

(CNR No.MHSN05002782015)

ORDER BELOW EXH.158 IN R.C.S. NO.278/2015

(Shila @ Chandrashila Patil +2 Vs. Sampat Patil +13.)

Defendant Nos. 12 to 14 have filed the present application seeking permission to exhibit and read in evidence document Nos. 1 to 5, 7 to 17, 26, 28, and 29 annexed with Exhibit 113, as well as document No. 1 annexed with Exhibit 123.

2. Read the application and reply thereon. Heard. The learned Advocate appearing on behalf of defendant Nos. 12 to 14 submitted that most of the documents sought to be exhibited are public in nature, and some of them have already been admitted by the plaintiff during cross-examination. Therefore, those documents are admissible in evidence. Hence, he has prayed for allowing the application. In support of oral argument, defendant nos.12 to 14 have filed written notes of argument which is at Exh.165.

3. As against this, it is the contention of the plaintiff that the documents in question are not public documents, and that no permission has been sought to adduce secondary evidence. Therefore, those documents cannot be directly marked as exhibits and read in evidence. Hence, the plaintiff has prayed for rejecting the application.

4. Having heard both sides, I have gone through the record. it is not in dispute that the plaintiff has filed the suit seeking a declaration that the sale-deed executed between defendant Nos. 1, 4

to 8 and 9 is void ab initio, along with a prayer for perpetual injunction. In the course of arguments, the learned Advocate appearing for defendant Nos. 12 to 14 submitted that document Nos. 1 to 5, 7 to 9, and 29 annexed with Exh. 113 are public documents, and therefore those are directly admissible in evidence. Keeping these submissions in mind, it is necessary to examine whether the documents referred to by the learned Advocate fall within the purview of public documents under Section 74 of the Indian Evidence Act, 1872 (hereinafter referred to as "the Act"). Section 74 of the Act provides that documents forming the acts or records of the acts of sovereign authorities, official bodies, and tribunals are public documents. Needless to say, a mortgage deed executed between private parties does not fall within Section 74 of the Act. On the contrary, those documents being private in nature fall within the purview of Section 75 of the Act. Once a document comes under Section 75 of the Act, it cannot be treated as a public document. Hence, I disagree with the submissions made by the learned Advocate for defendant Nos. 12 to 14 that document Nos. 1 to 5 and 29 annexed with Exh. 113 are public documents.

5. The learned Advocate appearing for defendant Nos. 12 to 14 further submitted that the plaintiff, in cross-examination, admitted document Nos. 1 to 5 and 29 annexed with Exh. 113. However, it is pertinent to note that nowhere in the cross-examination did the plaintiff admit those documents to be true and correct. Needless to say, in order to successfully prove a mortgage deed or a gift deed, the party relying upon such documents must

produce the originals from the registering office, examine the attesting witnesses, and corroborate the same with relevant records and conduct. In the absence of these parameters, mere production of documents is not sufficient to establish the case. It is also not in dispute that the documents are in possession of defendant Nos. 12 to 14. In such circumstances, they are under an obligation to produce the original copies thereof on record. Hence, document Nos. 1 to 5 and 29 annexed with Exh. 113 cannot be directly marked as exhibits and read in evidence, as prayed for in the application.

6. Now turn to document Nos. 7, 8, 10 to 17, 26, and 28 annexed with Exh. 113. Document Nos. 7 and 8, annexed with Exh. 113, are xerox copies of orders passed by the Circle Officer. Nothing is on record to show that document Nos. 7 and 8 have been admitted by the plaintiff. It is not in dispute that xerox copies of an order passed by a public servant are not generally admissible unless they satisfy the requirements of secondary evidence under the Indian Evidence Act. Hence, document Nos. 7 and 8 annexed with Exh. 113 cannot be directly marked as exhibits.

7. As far as document Nos. 10 to 17 annexed with Exh. 113 are concerned, these are photographs of the suit property. It is the contention of the learned Advocate appearing for defendant Nos. 12 to 14 that the plaintiff has admitted these documents during cross-examination. Keeping this submission in mind, I have gone through the cross-examination of the plaintiff. On perusal, it is clear that the plaintiff admitted that the photographs shown to him are of the

school building. However, the plaintiff nowhere admitted the correctness or authenticity of the photographs. Needless to say, unless and until the photographer who captured the photographs is examined, document Nos. 10 to 17 annexed with Exh. 113 cannot be directly marked as exhibits and read in evidence.

**8.** Document Nos. 26 and 28 annexed with Exh. 113 are the search report and the notice issued by Advocate Vijay Kaingade. It is not in dispute that these documents are not public documents. The plaintiff in cross-examination has not admitted these documents to be true and correct. Hence, in the absence of strict proof, these documents cannot be directly marked as exhibits and read in evidence.

**9.** Now turn to document No. 9 annexed with Exh. 113. On perusal of the said document, it reveals that the competent authority has prepared a measurement map. The said document is a certified copy. Section 74 of the Act, provides that documents prepared by public officers are public documents. Under the Act, there is a presumption regarding certified copies of measurement maps; however, such presumption is not conclusive and is rebuttable. Hence, unless the presumption is rebutted, the document is admissible. Therefore, document No. 9 annexed with Exh. 113 deserves to be marked as an exhibit and read in evidence.

**10.** Now turn to document No. 1 annexed with Exh. 123. It is the contention of the learned Advocate appearing for defendant Nos. 12 to 14 that the said document carries a presumption under

Section 81 of the Act. Section 81 provides that the Court shall presume the genuineness of Gazettes, newspapers, private Acts of Parliament, and other documents directed by law to be kept by any person. However, the presumption regarding newspapers extends only to the fact of their publication and not to the truth of the contents therein. If this principle is taken into consideration, document No. 1 can be exhibited to the extent of identifying the document and presuming that it has been duly published. However, it does not mean that the contents of the said document stand proved. Considering the circumstances and the aforesaid discussion, I come to the conclusion that the application deserves to be allowed partly. In the result, I pass the following order:

**ORDER**

1. Application is hereby allowed partly.
2. The concerned Clerk is hereby directed to mark document No. 9 annexed with Exh. 113 and document No. 1 annexed with Exh. 123 as exhibits.
3. Defendant Nos. 12 to 14 shall prove the genuineness of all the documents on which they have placed reliance.
4. No order as to costs.

**Islampur.**  
**Date: 01/04/2026**

**(Bhagwan M. Karlekar)**  
**Jt. Civil Judge Sr. Dn., Islampur.**

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