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R.C.S. NO. 57/2009
CNR- MHSN110003212009

ORDER BELOW EXH. 172

1. Read the application and say. Heard both the sides. The defendant no. 1 and 2 have filed the present application for permission to lead the secondary evidence. It is averred by the defendant that the plaintiff has filed the present suit against the defendants for partition and separate possession. The evidence of the plaintiff has been completed and it is pending for the evidence of defendants. The defendants have taken the plea of previous partition effected on 16/07/1990 in their written statement and deed of partition was executed on ten rupees stamp paper. The defendants have filed a xerox copy of the same on the record.

2. The original copy of the partition deed is with the plaintiff and the defendants has given a notice to produce the same before the Court in-spite of that plaintiff failed to produce the same. The matter is posted for the evidence of the defendants and defendant has filed an evidence by way of an affidavit of Shankar Appa Mote who is the witness to the partition deed. The defendants and his witnesses has mentioned about the partition deed dated 16/07/1990 and therefore it is necessary to lead the secondary evidence in respect of the said partition deed. If permission denied to lead the secondary evidence it will cause irreparable loss to the defendants.

3. Plaintiff intentionally avoiding to produce the original partition deed. Therefore the defendants constrained to file the present application for permission to lead secondary evidence.

4. The plaintiff opposed the application by filing say vide

Exh. 173. It is contention of the plaintiff that though the defendants mentioned about the partition deed dated 16/07/1990 that partition deed is insufficiently stamped and it is not registered. Therefore it cannot be taken into consideration. The defendants have given the reply to the notice to produce of the document. The alleged stamp appears to be in the name of the father of the defendants, therefore there is no question of possession of the same with the plaintiff. If primary evidence is not admissible, then secondary evidence cannot be lead as per the law. Therefore the defendants having no right to lead the secondary evidence in respect of the partition deed dated 16/07/1990.

5. Perused the record and submission of both the parties. The plaintiff has filed the present suit for partition and separate possession. During the trial the defendant no. 1 and 2 has given the notice to produce the memorandum of partition dated 16/07/1990 vide Exh. 37. To that notice the plaintiff replied that there is no document dated 16/07/1990 in existence and therefore there is no question of possession of the same with the defendant.

6. The evidence of the plaintiff has been completed and matter is posted for the evidence of the defendants. The defendants no. 1 and 2 produce the xerox copy of the partition deed dated 16/07/1990 and during the evidence of defendant no. 1 and 2 prayed lead to secondary evidence in respect of said partition deed. On perusal of the stamp it appears that it is a partition deed executed on the stamp paper of rupees ten.

7. The chapter V of the Indian Evidence Act, 1872 deals

with documentary evidence. As per section 61 of Indian Evidence Act, the contents of the documents may be prove either by primary or by secondary evidence. Section 62 defines primary evidence, whereas section 63 defines secondary evidence.

8. Section 64 mandates documents to be proved by primary evidence except in the cases mentioned in section 65, in which secondary evidence relating to the documents may be given.

9. There is no requirement of an application for secondary evidence. Before leading secondary evidence one or other circumstance set-out under section 65 of the Evidence Act must be satisfied.

10. Before secondary evidence of the document can be allowed to be led, two things have to be satisfied:

- i. That the original document was properly stamped and admissible in evidence;
- ii. That one of the conditions enumerated in section 65 of Indian Evidence Act entitling the leading of secondary evidence has to be establish.

11. The defendant no. 1 and 2 have taken the plea that the original document is in possession of the plaintiff and accordingly the defendant no. 1 and 2 has given the notice to produce the same. On perusal of the xerox copy of stamp paper alleged partition deed it appears to be a partition deed on ten rupees stamp paper. The partition deed must be sufficiently stamped, however the alleged xerox copy of partition deed is insufficiently stamped, therefore it is not admissible in evidence. The defendant no. 1 and 2 failed to

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satisfy that the original document is properly stamped and admissible in evidence. Secondary evidence cannot be lead in respect of insufficiently stamped therefore this application deserves to be rejected. Hence I pass following order.

ORDER

1. Application is hereby rejected.
2. No order as to cost.

Atpadi.
Date : 03/03/2023

(**Anant R. Tengse**)
Jt. Civil Judge Jr. Dn. Atpadi.

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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 - A. A. Jamadar
Court - Jt. CJJD and JMFC, Atpadi.
Date - 03.03.2023
Order signed by the
Presiding Officer on - 04.03.2023
Order uploaded on - 04.03.2023