

**ORDER BELOW EXH. 222**  
(CNR NO. MHSN110003002008)

1. The plaintiffs have moved this application for permitting them to lead secondary evidence in respect of letter dt. 20.04.1997, the original of which is in possession of BDO, Panchayat Samiti Atpadi.

2. In the application the plaintiffs have claimed that the then Sarpanch of Grampanchayat, Kharsundi has sent the letter in question to Panchayat Samiti Atpadi and thereby claimed some relief in respect of suit properties and which was against the interest of the plaintiffs. It is further claimed that this Court has previously issued summon and directed said authority to file the original letter on record, however, said order was not complied. It is further claimed that the plaintiff has tried to obtain certified copy of the letter from Grampanchayat Kharsundi, but it has shown its inability to furnish the same. As per plaintiffs, in order to establish their claim in this suit, it is necessary to prove the letter in question during their evidence and the original letter is not in their custody. This has constrained the plaintiffs to move present application with a prayer to permit them to lead secondary evidence in respect of the letter dt. 20.04.1997.

3. The application is opposed by defendant by filing his say vide Exh. 229. In the say, the defendant has claimed that there is nothing in the record which can sufficiently proves that the letter in question was destroyed and as original document cannot be procured in this suit, the permission sought by the plaintiff should be granted. It is further claimed that there in nothing in the record on basis of which it can be find out whether the document in question is in existence and if yes, it is in possession of a particular authority. The defendant has

also pointed out that since concerned Sarpanch was not examined by the plaintiff and he is no more at present, the permission to lead secondary evidence cannot be granted at this belated stage. With such submission, it was prayed to reject the application.

4. Heard both sides.

5. Perused record. It shows that previously this Court has issued witness summons and directed concerned authority to produce the letter in question in the Court. Further, xerox copy of said letter was filed on record, but said authority has omitted to produce the original in the Court. Further, in the say the defendant is alleging that as there is nothing in the record which shows the original has been destroyed and unless, this fact is proved permission to lead secondary evidence can not be granted. However, the point raised by the defendant does not seems to be reasonable. Sec. 65 of the Indian Evidence Act provides for the cases in which secondary evidence relating to the documents may be given. As per Sec. 65 (a) of Indian Evidence Act secondary evidence regarding existence, condition or contents of a document can be given when the original is shown or appears to be in possession or power of a person who is out of reach of the Court or not subjected to the process of Court. Here, the original letter appears to be in possession of Panchayat Samiti Atpadi and it is not party to this suit. It was directed by the Court to produce the original letter but said order was not complied with. This means in view of Sec. 65 (a) of the Indian Evidence Act Court can permit the plaintiffs to lead secondary evidence in respect of the letter in question.

6. Further, the defendant has pointed out that the plaintiffs have not examined concerned Sarpanch previously and therefore, the

permission sought by them cannot be granted. However, this submission also do not seems to be reasonable as it is right of the plaintiff to decide whether he wants to examine any witness or not and if yes, when such witness should be examined. Further, considering the claim made by the plaintiffs in this suit, the letter in question appears to be relevant and as its original is not available permission to lead secondary evidence must be granted to them. Considering all above facts and as I have found merit in the application, I am passing following order,

**ORDER**

1. The application Exh. 222 is hereby allowed.
2. Plaintiff is permitted to lead secondary evidence in respect of the letter in question.

Place :- Atpadi.  
Date :- 18.09.2019

( J. R. Ghadge )  
Jt.Civil Judge, Jr. Dn., Atpadi.  
Dist. Sangli.

**Certificate**

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

Name of the Stenographer - M. M. Buchade  
Court - Jt. Civil Judge Jr. Div. Atpadi.  
Date - 18.09.2019  
Order signed by the  
Presiding Officer on - 18.09.2019  
Order uploaded on - 20.09.2019