

RCS No. 112/2014
Saroja Vs Suryakant & Ors.

ORDER BELOW EXHIBIT-34

1] This is an application filed by plaintiff U/s 65 of the Indian Evidence Act for permission to lead secondary evidence.

2] It is the contention of the plaintiff that she has filed present suit for partition & separate possession in respect of suit land against the defendants. While institution of the suit, the plaintiff has filed certified copies of sale deeds No.357 & 358 dated 17/2/1999. It is further contention of plaintiff that the originals of aforesaid certified copies of sale deeds are in possession of defendants. Therefore, by this application the plaintiff prayed to lead secondary evidence in respect of aforesaid sale deeds.

3] The defendants have filed their say at Exhibit-36 and resisted the claim of plaintiff. It is submitted by defendants that the application filed by plaintiff is neither tenable nor maintainable as per the provisions of Sections 65 & 66 of the Indian Evidence Act. It is further submitted that the plaintiff has not followed the procedure as per law for leading secondary evidence. Hence, they prayed to reject the application.

4] Perused the record. Heard both sides at considerable

length. According to plaintiff, the sale deeds in question are in possession of defendants. Therefore, by this application, the plaintiff prayed to allow her to lead secondary evidence on the basis of certified copies of above said sale deeds. On the other hand, the defendants resisted the claim of plaintiff on account of failure to comply with the provisions of Section 65 & 66 of the Indian Evidence Act. According to Section 65 of the Indian Evidence Act, a party can lead secondary evidence when the original is shown or appears to be in the possession or power against whom the document is sought to be proved but subject to after the notice as mentioned in Section 66 of the Indian Evidence Act.

5] On perusal of record, it appears that plaintiff has not given notice to defendants to submit the documents on record. But according to Proviso of Section 66, when from the nature of the case an adverse party must know that he will be required to produce it, in that circumstances, notice need not be given to the defendants. The present suit is in respect of partition of ancestral property. Therefore, it is necessary to brought on record the aforesaid sale deeds. Hence, considering the proviso of Section 66 of the said Act and the nature of suit, it is required to given an opportunity to plaintiff to lead secondary evidence. Hence, I proceed to pass following order.

ORDER

1] Application is allowed.

2] The plaintiff is permitted to lead secondary evidence in respect of sale deeds bearing No.357 & 358 dated 17/2/1999.

Dated : 1/7/2017

(Sharad B. Kaldate)
Civil Judge, J.D. Mukhed.

CERTIFICATE

I affirm that the contents of this PDF file Judgment are same word to word, as per the original Judgment.

Name of the Stenographer	:	RAUT M.G.
Court Name	:	Civil Judge, JD & JMFC Mukhed
Date	:	1/7/2017
Judgment signed by the Presiding Officer On	:	1/7/2017
Judgment uploaded on	:	1/7/2017