

ORDER BELOW EXH. NO.108 IN SPL.C.S.NO.04/2023

(Shivaji Vs. Pratap and others)

(Order Passed on this **22nd Day of October, 2024**)

CNRNO.MHLA170009172023

Defendant No.1 has filed application submitting that, prior to handing over possession of suit land by way of agreement to sell and sale deed the said land was handed over to plaintiff on 31.03.2006 by owner of the suit land Changunabai Ranba Digrase by way of partition deed. Thereafter Changunabai, Ragina and Madhav were causing obstruction to the plaintiff. Hence, the plaintiff had filed suit bearing RCS No.321/2007 on the basis of said partition deed. The original partition deed is filed in RCS No.321/2007. The Court had allowed Exh.5 in favour of plaintiff on the basis of said partition deed in that suit. The plaintiff has not obtained the said original partition deed from the Court. Hence, the record was destroyed by the Court. In which the partition deed was also destroyed. Hence, the copy of partition deed produced on record be consider as secondary evidence and plaintiff be granted permission to examine witness on the said copy of partition deed.

Defendants have filed their say objecting the application of the plaintiff on the grounds that, there is no evidence to show that the said partition deed is not in existence. Therefore, the copy of partition deed produced on record by the plaintiff is obtained from the original is not proved by the plaintiff. The plaintiff has not produced the true copy of the partition deed. The plaintiff has not produced on record any documentary evidence to show that the partition deed was destroyed by the Court. Hence, defendants prayed to reject the application of the plaintiff.

Heard learned counsels for both the parties at length. Perused the record. The certified copy in the suit bearing RCS No.321/2007 reveals that, there is reference of partition deed in para No.3 of the decree. Hence, for the just decision of the suit the application of the plaintiff is liable to be allowed. Defendants have opportunity to challenge the document copy of partition deed produced on record by the plaintiff. They have also opportunity to cross-examine the witness regarding the partition deed. Hence, I pass following order:-

ORDER

1. The application is allowed.
2. The copy of partition deed produced on record by the plaintiff alongwith application is consider as secondary evidence.
3. The plaintiff is granted permission to examine witness regarding the said partition deed.
4. No order as to costs.

Date : 22.10.2024.
Place : Ausa.

(P. I. Mokashi)
Civil Judge Senior Division,
Ausa.