



CNR NO. MHSI70004782017
Order passed below Exh. No. 49
in R.C.S. No. 78/2017

This is an application preferred by the plaintiff for granting permission to lead secondary evidence.

2. The plaintiff has contended that the plaintiff has filed the application cum notice at Exh.50 to direct the defendant no. 1 to produce original sale deed dated 19/06/2017. However, the said application came to be rejected. The original sale deed dated 19/06/2017 is in the possession of the defendant no. 1 and he is avoiding to produce the sale deed before the court. The plaintiff has filed certified copy of the sale deed at Exh.4/11. Therefore, it is prayed that plaintiff be permitted to adduce secondary evidence. Despite of sufficient time and opportunity defendant no. 1 has failed to file say on application. Therefore, the application was proceeded without the say of defendant no.1.

3. Heard learned advocate for the plaintiff. The learned advocate for the plaintiff has reiterated the contents of application. The leaned advocate for the plaintiff has relied upon the judgment of Hon'ble High Court of Bombay in case of **Prasanbai Jain Vs. Sunanda Jadhav**, reported in **2017(6) All M.R. 877** and Judgment of Hon'ble High Court of Patana in case of **Ram Briksha Singh Vs. Ramashray Singh** arising out of **Civil Miscellaneous Jurisdiction No. 18/2018** dated 11/07/2024.

4. In light of arguments advanced by the learned advocate for the plaintiff, I have gone through the provisions laid down in section 65 of the Indian Evidence Act. As per section

65(a) of the Indian Evidence Act, secondary evidence may be given when the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved or of any person ought of reach of, or not subject to, the process of the court. The plaintiff earlier has filed application cum notice to the defendant no.1 at Exh.50 to produce original sale deed dated 19/06/2017. However, the defendant no. 1 has not filed any say over the said application. Therefore, the said application cum notice was filed. As the original sale deed is in the possession of the defendant no. 1 and he has failed to produce the said sale deed after the application cum notice at Exh.50. Therefore, the plaintiff is entitled to adduce secondary evidence in light of section 65(a) of the Indian Evidence Act. Hence, the application is liable to be allowed. Accordingly, I pass following order.

ORDER

1. The application at Exh. 49 is hereby allowed.
2. The plaintiff is permitted to lead secondary evidence in respect of sale deed annexed at list at Exh. 4/11.

(Pronounced and dictated in open Court.)

Place : Malavan
Date : 23/09/2024

Mahesh R. Devkate
Civil Judge Jr.Dn., Malvan.