



IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION, KURKHEDA
(Presided Over by K.G.Mendhe)

Regular Civil Suit No.01/2022

PLAINTIFF :- Pundlikrao Ramchandraji Akre,
Age : 64 Years., Occ.:- Retired,
R/o.- Kadholi, Post-Kadholi,
Tahsil-Kurkheda, District – Gadchiroli

-VERSUS-

DEFENDANTS :- 1) Smt. Nirmala Sukhdeo Mohurle,
Age about : Major, Occ.:- Service,
2) Shri Dambhaji Madhukar Kosare,
Age about : Major, Occ.:- Agriculturist,
3) Shri Ravi S/o Madhukar Kosare,
Age about : Major, Occ.:- Agriculturist,
All Defendants No1 to 3 are R/o. Kadholi,
Tahsil – Kurkheda, District – Gadchiroli

Ld. Advocate Mr. I.K. Daudasariya – for the plaintiff.
Ld. Advocate Mr. S.S. Guru – for defendants

ORDER BELOW EXH.55

(Passed on 04/11/2022)

The plaintiff seeks an appointment of court commissioner through this application for the purpose finding out as to whether or not the defendants have sold out the area out of suit property to other persons and whether those other persons have constructed their houses on the said land. Application is strongly opposed on behalf of the defendants on the ground that the same is made with sole intent to collect the evidence.

2. Heard. Perused the application, say and record of the case. Applicant/plaintiff has instituted this suit for specific performance for contract in respect of land bearing Survey no.12 total area 0.45 H.R.

Learned advocate for plaintiff argued the defendant has come with a defence that suit land is the only means of her livelihood, but she has already sold the remaining area of the suit land of Survey No.12 to third persons and those purchasers have constructed their houses. Learned advocate for plaintiff argued that, therefore, to ascertain this fact court commissioner is necessary. However, plaintiff has nowhere averred this fact in his plaint. The agreement to sale, the specific performance of which plaintiff is seeking, nowhere mentioned the area of land agreed to be sold. Therefore, the alleged fact which plaintiff want to bring on record through appointment of court commissioner appears to have no bearing in deciding the real controversy between the parties in this suit for specific performance of contract. It is settled that court cannot assist the party in collection of evidence. Having regard to the fact and circumstances of the case, the appointment of court commissioner as prayed by the plaintiff would certainly amount to assisting in collection of evidence, which is not permissible in law. Furthermore, plaintiff can prove the alleged fact by adducing his evidence. Hence, application being devoid of merits, stands rejected. Cost in main cause.

Date: 04.11.2022
Place : Kurkheda.

(K. G. Mendhe)
Civil Judge Junior Division,
Kurkheda.