

**ORDER BELOW APPLICATION (EXH. 88) IN REGULAR CIVIL
SUIT No. 154 OF 2023**

1. The present application has been filed by the plaintiff with the prayer that he may be allowed to lead secondary evidence regarding the registered gift-deed and Three Special Power of Attornies dtd. 07/06/2014, 05/11/2014 and registered in Novmeber-2004. Further, he submitted that notice to produce was already served upon defendants, however they failed to produce the original documents, though they are in their possession. It is contended by the defendant that, plaintiff can file the certifiied copies of the said documents and can lead the evidence, but cannot rely upon the photo copies of the same. Further, he prayed for rejection of the said application with costs.

2. Perused application and Say). Heard both learned advocates at length.

3. Section 63 of the Evidence Act provides for leading secondary evidence. Secondary evidence cannot be accepted without sufficient reason being given for non-production of the original. The loss of original document must be shown in order to lead secondary evidence. Secondary evidence of the document can be allowed to be lead only where original is proved to have existed but was lost or misplaced. The document unless shown to have been compared with original one, mere copy of the document does not become secondary evidence. Section 65 of the Evidence Act provides that in each type of cases secondary evidence relating to the document may be given. This section enumerates the seven exceptional cases in which the secondary evidence is admissible. Secondary evidence is

of the contents which cannot be admitted without the production of document in such a manner within one or the other of the cases as provided for in the Section. When anybody wants to lead secondary evidence, two things are required to be proved; there must be evidence of the existence of the original documents and there must be evidence of their loss.

4. So far as the case in hand, original documents are with defendants. Till today, they have failed to produce the same. So, in such circumstances, I do not find any reason to reject the said application as the plaintiff is ready to produce the certified copies of the said documents to lead his evidence. Therefore, in view of above discussion about as to when the permission to lead secondary evidence can be granted, in my opinion, this is a fit case to grant permission to lead secondary evidence. Hence, following order.

ORDER

- (1) Application stands allowed.
- (2) The plaintiff to lead the secondary evidence i.e. certified copies of gift-deed and three Special Power of Attornies dtd. 07/06/2014, 05/11/2014 and registered in Novmeber-2004.

Date : 21/06/2024.

Sd/-
(Yashshree Marulkar)
Civil Judge Senior Division,
Igatpuri.