

Order Below Exh. 53

1. The plaintiff has filed this application to permit her to lead secondary evidence.
2. She submitted that, issues have been framed at Exh. 42 in this suit wherein plaintiff has filed her affidavit in lieu of chief examination on 17.03.2023. The plaintiff has filed certified copies of sale deed dated 04.09.2017, 12.09.2017 and 21.04.2005 at list Exh. 11. The defendant is in possession of these original sale deeds. In order to prove the case, it is necessary to put the original copies on record. Hence, the plaintiff has filed application at Exh. 44. However, it was filed again she has filed application at Exh. 51 vide order XI rule 16 of C.P.C. Even then, the defendant failed to file original copies on record. The suit is in respect of immovable property. Hence, it is necessary for the plaintiff to lead secondary evidence of said sale deeds. Accordingly, she prayed to grant the permission to lead secondary evidence of the alleged sale deeds.
3. Defendants failed to file say to this application till today. Hence, application is proceeded without say.
4. Perused the application, record and the documents on the record. It appears that, the plaintiff has filed certified copy of the alleged sale deed dated 04.09.2017, 12.09.2017 and 21.04.2005 at list Exh. 11. However, in order to prove the contents of the document, primary evidence has to be laid. Yet, the plaintiff is seeking permission to lead secondary evidence in respect of this document on the ground that it has been lost.
5. In this aspect, I have gone through the authority laid down by Hon. Bombay High Court in **Karthick Gangadhar Bhat vs Smt. Nirmala Namdeo Wagh And Anr. 2017(6) ALL MR 769**, wherein, it has been observed that,
“Under Section 65(c), where the original is lost, the party seeking to adduce secondary evidence must depose that the original is lost and must also depose to the other conditions set out in that sub-clause, viz., that he

is not guilty of default or neglect. The section itself says that in a case under 65(c), any evidence of the contents is admissible. Again, there is simply no question of 'leave' being required.”

6. Hence, taking into consideration the above aspect, it is clear that, the party has to establish the foundational facts before the court and the Court should record a satisfaction on the basis of such evidence that the originals are lost before admitting the secondary evidence. If these conditions are not proved, the secondary evidence cannot be admitted in the evidence. However, in the instant suit, this application seeking permission to lead secondary evidence which is different from the aspect of admitting the document as a secondary evidence.
7. Hence, at the time of admitting the alleged document, the plaintiff has to prove those foundational facts. Accordingly, she issued notice to the defendant vide Exh. 51 in view of order XI rule 16 C.P.C. still then defendant failed to file original sale deeds on record. Vide Exh. 49 the defendant has submitted through the say to Exh. 44 that, original sale deeds are not in his possession. For these reasons there seems no necessity to issue notice to the defendant again in view of section 66 of Indian Evidence Act, as she has already issued notice through Exh. 51. In view of the above authority, there is no such specific need to seek permission of the court. Accordingly, as such, there would be no bar to allow this application and to grant the liberty to the plaintiff to lead secondary evidence. Besides this, she has to establish the foundational facts in order to admit the alleged document. Accordingly, question as to admissibility of the document in order to prove the contents sufficiently remains open. Resultantly, following is the order –

ORDER

1. The application at Exh. 53 is allowed
2. The plaintiff is at liberty to lead secondary evidence as she desires.

3. The question as to admissibility, contents, truthfulness, genuineness and relevancy of the document is open.
4. Parties to bear their own costs.

Place – Pandharpur.

Date – 23/06/2023

SD/-

(Sonal A. Salunkhe)

4th Jt. Civil Judge, J. D., Pandharpur.

Certificate

I affirm that, the contents of this PDF file Order/Judgment are same word to word, as per original Order/Judgment.

Name of Stenographer	:- M.P.Gheradi (L. G.)
Court	:- 4 th Jt.C.J.J.D. & J.M.F.C. Pandharpur
Date	:- 23.06.2023
Judgment/Order signed by the Presiding Officer	:- 23.06.2023
Judgment/Order uploaded on	:- 01.07.2023