

ORDER BELOW EXH. 42

(Passed on : 12.06.2017)

01. Read the application, affidavit, say and documents on record. Heard Mr. U.S. Jadhav, advocate for the plaintiff. I have also heard Mr. S.M. Kamble, advocate for the defendants. Present application is filed by the plaintiff under Order XXVI Rule 10 of Civil Procedure Code.

02. According to the plaintiff, he has filed present suit for reliefs of specific performance. The plaintiff has claimed that defendant No. 1 executed agreement to sale in his favour on 27.05.2014. In view of pleading of defendant No. 1, he has denied the signature over the agreement to sale dated 27.05.2014. Therefore, according to the plaintiff it is necessary to refer the document, agreement to sale dated 27.05.2014 for its examination so as to form opinion on the document whether it bears signature of defendant No. 1.

03. On the contrary, it is the case of the defendant No.1 that the plaintiff has filed the false application. The defendant No. 1 never executed the document and never signed the

document agreement to sale dated 27.05.2014. Therefore, defendant No. 1 has prayed for rejection of the application.

04. Having considered the contentions of both respective parties and having heard advocates for both the parties following points arise for my determination. I have recorded my findings thereon with reason as under :

	<u>POINTS</u>		<u>FINDINGS</u>
1.	Whether the plaintiff has made out the case of grant of appointment of Commissioner as prayed for ?	:	... <u>Yes.</u>
2.	What order ?	:	... <u>Application is allowed.</u>

REASONS.

AS TO POINT NO. 1:

05. Mr. U.S. Jadhav, advocate for the plaintiff has submitted that on 27.05.2014 defendant No. 1 has executed agreement to sale in favour of the plaintiff. He has further submitted that defendant No. 1 has duly signed over it in presence of the witnesses. However, defendant No. 1 in his

written statement has denied the facts in issue. Therefore, according to the plaintiff, it is necessary to obtain natural handwriting of the defendant No. 1 to compare it with disputed agreement to sale dated 27.05.2014. Mr. Jadhav has further submitted that defendant No.1 has already signed Vakalatnama and written statement. It is on record. It also requires to be referred to the handwriting expert for being examined it.

06. On the contrary, Mr. Kamble, advocate for the defendants has submitted that the plaintiff has filed the false application. Suit is posted for hearing. Defendant No. 1 has never signed the document in question. Defendant No. 1 has never executed the document dated 27.05.2014. Therefore, he has prayed for rejection of the application.

07. Considering the contentions of the both the parties and upon hearing advocates for the both the parties, it seems that the plaintiff has filed present suit for relief of specific performance on the basis of agreement to sale dated 27.05.2014. However, perusing written statement of defendant No. 1, it seems that he has specially denied his signature over the agreement to sale dated 27.05.2014.

08. Under the circumstances, it is necessary to refer the document agreement to sale for its examination and for forming the opinion of expert witness by appointing Court Commissioner on that point. Therefore, it is necessary to obtain natural handwriting of defendant No. 1 in presence of both the parties and their advocates. It is also evident that defendant No. 1 has signed Vakalatnama and written statement. Therefore, all these documents including natural writing, specimen writing and disputed writing will have to be referred to handwriting expert for its examination and opinion of expert witness by appointing Court Commissioner. Therefore, the court answers the point No. 1 in affirmative and proceed to pass following order.

ORDER

1. The application is allowed.
2. The plaintiff is directed to deposit Rs. 5,000/- towards cost of Court Commissioner, handwriting expert within ten days from date of order.

3. On depositing Rs. 5,000/- by the plaintiff, specimen signature of defendant No. 1 should be obtained in presence of both the parties and their advocates.
4. The disputed document dated 27.05.2014, Vakalatnama, Written statement (Natural writing of defendant No. 1) and specimen signatures be sent to handwriting expert for its examination and opinion.

Sd/-
(G.H. Patil)
Civil Judge Senior Division
Nilanga.

Date : 12.06.2017.