

MHKO020007952012



Order Below Exh. 372 in Spl.C.S. No. 68/2012
(Suryakant Sutar Vs. Sharad Jadhav etc.)

This is an application for reopening evidence of the plaintiff.

2) It is contended that suit has been filed for declaration and injunction. Against the order passed by my learned predecessor in office, the plaintiff has preferred Writ Petition No. 33935/2023 in which the Hon'ble their Lordship passed an order on 18/03/2024 and directed the plaintiff for moving application before Lower Court under the provisions of Indian Evidence Act to lead secondary evidence in respect of the documents produced along with list Exh.156/1 to 156/6. Therefore, the plaintiff is constrained to move application under consideration for reopening of evidence and to lead additional evidence for proof of documents produced along with list Exh.156/1 to 156/3. Hence, on all these grounds, he prayed for allowing the application.

2) Defendant No.5 and 6 have resisted the application under consideration by filing say below overleaf of it. It is contended that the Hon'ble their Lordship of Bombay High Court has given liberty to the plaintiff to take steps to lead

additional evidence. It does not mean that the plaintiff can move the application to reopen without any just, cogent and convincing reason and explanation. In the application under consideration no specific reason has been given for reopening of evidence. The documents which plaintiff wants to prove are xerox copies of notarized agreements. So they can not be proved by leading secondary evidence. The application is devoid of merit. So deserves to be rejected.

3) Defendant No.7 and 8 have adopted the say of defendant No. 5 and 6. While defendant No.1 has submitted his separate say at Exh.374. It is contended that suit is of the year 2012. Matter is pending for final argument. Already 12 years delay has been passed by the plaintiff for leading additional evidence. The documents in question are produced by him at Exh. 156/1 to 156/6 which are already on record. Then, why he has not lead evidence regarding those documents at the earliest stage. The application has been moved only to prolong the matter. Hence, on these grounds defendant No.1 prayed for rejection of application.

4) Heard learned advocates from both sides and gone through the record of proceeding. As pointed out by the learned advocate for the plaintiff that in Writ Petition No. 33935/2023 the plaintiff was specifically directed to take out proper application or proceedings as available to him in accordance with the provisions of Indian Evidence Act nor to prove the

documents in question by secondary evidence for marking them as exhibits. Accordingly, he had moved application Exh. 347. However, in said application he had not sought permission for reopening the evidence.

5) Perusal of record shows that, admittedly, the matter is posted for final argument. Already both sides had led evidence. However, at the time of final argument, the plaintiff found that some documents, originals of which are in possession of defendants are not exhibited as originals are not produced by defendants even after issuance of notice to produce, he sought permission to lead secondary evidence. After finding that documents in question are material to prove case of the plaintiff. The Hon'ble their Lordship gave opportunity to the plaintiff to take steps to lead secondary evidence and get proved the documents in question.

6) In response to said order, application under consideration has been moved. Already the Hon'ble their Lordship has given the plaintiff opportunity to lead evidence. Therefore, considering the order of the Hon'ble High Court and the provisions of secondary evidence provided under Indian Evidence Act, in my view it will be proper to reopen the evidence of the plaintiff and allow him to lead further evidence for proving documents in question by leading secondary evidence. Hence, in view of this discussion, I pass following order :-

ORDER

1. Application is hereby allowed.
2. The plaintiff is directed to submit affidavit of examination in chief on next date without fail.

Date: 06/07/2024
Sangli.

(Vibha P. Gaikwad)
2nd Civil Judge, Sr. Division,
Sangli.