

ORDER PASSED BELOW EXH.37

1. This application is filed by defendant No. 6 under Order 14 Rule 2 of Civil Procedure Code praying therein to delete issue No.6. In this issue, burden is casted on defendant No. 6 to prove that whether defendant No.1 has executed agreement to sell in favour of defendant No.6 in respect of suit property for valid consideration of Rs.9,50,000/- and on the date of agreement i.e. on 18.5.2011, defendant No.1 has accepted Rs.4,95,000/- from defendant No. 6 and put him in possession of suit property. According to defendant, this suit is filed by plaintiff seeking specific performance in respect of suit property against defendant Nos.1 to 4. Therefore, transaction between him and defendant No.1 can not be questioned in this matter and issue to that effect needs not be framed. Another suit between defendant No. 1 and 6 for specific performance of agreement is pending. In that suit, this issue can be decided. Therefore, he prayed for deletion of that issue.

2. On the other hand, plaintiff filed his say and opposed to allow this application contending that defendant No.1 has pleaded in his plaint that how he came into possession of suit property and hence, this issue is absolutely

necessary to decide this suit on merit. Hence, he prayed for rejection of application.

3. Heard both sides and gone through the record. It is true that, in this suit, it is to be decided as to whether plaintiff is entitled to the relief of specific performance of agreement. However, at the same time defence of defendant No. 6 is also necessary to be considered. According to defendant No.6, his agreement with defendant No.1 is prior in time than that of agreement with present plaintiff and he is in possession of suit property in part performance of agreement executed in his favour. Therefore, though said issue is not directly raised by plaintiff but definitely while deciding whether plaintiff is entitled for relief of specific performance, defence of defendant No. 6 is also required to be considered. No any loss or prejudice will cause to defendant No. 6 since in another pending suit also he has to prove that whether he is put in possession of suit property in view of agreement executed by defendant No.1 in his favour. Therefore, this issue need not be deleted. However, on the request of defendant No.6, this issue is modified to some extent and word whether defendant No. 6 put in possession on the date of agreement itself, is deleted. Hence, following order.

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Spl. Civil Suit No.27/2012.
CNR NO.: MHKO07-000929-2012.

O R D E R

- (1) Application is rejected.
- (2) Issue No. 6 is modified to some extent.

Dt.: 29.11.2018.

Sd/-
(**K.G. Sawant**)
Civil Judge Senior Division,
Jaysingpur.

