



ORDER PASSED BELOW EXH. No. 19 IN R.C.S. No. 378/2022.

01. This application is filed on behalf of the plaintiff under Order 26 Rule 9 of Civil Procedure Code for appointment of court-commissioner.

02. It is contention of the plaintiff that, she filed present suit for redemption of mortgage deed dated 21.04.2015 and for recovery of possession. She contended that, on 21.04.2015 she executed mortgage deed, in respect of suit property i.e. land bearing gat no.1758 ad-measuring 0H.58R. situated at village Tambave, Tal. Walwa, Dist. Sangli, in favour of the defendant for seven years. Said mortgage deed is expired on 21.04.2022, hence, thereafter, she requested the defendant for possession of the suit property and for redemption of mortgage deed, but he denied. Hence, she filed present suit. After 21.04.2022 the defendant has no right over the suit property but then also he is in illegal possession of the suit property. The defendant is also trying to disposed off sugarcane crops from the suit property. But actually now, the defendant has no right over said sugarcane crops. Hence, she prayed for appoint Court Commissioner for cutting of sugarcane crops from the suit property. She also prayed that, said sugarcane crops be sent to Sugar factory in the name of Court Commissioner and amount of said sugarcane crops be deposited in court till conclusion of trial.

03. The defendant filed his say at Exh.30. He contented that, after execution of mortgage deed, the plaintiff by way of oral agreement agreed to sell the suit property to him for total consideration amount of Rs.12,50,000/-. As per said oral agreement he also paid Rs.10,50,000/- to the plaintiff. Now, only to grab said amount the plaintiff filed present false suit against him. He further contended that, he is in possession of the suit property since 21.04.2015. He cultivated sugarcane crops in the suit property and for development of said crops he also spent lot of money. Therefore, he has every right over the sugarcane crops which are in the suit property. Hence, considering the above fact at present there is no necessity for appointment of Court Commissioner.

04. After perusal of said application, say on it and documents produced on record, following points arose for my determination and I have recorded my findings against each of them with reasons stated below it :-

Sr. Nos.	Points	Findings
1)	Whether appointment of Court Commissioner is necessary as prayed ?	No.
2)	What Order ?	Application is rejected.

REASONS

As to point number 1 and 2 :-

05. Heard learned counsels for both sides. Learned advocate for the

plaintiff submitted that, after 21.04.2022 the defendant has no right over the suit property and sugarcane crops which are in the suit property. The plaintiff is the owner of the suit property therefore, she is having rights over the sugarcane crops. If said crops sold by the defendant then plaintiff will suffer irreparable loss. Therefore, he submitted that, application be allowed.

06. On the other hand, learned advocate for the defendant submitted that, the defendant is in possession of the suit property since 21.04.2015. The defendant cultivated the sugarcane crops in the suit property and he has every right over the said crops. Therefore, he submitted that, there is no need to appointment of Court Commissioner.

07. Perused application and say. It is admitted fact that, the defendant is in possession of the suit property since 21.04.2015. It is also admitted fact that, the defendant cultivated the sugarcane crops in the suit property and he also spent money for development of said crops. Hence, considering the said admitted facts prima facie it appears that, the defendant has right over the sugarcane crops which are cultivated in the suit property. Prima faice he has right to send the sugarcane crops to the sugar factory and also entitled for money receive from the sugar factory in respect of said sugarcane crops.

08. Apart, the plaintiff filed present suit for redemption of mortgage deed and for recovery of possession of the suit property. The defendant filed his say and contended that, the plaintiff agreed to sell suit property to him for total consideration amount of Rs.12,50,000/- and out of that he paid Rs.10,50,000/- to the plaintiff. He also filed some documents on record which shows that, after execution of mortgage deed he paid some amount

to the plaintiff. After considering the rival contentions of both sides it appears that, both parties are claiming their rights over the suit property. The ownership of the plaintiff is in dispute. If plaintiff will succeed the suit then she has every right to claim *mesne profits* from the defendant. Therefore, at this juncture, it is not necessary to appoint Court Commissioner for sending the sugarcane crops to the sugar factory and it is also not necessary to direct the sugar factory to deposit the amount of sugarcane crops in the court. Hence, considering the above facts I pass following order;

ORDER

Application is hereby rejected.

Dated: 04.01.2023.

(Kamaljeet M. Chandaliya)
6th Jt. Civil Judge Junior Division,
Islampur.