

Order Below Exh. 143 in R.C.S.No. 36/2009
Radhabai Mhasku Karade and other Vs Vikram Yashwantrao
Dafale and other

(CNR No. MHSN08000156-2009)

This is an application for seeking permission to lead secondary evidence of demarcation map of the suit property of “A” sheet, of which only “B” sheet is available on record.

02. The Ld. Advocate Shri. T.S. Shaikh for the plaintiffs submitted that the plaintiffs have filed suit for declaration that the plaintiffs become the owner of the suit property by adverse possession and also sought the relief of fixing of boundaries through court commissioner. Accordingly, the court commissioner was appointed and the commissioner has filed report vide Exh. 79 from page Nos. 1 to 71. The court commissioner has produced the demarcation map at page No. 71, which is “B” sheet of the said measurement.

03. He further submitted that the plaintiffs examined himself at Exh.110 and filed application at Exh. 111 for issuing witness summons to the court commissioner and also given direction to produce the “A” sheet of said measurement map. However, the said court commissioner vide Exh. 114 stated that “A” sheet is not found. Thereafter, the Taluka Inspector of Land Record (here-in-after referred as “ **T.I.L.R.**” in short) has also

issued letter vide Exh. 129 that “A” sheet is not found despite search in their office. Further the surveyor as well as Superintendent of Land Record, Jath also reported vide Exh. 134 and 135 respectively that the “A” sheet is not found in the record. Therefore, he submitted that while examining the court commissioner, it is essential to show “A” sheet of the map but the said “A” sheet is not found and therefore, “B” sheet filed at page No.71 alongwith court commissioner’s report at Exh. 79 is required to be shown to the commissioner witness at the time of evidence and therefore, he submitted that, he be allowed to lead the secondary evidence of “A” sheet, which is filed on record by the court commissioner. Hence, submitted to allow his application.

04. On the other hand, the Ld. Advocate Shri. V.S. Walujkar has opposed the application by filing say at Exh. 145. He submitted that the plaintiffs have not filed affidavit in support of their application. He further submitted that the land record office has not given the report that “A” sheet is misplaced. Therefore, merely it is not found in their office is not the ground to allow the secondary evidence. He further submitted that it is not possible to lost the “A” sheet from the government office and therefore, the report about “A” sheet is not found, is not the sufficient reason to allow the plaintiffs to lead the secondary evidence. Therefore, he submitted that “A” sheet is the original and “B” sheet is the true copy and therefore, to examine its authenticity is difficult task. Thereafter, he submitted that application be rejected.

05. Heard both sides. Perused the application, say and record of the case. After hearing of both the parties, following points arise for my determination and I have recorded my findings thereupon for the reasons stated below :-

Sr. No.	Points	Findings
1.	Whether permission can be granted to lead the secondary evidence as "B" Sheet on record of "A" sheet, which is not found by T.I.L.R. Office ?	Yes.
2.	What Order ?	As per final order.

REASONS

AS TO POINT NOS. 1 AND 2:-

06. On perusal of record it appears that the plaintiffs filed suit for carrying out measurement and fixing of boundaries by appointing T.I.L.R. as court commissioner and also sought declaration that the plaintiffs become the owner of the suit property by adverse possession.

07. Admittedly, the court commissioner was appointed and he has submitted the report vide Exh. 79. "B" sheet of the said measurement is filed on record at page No. 71 of the court commissioner's report. After recording the plaintiffs evidence, the witness summons was issued to surveyor namely Shri. U.N.

Gondhali of T.I.L.R. Jath as per application at Exh. 111. As per report vide Exh. 114 dated 23/01/2019, the witness namely Shri. U.N. Gondhali has filed report that “A” sheet was not found and time may be granted. The time was granted. Further, T.I.L.R. reported vide Exh. 129 that the “A” sheet of M.R. No. 126/2016 is not found and again time was granted. Further report vide Exh. 134 of surveyor namely Shri. U.N. Gondhali, it appears that the “A” Sheet is not found in the T.I.L.R. office. Further vide Exh. 135, the T.I.L.R. Jath has also submitted the “A” sheet is not found in their record and finally submitted to pass appropriate orders. My Ld. Predecessor passed order seen on the said report. Therefore, considering these reports filed by T.I.L.R. Jath, it appears that the “A” sheet could not be found in the office of the T.I.L.R. Jath.

08. On this backdrop of history of the case, it appears to me that the suit is pending since 2009. The court commissioner has submitted his report on 03/10/2016 and the matter is lingering for the evidence on the ground that “A” sheet report is not found in the office of T.I.L.R. Jath since 2019.

09. As submitted by the Ld. Advocate for the defendants the “B” sheet is the true copy prepared from “A” sheet. Therefore, as the “A” sheet is not found or lost or when the party offering evidence of its contents for any other reason not arising from his own default or neglect, produced it in reasonable time. Then in that circumstances, the permission for leading secondary evidence

can certainly be granted as per sub section (c) of section 65 of The Indian Evidence Act.

10. The Ld. Advocate for the plaintiffs Mr. T.S. Shaikh relied upon the ruling in case of **Eslie Noronha V/s J. Lambert Almeida and another reported in 2012 (4) Mh.L.J. Page No. 520**. In this ruling the Hon'ble Bombay High Court held that *"if originals of the documents not produced by the respondents though petition had given notice to them to produce the originals of the documents, then the petitioner is entitled to lead secondary evidence"*. Considering the above decision, it appears to me that, in the present case the T.I.L.R. Jath despite giving the notice or summons to produce those documents, failed to produce it, then plaintiffs are entitled to prove those documents by leading secondary evidence. Hence, the decision given in above case is squarely applicable to the present set of facts.

11. The plaintiffs wants to prove the contents of measurement and the surveyor or T.I.L.R. are unable to produce "A" sheet despite repeated letters or issuing warrants for production of that "A" sheet time to time. Then it appears to me that the plaintiffs who wants to prove it but is unable to produce the original for the reasons stated by T.I.L.R., which is certainly not arising from his own default or neglect. Therefore, in view of sub section (c) of section 65 of Indian Evidence Act, the secondary evidence of "B" Sheet can be given. Therefore, application needs to

be allowed. Hence, I answer point No.1 in the affirmative and in answer to point no.2, I pass the following order.

ORDER

1. Application is allowed.
2. The plaintiffs are allowed to lead secondary evidence of "A" sheet, as "B" sheet filed at page No. 79 at Exh. 79.
3. Cost shall in main cause.

Place :- Jath

Date :- 12/04/2023

(Amarjeet B. Jadhav)
Joint Civil Judge, Junior Division,
Jath.

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

Name of steno : Ainapure I.G.,

Name of court : C.J.J.D.& J.M.F.C., Jath,

Date : 12.04.2023

Judgment/order signed by Presiding Officer on : 12.04.2023

Judgment/order uploaded on : 17.04.2023