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A.No.807 of 2023

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in C.S.No.331 of 2021

K.KUMARESH BABU, J.

This application has been filed by the applicants seeking to permit the applicants / plaintiffs to produce the photocopy of the approved layout sketch of Sasirekamma Nagar vide approved layout No.LPTN-142/74 filed as Document 1 in the above suit and mark the same on the side of the applicants / plaintiffs in the above suit in C.S.No.331 of 2021.

2. Heard Ms.N.Kalaivani for M/s.Richardson Wilson, learned counsel for the applicants and Ms.J.Lavanya for Mr.S.Ranjith Kumar, learned counsel for the respondent.

3. Learned counsel for the applicants would submit that he is the owner of the Item No.1 and Item No.2 of the suit schedule mentioned property and that the said items form part of an approved layout. The applicants are not in the possession of the original copy of the layout of



A.No.807 of 2023

approval and only a photocopy of the same was given to the applicants by their vendor. The applicants had also taken steps to obtain the same under the Right to Information Act from both the Chennai Metropolitan Development Authority as well as Authority in Town and Country Planning Act. Their attempt was in vein as both the authorities have reported that they do not since the record relates to the year 1974 they have not in possession this offices does not contain or not in possession of the said approved plan to submit that the sale deed under which the plaintiffs seek right to the property would also reflect the said approved plan which would evidence such a plan approval.

4. Learned counsel will further submit that the said document is a necessary document to substantiate the claim of the applicants / plaintiffs if the learned counsel would heavily rely upon Section 65 clause (c) and contend that when the original had been destroyed or loss or party offering evidences of the content is not able to produce the same within a reasonable time. Then the copies of such documents could be taken as secondary evidence. Therefore, she would pray this Court to allow the petition and



A.No.807 of 2023

permit the applicants to mark the xerox copy of the approved layout during the course of recording evidence on the side of the plaintiffs.

5. Ms.J.Lavanya for Mr.S.Ranjith Kumar, learned counsel appearing on behalf of the respondent would suitably oppose the application. He would submit that the office of the concerned authorities do not have the copies of the said document. He would further submit that he contest the genuinity of such xerox copies unless or until the same is proved to be a true copy of the original. He would further submit that it is not the case of the applicants that he himself had seen the original document to substantiate the contends in the xerox copy of the documents when that be done, he would submit that the same could not be received as a secondary evidence as the said document would not fall within the ambit of the secondary document. Therefore he would pray this Court to dismiss the application.

6. I have considered the submission made by the respective counsels appearing on either side. What is sought to be marked by the applicants is a xerox copy of the approved layout invoking the provisions of Section 65(c)



of the Indian Evidence Act as secondary evidence. It is pertinent to note

Section 63 of the Indian Evidence Act defines what “secondary evidence”.

For better appreciation the same is extracted hereunder:

"63. Secondary evidence – Secondary evidence means and includes-

- (1) Certified copies given under the provisions hereinafter contained;*
- (2) Copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;*
- (3) Copies made from or compared with the original;*
- (4) Counterparts of documents as against the parties who did not execute them;*
- (5) Oral accounts of the contents of a document given by some person who has himself seen it."*

7. Admittedly, the document that it is sought to be marked;

(a) is not a certified copy as provided under Sub-Section (1) of Section 63, it is a xerox copy claimed to have been made by a mechanical process from the original.

(b) the copies have not been compared with any other copy.



A.No.807 of 2023

Therefore, the same also do not fall under Sub-Section 2 of Section 63.

(c) the copies that is sought to be marked have not been compared with the original. Therefore, they do not satisfied Sub-Section 3 of Section 63.

(d) This document would not fall under Sub-Section 4 of Section 63 as it is not a document of the counter parts of the plaintiff.

(e) what is sought to be marked is a document and not oral account of a person who had seen the original document, therefore, this document also do not fall under Sub-Section 5 of Section 63.

8. When that being so, I am of the view that the document is sought to be marked admittedly being a xerox copy which do not fall with any of the provisions and Section 63, I am not inclined to allow the petition as prayed for. However, liberty is given to the applicants to lead it any other necessary evidences in support of the claim as regards to the approved plan which is shown in the schedule to the Judge's summons.

9. With the above observations, this application is disposed of.

26.06.2023

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