

APPLICATION NO.3953 OF 2016
IN C.S.NO.758 OF 2009

PUSHPA SATHYANARAYANA, J.

This application is filed by the applicant / plaintiff to mark the xerox copies of the suit documents namely, Exhibits P2 to P18, P20 to P27 as secondary evidence in the above suit.

2. The application is taken out by the plaintiff and P.W.1 had filed proof affidavit in the suit. While marking the documents, the fourth defendant objected to the marking of the suit documents. Hence, notice was issued to the first defendant calling upon them to produce the suit documents in serial numbers 1 to 9, 11 and 12, which are letter correspondences between the first defendant and the defendants 2 and 3 in the above suit.

3. With respect to the above mentioned documents, the first defendant had filed counter stating that the assets together with all records in the premises were taken possession by the financial institutions

and the documents were not available with the first defendant. Hence, they could not be heeded to the request of the plaintiff. It is specifically stated by the first defendant that these documents were never handed over to the plaintiff and the claim of the plaintiff that photocopies were furnished by the first defendant to the plaintiff was denied.

4. With respect to the document numbers 10, 14 and 17, they are the paper publications and only the photocopies of the same are filed. It is objected to by the learned counsel for the fourth defendant that the copy of the newspaper, much less a photo copy of the newspaper, cannot be used as a secondary evidence of proof. When the original newspaper is not produced and even presuming that the original is produced, when the correspondent or reporter of the news, cannot be examined, the said documents cannot be admitted in evidence.

5. So far as document no.13, which is a certified copy issued by an Architect, unless it is marked through the author of the document, the fourth defendant opposed the marking of the same through the plaintiff.

6. Document no.22 is the photo copy of the sanctioned plan issued by CMDA, which pertains to the entire building owned by the plaintiff and the fourth defendant. As the original of the said plan is available with the fourth defendant, marking of the copy of the same is not objected to by the fourth defendant.

7. So far as document no.26 is concerned, it is an e-mail correspondence between the plaintiff and the fourth defendant, for which also there cannot be any objection by the fourth defendant.

8. After giving anxious consideration to the objections raised by the respondents in marking those documents, document numbers 1 to 9, 11 and 12, when the above said documents are not handed over to the plaintiff as claimed and they are the correspondence between the first and second defendants, they have to be proved in the manner known to law. Therefore, they may be permitted to be received subject to admissibility, proof and relevancy.

9. Documents nos.22, 23 and 24 can also be received, for which, there was no objection.

10. For the reception of document no.13, unless the author of the document is examined, the same cannot be marked through the plaintiff.

11. So far as document numbers 10, 14 and 17 are concerned, which are the paper publications, as stated earlier, the same cannot be marked through the plaintiff, when what is marked is only a photocopy of the newspaper.

12. So far as document numbers 18 to 21 are concerned, the true copy of the document will not be admissible under Section 63 of the Indian Evidence Act, unless it is shown that it had been made from or compared with the original. There must also be sufficient proof of the search for the original to render the secondary evidence admissible.

13. In the light of the above discussions, excepting those documents that are indicated to be marked, subject to admissibility, proof and relevancy, the other documents cannot be marked and the application is disposed of accordingly. No costs.

14. Post the matter before the learned Additional Master - I on 20.10.2016 for recording evidence.

05 / 10 / 2016

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