

ORDER BELOW EXH. 73

(Passed on : 17.08.2019)

01. Read application and say filed thereon. Heard the parties. The plaintiff wants to examine the witnesses as mentioned in para No. 2 of the application on the sale deed as well as on the point of payment of the interest amount. Defendants opposed the application contending that already plaintiff closed the evidence vied pursis Exh. 62. Name of witnesses were not mentioned earlier, reason for the delay is not mentioned, matter is for final argument. Hence, prayed to reject the application.

02. Perused the record and proceedings. Vide Exh. 62 the plaintiff closed his evidence. The defendants also filed evidence close pursis at Exh. 63. The matter was posted for the final argument and at this stage, present application is filed. So far as, examination of witnesses of sale deed bearing No. 106/2001 is concerned, defendants have admitted that sale deed and same is exhibited as Exh. 55, therefore, examination of scribe and the witnesses on the deed is not necessary.

03. So far as examination of other witnesses namely Trimbak Gundaji Kamble, Bhimrao Rama Kamble, Baban Jogi, Maroti Bhimrao Kamble and Rangrao Rama Kamble is concerned, the plaintiff wants to examine them on the point of payment of interest amount to defendants. Present suit is for specific performance of re-conveyance contending that the transaction between the plaintiff and defendants was loan transaction. In para No. 6 of the plaint name of all these witnesses is mentioned.

Burden of issue No. 4 is on the plaintiff and in these situation, though the plaintiff filed evidence close pursis but it is necessary to grant permission to examine the above witnesses.

04. Merely because the plaintiff has filed the evidence close pursis is not a ground to deny the opportunity to the plaintiff to lead the evidence to prove any fact of which the burden is upon the plaintiff. The Court is having discretionary power to allow the party to lead the evidence at any stage.

05. For the delay on the part of plaintiff, the defendants can be awarded with costs. So also, the plaintiff can be directed to file the affidavits of all witnesses at once, so that, the evidence could be completed in a short period. Hence, I pass the following order.

ORDER

1. The application is partly allowed subject to costs of Rs. 500/-.
2. The plaintiff is permitted to examine Trimbak Gundaji Kamble, Bhimrao Rama Kamble, Baban Jogi, Maroti Bhimrao Kamble and Rangrao Rama Kamble.
3. The plaintiff shall file affidavits of all these witnesses on next date without fail.
4. The prayer to the extent of examining the scriber and witnesses on the sale deed is rejected.
5. The plaintiff shall deposit the Bhatta of the witnesses.

Sd/-

(R. P. Kulkarni)

Civil Judge Senior Division,
Nilanga.

Nilanga.

Dated : 17.08.2019.