

ORDER BELOW EXH. 57

Perused the application. The present application is filed by the plaintiff to lead the secondary evidence in respect of document filed with list Exh. 59. It is his contention that, he issued a notice dated 17.02.2025 through registered post to the defendant, requesting the filing of Sale-Deed No. 1973/2015, executed on 02.06.2015, pertaining to Gat No. 212. However, the defendant has not complied with this request till date. The plaintiff has obtained a certified copy of the said document and submitted it in the present suit. Hence, he prayed to grant permission to lead the secondary evidence in respect of document as stated in the present application.

2] Defendants filled their say and contented that, application filed by the defendant is not tenable. Hence, pleaded to reject an application.

3] Considering the submission of defendant, I have gone through the Section 65 which provided that, cases in which secondary evidence relating to documents may be given of the existence, or contents of documents in the following cases.

- c) When the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time.*

In such case any secondary evidence of the contents of the document is admissible.

4] Reliance can be placed upon the judgment by Hon'ble High Court of Bombay in *Civil Revision Application No 82 of 2016, Prasanbai Dhanraj Jain Vs Sunanda Madhukar Jadhav* reported in **2017(6) ALL MR 877** where in it is stated that "*The Obstructionists will be at liberty to lead such secondary evidence as they deem fit and to summons such witnesses as they think appropriate in support of the case they have pleaded*". Therefore plaintiff submitted that, if permission to lead secondary evidence granted then plaintiff have to prove the document on merit.

5] It is pertinent to note that in the judgment cited supra it is also mentioned that, "*I will say so briefly once again: either secondary evidence is led or it is not led. Either the provisions of Section 65 are met or they are not met. No permission of a Court is required to lead evidence of any kind. No judge in the subordinate judiciary to this High Court will hereafter will insist on any such application under any circumstances whatsoever..... For 'permission' to lead secondary evidence. The Court cannot refuse that permission, and it cannot insist on an application for any such permission.*"

6] Considering the provision in section 65(c) of the Indian Evidence Act and the facts stated by the plaintiff, the above provision is perfectly applicable to the facts narrated by the plaintiff in the present application. Therefore, I have not hesitation to allow the present application. Hence, following order.

O R D E R

- 1] Application is allowed.
- 2] Plaintiff is permitted to lead the secondary evidence in respect of documents filed with list Exh. 59.
- 3] No order as to costs.

Date: 04/04/2025

(Mahesh N. Patil)
4th Jt. Civil Judge Jr. Dn.
Malshiras

C E R T I F I C A T E

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

Name of the Court : 4th Jt. C.J.J.D & J.M.F.C., Malshiras.

Name of Stenographer : Praveen Nagnath Nalla (Grade III)

Order signed by the Presiding : 04 / 04 / 2025.

Officer on

Order uploaded on : 04 / 04 / 2025.