

MHLA160011422015



**Order below Exh.38 in Regular Civil Suit No.97/2016**

**[ Bhagwan Ramchandra Bhatambhare**

**Vs.**

**Nagesh Dattatraya Biradar ]**

(Passed on 21.02.2024)

I have heard both sides at length. Perused the application and say filed at Exh.38 by defendant No.1.

2. Application is filed by plaintiff seeking permission to lead secondary evidence of the alleged registered sale deed dated 06/05/1994 bearing D.No.1824/1994 on the ground that, matter is at the stage of evidence. Suit is for execution of re-conveyance deed by defendant No.1 in respect of suit property in favour of plaintiff. The original sale deed was in possession of the defendant No.1. However, after due notice defendant No.1 replied the same is not in the custody of defendant No.1 as it is lost at the time of shifting the house articles in new house. Hence, prayed to allow the permission to lead secondary evidence.

3. Defendant No.1 objected the application contending that, plaintiff has not laid his foundation of suit on the said sale deed. Hence, prayed to reject the application. Other defendants have not filed say as suit proceeded ex-parte against them.

4. Considering argument of both sides and settled position of Law on the question of leading secondary evidence, even application for leading secondary evidence is not necessary. Party desiring to lead secondary evidence can lead so before the court. In present case, plaintiff vide Exh.36 has served

notice to produce the said document upon the defendant No.1, to which by filing say on the overleaf of the said notice defendant No.1 has stated that, the said document is lost while shifting his house articles in new house and therefore it is not in his possession. Therefore, as per Section 66 of the Indian Evidence Act, notice is served on defendant No.1. Under these circumstances, plaintiff needs to be permitted to lead secondary evidence in respect of the alleged sale deed dated 06/05/1994. It is necessary to note that permitting to lead secondary evidence does not amount to admitting the same. Accordingly, I proceed to pass the following order:-

### **ORDER**

1. Application at Exh.38 is allowed.
2. Plaintiff is permitted to lead secondary evidence.

**Place : Deoni**  
**Date : 21.02.2024.**

**Sd/-**  
**(Atish Pralhad Kholam)**  
**Civil Judge, Jr. Division, Deoni.**

### **CERTIFICATE**

I affirm that the contents of this PDF file Order / judgment are same, word to word, as per the original order / judgment.

Name of Stenographer Stenographer)	:	Surwase R.V. (L.G.
Name of the Court	:	Shri. A.P. Kholam, C.J.J.D., Deoni, Dist. Latur.
Date of Order / judgment	:	21.02.2024.
Order / judgment signed by Presiding officer on	:	21.02.2024.
Order / judgment uploaded on:	:	21.02.2024.