

MHNS130011462019



R.C.S. No. 92/2019

Sulochana Vs. Devidas

ORDER BELOW EXH. NO.25

The present application is filed by the plaintiff for seeking permission to lead secondary evidence. The application is not opposed by the defendant. I have also perused the pleadings of both parties.

2) Learned adv. Shri. B.A Jadhav appearing for the plaintiff submitted that the plaintiff is relying on the copy of agreement i.e., power of attorney dated 19.09.2019 executed in the name of the plaintiff before notary. It is submitted that plaintiff nos.1, 2 and 3 are real sisters. Due to old age and other reasons plaintiff nos. 2 and 3 had given authority to plaintiff no.1 through special power of attorney to file suit, appear, contest and to do everything possible and required for court proceedings. Accordingly, power of attorney was executed and signed before notary.

3) He further submitted that, since the plaintiff no.1 is illiterate and elderly woman, she cannot find the original document despite searching many times. The original copy of the said document is missing from the plaintiff no.1. Therefore, she cannot produce original copy of the above document on record. Under such circumstances the plaintiff has no other option but to adduce the secondary of the said agreement filed with the list provided below Exh.3. The document was verified from original by concern authority at the time of institution of this suit.

4) On perusal of record, it appears that plaintiff no.1 to 3 and defendant no.1 are sisters and brother. Suit is for partition, declaration. Xerox copy of alleged document is filed with list below Exh.3. On perusal of said document prima facie it appears that plaintiff no.2 and 3 have given authority to plaintiff no.1 to institute suit, appear in court, lead

evidence and to do everything on behalf of them, which is possible and required for court process in respect of suit property. The said document is registered and notarized vide Reg.No.59/2019. Prima facie it also appears that said document bears signature and seal of the superintendent of the court along with remark “verified from original”.

5) Sec.63(2) of Indian Evidence Act, (new Sec 58 of Bhartiya Sakshya Adhiniyam, 2023) permits production of document as secondary evidence, provided that its accuracy is verified. In present case that accuracy is verified by concern authority by comparing it with originals at the time of institution of the suit. As per section 65 of the Indian Evidence Act (new sec. 60 of B.S.A.2023) permission to lead secondary evidence relating to the documents can be given when the original is destroyed or lost or when the party offering evidence of its contents cannot for any other reason not arising from his own default or neglect to produce it in reasonable time along with other reasons. As per case of the plaintiff the alleged agreement is lost, missing from her, hence, the plaintiff requires permission to lead it as secondary evidence. Hence, the application deserves to be allowed. Accordingly, I pass following order:

ORDER

1. The application Exh. 25 is allowed.
2. The plaintiff is allowed to lead secondary evidence regarding the agreement/ special power of attorney dated 19.09.2019.
3. Cost in main cause.

Date :- 04/10/2025
Place :- Pimpalgaon (B).

Sd/-xxx
(V. W. Khendad)
2nd Jt.Civil Judicial Junior Division
Pimpalgaon (B)