

A.Nos.2957 & 2958 of 2021 in
C.S.No.735 of 2008,
C.S.No.763 of 2010 &
C.S.No.127 of 2011

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N.SESHASAYEE. J.,

The present applications have been filed by the 1st defendant to eschew the evidence of DW2 and also to receive additional documents for cross examination of his next witness.

2.The brief facts are that the suit property was stated to have been mortgaged by the father of the plaintiffs with the 1st defendant and that he sold the property under its powers available to him u/s.69 of the Transfer of the Property Act, to the defendants 10 and 11, who have subsequently sold the property to others. The auction sale u/s.69 is in challenge.

3.In this case, the trial has commenced and the plaintiffs have been cross examined and their side is closed. For the defendants, evidence is being let in and so far as the 1st defendant is concerned, it examined its Administrator as DW2 and he was being cross examined and he was superannuated before

completion of the cross examination. The 1st defendant would now state that the whereabouts of DW2 could not be traced and requires this Court to eschew the evidence. This is opposed by the plaintiff, essentially on the strength of the authority reported in Vidhyadhar Vs. Manikrao (AIR 1999 SC 1441).

4.This Court heard all the parties.

5.It is not adequately clear to what extent DW2 whose evidence is now sought to be eschewed, would be relevant, since he has already been cross examined partly. Therefore this Court only chooses to close the evidence of DW2 to enable the 1st defendant to proceed with producing its next witness.

6.Accordingly, **the application in A.No.2958 of 2021 is disposed of.**

7.So far as application filed in **A.No.2957 of 2021** is concerned, it is filed for receiving certain additional documents but it **is allowed subject to**

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proof, relevancy and admissibility.

8.The cases are posted before the learned Additional Master No.IV. The learned Master is now required to resume trial of the matter.

9.The plaintiffs are required to carry out amendment as concerning one of the defendants whose legal representatives according to the plaintiffs is required to be impleaded, which fact this Court has already recorded.

10.Post the matter on 27.10.2021.

23.09.2021

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