

MHSN020013102019



ORDER BELOW Exh. 41

The plaintiff has sought leave to adduce secondary evidence in respect of registered release deed bearing no.2155/2009 dated 04/05/2009 by way of application (Exh.41). It is stated that, this release deed was executed by plaintiff and defendant no. 1 and 2 in favor of defendant no. 3 to 6. The plaintiff has issued notice to defendant for production original release deed. Despite service of notice defendants failed to produce on record. The plaintiff has produced certified copy of this release deed at Exh. 35/1. Hence, it prayed that, the plaintiff may be allowed to lead secondary evidence of this release deed.

2. Say of defendants was called. Defendant no. 4 to 8 filed say at Exh. 42 and contended that, present suit is filed on 15/09/2019 but not produced certified copy of release deed during presentation of plaint. The property mentioned in release deed is not subject matter of partition in this suit. Accordingly, it is prayed that the application may be rejected.

3. Application (Exh.41) is supported with affidavit of plaintiff. Perused applications, say and the record. Heard learned advocate for plaintiff and for the defendants.

4. Ld. Advocate for plaintiff submitted that secondary evidence in respect of release deed is permissible in view of clause (a) of Sec 65 of the Indian Evidence Act since a release deed is a public document within the meaning of Sec 74 (2) of the Indian Evidence Act. There is substance in the arguments of the Ld. Advocate for the plaintiff. In view of Sec 76 of the

Evidence Act, public document can be proved by adducing its certified copy. Even the plaintiff has produced copy of notice issued to defendants at Exh. 40/1 and postal acknowledgments of this notice at Exh. 41-B/1 to 41-B/4. In such circumstances, present case is squarely covered by clause (e) as well as (f) of Sec 65 of the Evidence Act.

5. Undoubtedly, the plaintiff has specified that this document is in possession of defendants. Present suit is for partition. Thus, the document in respect of which such permission is sought is very essential evidence for just decision in this case. Plaintiffs deserve opportunity to prove their contentions by adducing cogent evidence. If the application is allowed no prejudice would be caused to defendants as they will get opportunity to examine plaintiffs.

6. Thus, above discussion shows that the plaintiff deserves permission to adduce secondary evidence in respect of the release deed bearing no. 2155/2009 dated 04/05/2009. Hence, the order :-

ORDER

1. Applications (Exh.41) is allowed and leave is hereby granted to the plaintiffs to adduce secondary evidence in respect of the release deed bearing no. 2155/2009 dated 04/05/2009

(Dictated and Pronounced in Open Court)

Date :- 09/10/2023.

Place :- Sangli

(Divya P. Kale)
7th Jt. Civil Judge Junior
Division Sangli.

C E R T I F I C A T E

I affirm that, the contents of this P.D.F. file judgment/order are same,
word to word, as per the original judgment/order;

Name of the Stenographer : Self

Court Name : 7th Jt. C.J.J.D. and J.M.F.C., Sangli

Date of judgment/order : 09/10/2023

Date of Judgment/Order signed by

the Presiding Officer on : 09/10/2023

Judgment/Order uploaded on : 11/10/2023