

R.C.S.N0.71/2016
Nhanu Joshi Vs. Shivram Joshi

ORDER BELOW (EXH.54)
(Passed on 21/06/2023)

This is an application filed by the plaintiff for seeking permission to file the secondary evidence in respect of Decree in Small cause case No.06/1961 of Kudal Court.

2. The plaintiff contended that, he has filed photo copy of Decree in Small cause case No.06/1961 at exh.4/2. There after on 18/05/2016 he has filed an application in the District court Sindhudurg to get a certified copies of said decree. In response on 20/05/2016 Superintendent, District court Sindhudurg informed the plaintiff that, the document in respect to Small cause case No.06/1961 has been destroyed as per rule. Therefore, it is not easily available for him to brought on record the original documents or certified copies of it. Hence, prayed for permission to file and adduce secondary evidence .

3. The defendant filed say overleaf the application and resisted the application. He contended that, the contents are not admitted. No case is made out for secondary evidence. Hence, prayed to reject the application.

4. Read the application and say. Heard the Ld. Advocate for both sides.

5. It is important to mention here and consider the provision of section 65 of the Indian Evidence Act. In view taken by the Hon'ble

High Court of Bombay in ***Karthik Gangadhar Bhat Vs. Smt. Nirmala Namdeo Wagh, in Civil Writ Petition No. 11151 of 2017***, it is held that, *there is no necessity of filling any application to lead secondary evidence. Rather, it is for the witness / party to step into the witness box and to make out a case justifying to the production of secondary evidence.*

6. The plaintiff in his application specifically mentioned that, the document in respect to Small cause case No.06/1961 has been destroyed as per rule by Hon'ble District Court Sindhudurg. Therefore as per section 65 (c) of Indian Evidence Act provide that, secondary evidence may be given in case of original has been destroyed or lost, or when the party offering evidence of its contents can not, for any other reason not arising from his own default.

7. Moreover, the present suit is in respect of partition, permanent injunction and mandatory injunction. Therefore, the production of a secondary evidence will not cause any harm. Thus, in view of above discussion and in view of the authority cited (supra), the plaintiff is at liberty to adduce secondary evidence and accordingly the application is allowed.

Date : 21/06/2023

Sd/-
(P.R.Dhore)
Jt.Civil Judge Junior Division,
Kudal

