who is donor of 41 R. land of Gram Panchayat Tiwatghal. The Commissioner find out encroachment over plaintiff's land. On the other hand defendant contended that plaintiff taking disadvantage of alleged measurement of dated 25.06.2014.

6. Section 65 of Indian evidence Act permit to lead secondary evidence. When original is shown or appear to be in possession and power of person against whom the document is sought to be proved or of any person out of reach, when existence, conditions, contain have been admitted in writing by person against whom dispute or **when**

original has been destroyed or lost, when it is not easily movable when it public document under section 74 or when certificate copy is permitted by law when original consists of numerous account

7. Hence, the suit is for recovery of possession of alleged encroached area and not for declaration of ownership. Moreover, it is not denied that plaintiff and defendants are neighborers of each other. Moreover, fact of pending previous civil suit and appointment of TILR as court commissioner is also not specifically denied. Moreover, the alleged sale deed is registered document and plaintiff filed certified copy of it. Moreover, defendant will get opportunity to cross examine plaintiff and witnesses and to lead evidence on this point. Considering the nature of suit and claim of plaintiff and the certified copy of sale deed and contention of plaintiff that original is lost, permission needs to be granted to plaintiff for leading secondary evidence in this regard to avoid multiplicity of proceeding between the parties. Hence, following order.

ORDER

1. Application is allowed.
2. The plaintiff is permitted to lead secondary evidence in respect of sale deed no. 3030/1993 dt.15.12.1993.

Place: Chakur
Date- 21-06-2019

(Yogesh D. Koinkar)
Jt.C.J.J.D., Chakur.