

**ORDER BELOW EXH.86 IN R.C.S.No. 4/2013**

1. This application is filed by defendant no. 1 contending to permit them to file evidence which is closed on 02/12/2023 vide pursis Exh.81.

2. According to defendant no. 1, suit property is purchased from defendant no. 2. However, inadvertently the said is not filed on record. It is averred that, the said sale deed is executed in his favour and if the said is not proved by evidence that may affects ultimate decision of suit. Thus, for decision of suit on merit, the sale executed in favour of defendant no. 1 is required to be proved by leading evidence. It is further submitted that, the original sale deed was not found to the defendant no. 1 and this facts is acknowledge to the defendant no. 1 at the time of argument and after frantic search the sale deed is found. Therefore, the sale deed is filed on record and to prove the sale deed, opportunity to lead the evidence is necessary. It is argued that, if the defendant no. 1 denied to led evidence, it may result into loss. It is further submitted that, yet evidence of defendant no. 2 is not commenced. Hence, by this application it is prayed by defendant no. 1 to grant an opportunity to lead evidence which is closed vide pursis 02/12/2023. The learned advocate of defendant no. 1 relied on the original sale deed and relevant documents filed below Exh. 88.

3. Contrary, this application is opposed by learned advocate of plaintiff by filing his say below Exh. 90 and submitted that, there is no cause of action to the application. It is further

submitted that, on 02/12/2023 vide Exh. 81 the pursis is filed on record. Therefore, ample opportunity was granted to the defendant no. 1 to lead his evidence. Further, the defendant no. 1 also closed his evidence after leading sufficient evidence. Thus, question of granting opportunity again to the defendant no. 1 would not arise. It is submitted that, father of defendant no. 2 executed conditional sale vide deed no. 1987 on 30/12/1971 before Sub-Registrar, Kagal and possession is also handed over to the predecessor of plaintiffs. It is further submitted that, after demise of their predecessor, the plaintiff being owner are in possession of suit property. It is submitted that, alleged sale executed on 19/06/2003 in favour of defendant no. 1 is hollow, illegal and without consideration. Moreover, the said sale deed is denied by the plaintiff in his pleading. It is averred that, this application is filed without sufficient reason and if opportunity granted to the defendant irreparable loss will caused to the plaintiffs causing injury to the rights of the plaintiff.

4. It is argued that, the defendant no. 1 submitted the false affidavit pretending himself as plaintiff. It is further submitted that, defendant no. 2 has not cross-examined the plaintiffs and their witness. Therefore, this application is not maintainable as well as it is barred by limitation, thus, accordingly, urged to reject the application.

5. Perused the record. Heard learned advocates of both parties.

6. Admittedly, the evidence by defendant no. 1 is closed on 02/12/2023. However, the defendant claimed their right upon sale deed executed on 19/06/2003. It is contention of defendant

no. 1 that, though there is frantic search, the sale deed is not found. Apart from that, the defendant no. 1 just to prove the sale deed executed in his favour preferred this application and right to the cross-examination is available to the plaintiff. Moreover, by way of this application the plaintiff just want to led evidence on the basis of sale deed. Beside that, the sale deed executed on 19/06/2003 is referred in the pleading of plaintiff and the plaintiff has not claim any relief in respect to sale deed dated 19/06/2003. Under such circumstances, having regard to pleading of parties issues framed earlier in this matter, there is no hurdle to permit the defendant no. 1 to lead his evidence as prayed in the application.

7. Though the application is allowed earlier such attempt could have been made by plaintiff by leading secondary evidence in want of original sale deed. However, defendant no. 1 failed to led any secondary evidence. Under such circumstances, certain costs is required to be imposed upon the defendant no. 1, as the matter is old one, which was put up for argument of parties. In the result, considering reasons mention in the application coupled with say, the application is allowed with costs of Rs.500/-. After payment of costs of Rs.500/-, the defendant no. 1 is permitted to lead his evidence. The defendant no. 1 shall pay the costs of Rs.500/- on or before next date to the plaintiffs. If the defendant no. 1 failed to pay the costs, the matter shall proceed from earlier stage of the suit.

Kagal
Date:- 21/02/2024

Sd/-
(B.D.Gore)
Civil Judge Junior Division,
Kagal.