

Order below Ex.146 in RCS 19/2019
Laxman and Ors Vs Rayappa and Ors
(CNR MHSN080001502019)

The application is to de-exhibit the document marked as exhibit 10 below Ex.3/Sr.No.3 [(which is a photo copy of Agreement of Sale (AoS)].

2 Perused the application, say, and the record.

3 Heard.

4 The suit is for a declaratory decree of being owners, and a decree of perpetual injunction. The defendants have contested the claim. The suit is listed for evidence of defendants.

5 The application is premised on the ground that the photocopy of the AoS below Ex.3/Sr.No.3 has been inadvertently marked as exhibit and has not been proved. Therefore, it should be de-exhibited.

6 The application is opposed on the ground that the plaintiff possesses the suit property by virtue of the AoS. The application is misconceived. If the application is allowed, it would adversely affect the plaintiff's case. The application has been filed belatedly. If the document is de-exhibited, it would create multiplicity of the proceedings.

7 The following points arose for my determination, to which I record my findings with the reasons thereof:-

Sr.No	Points for determination	Findings
1	Whethet the photo copy of the AoS below Ex.3/Sr.No.3 marked as Exhibit 10 has to be de-exhibited?	Yes
2	What order?	As per the final order.

Reasons

Point 1

8 As a matter of fact and record, the suit is listed for evidence of the defendants. Further, the document which appears to be a photo copy of the AoS produced below Ex.3/Sr.No.3 has been marked as Exhibit 10.

9 It further appears that there is a random marking of the exhibits below the list of document Ex.3. The plaintiffs have not sought to exhibit or prove the said document during evidence. It is a practise that the certified copies of the public documents are marked exhibited, as not required to be proved.

10 It has been argued on behalf of the plaintiffs that once a document is exhibited, it cannot be de-exhibited.

11 Per contra, it is argued that mere marking of exhibit, does not dispense with its proof. This Court can recall the order to avoid prejudice.

12 This Court is guided by the law laid down in **G M.Shahul Hameed Vs Jayanthi R.Hegde 2024 SCC OnLine SC 1674** wherein an insufficiently stamped instrument was marked exhibit. Hon'ble the Apex Court has held that the said order can be recalled under Section 151 of the CPC.

13 The facts may be examined from various angles, in any case, the said document has not been tendered during evidence and that the same has been marked exhibit which exhibiting the public documents, which is a ministerial act. No judicial order has been passed to exhibit the said document. Though, merely because the said document has been exhibited, it cannot be read into evidence, unless it is duly proved.

14 In the peculiar facts, the apprehension of the Ld.Advocate for the defendants that the same may be taken benefit of in the appellate proceedings has to be considered. In any case, though admittedly, the document cannot be said to be proved, the fact remains the marking of exhibit, has to be recalled, as neither the foundational pleadings of secondary evidence is laid or relied upon nor the same is a public

document. Accordingly, the point for determination is answered. Costs follows the event. Hence, the following

Order

The application is allowed.

2 The document below Ex.3/3 marked as exhibit 10 is hereby recalled. An endorsement be made on the list of document and the photo copy of the said document, at the appropriate place.

3 Costs in the cause.

Jath
Date:-12/08/2026

(Sanjay P.Bunde)
Jt C.J.J.D, Jath