

Order below Exh. No.60

This is an application filed by the defendants for recasting the issues.

2. It is the contention of defendants that plaintiff has filed the present suit for perpetual injunction with specific plea that suit property is purchased by him from the defendant no.1 through registered Sale Deed. It is the contention of the defendants that they have pleaded that alleged Sale Deed was not executed by the defendant no.1 and the alleged Sale Deed is false and bogus. It is the contention of the defendants that they have challenged the title of the plaintiff over the suit property however, court has framed issue no.2 to the extent of only possession. It is the contention of the defendants that issue no.2 should be re-casted with the issue i.e. whether the plaintiff proves that he has title and possession over the suit property? Therefore, defendants prayed for allowing the present application.

3. Plaintiff has filed his say vide exh.61. It is the contention of the plaintiff that he has examined two witnesses and filed evidence close pursis. It is the contention of the plaintiff that the matter is pending for the evidence of the defendants. It is the contention of the plaintiff that the defendants have filed RCS No.117/2013. It is the contention of the plaintiff that the suit property in the RCS No.117/2013 and in the present suit is same. It is the contention of the plaintiff that both the suits are pending in the present court. It

is the contention of the plaintiff that defendants have filed the present application for prolonging the matter. Therefore, he prayed for rejecting the present application.

4. Perused the application and say filed. Perused the record of the suit. Heard learned Advocate for defendants and for the plaintiff.

5. On perusal of the suit it appears that plaintiff has filed the present suit for perpetual injunction. It is the contention of the plaintiff that the guardian of the plaintiff purchased suit property on 06.07.1991 for the consideration of amount of Rs.8000/- from defendant no.1. It is the contention of the plaintiff that the guardian of the plaintiff transferred the suit property in the name of plaintiff vide mutation entry no.114. It is the contention of the plaintiff that he is in the possession of the suit property by alleged sale deed. Defendant no.1 to 3 have filed their written statement vide exh.20. In the paragraph no.2 of their written statement defendant no.1 to 3 have denied that the guardian of the plaintiff have purchased the suit property from defendant no.1 on 06.07.1991 for the consideration of the amount of Rs.8000/-. On perusal of the issues framed vide exh.23/B, my learned predecessor framed the issue no.2 as whether the plaintiff proves that he is in the second possession over the suit property?

6. As per order XIV Rule 1 issues arise when a material proportion of a fact or law is affirmed by the one party and denied by the other. In the present suit, it is the

contention of the plaintiff that he is in the possession of the suit property by way of sale deed executed by defendant no.1 in favour of the guardian of plaintiff. Defendant no.1 to 3 in their written statement have denied the same. Therefore, issue of ownership i.e. title should be framed.

7. Learned Advocate for the plaintiff submitted that issue of ownership is framed in RCS No.117/2013. However, cause of action in RCS No.117/2013 and cause of action in present suit is different. Therefore, the submission of the learned Advocate for plaintiff cannot be accepted.

8. Therefore, in order to decide the present suit properly the present application deserves to be allowed. Therefore, considering the above discussion, I passed the following order;

Order

1. Application below Exh.60 is allowed.
2. Cost in cause.

(K. S. Kulkarni)

Date : 06.07.2023. 2nd Jt. Civil Judge, Junior Division,
Tuljapur