

R.C.S. No. 297/2024 - Order Below Exh.30

Brahmdev Sadashiv Babar Vs. Hanmant Bhimrav Kate

CNR No. MHSO2000-1017-2024

The present application is filed by the defendant for appointment of advocate as Court Commissioner for ascertaining the possession of defendant over the suit property.

2. The defendant has contended that, the land in gat no.325 admeasuring 1H-03R situated at village Ligadewadi, Tq. Sangola is owned and possessed by the defendant. The defendant was in need of money in the year 2020. The defendant was informed that Machindra Bhanudas Chaugule is in to business of privet money lending. The defendant was in dire need of money. Therefore the defendant decided to avail handloan from Machindra Chaugule. The defendant approached him and requested him to advance loan of Rs.7,00,000/-. Machindra Chaugule agreed to advance the said loan amount. However he put forth condition that the defendant would mortgage his land for securing repayment of loan amount. The defendant agreed to same. Machindra Chaugule advance Rs.7,00,000/- as loan amount to the defendant. The defendant executed deed bearing registration no.2911/2020. Though the recitals in the said document provide "sale", the transaction is of mortgage. The defendant has repaid the entire loan amount till the end of year 2022. The defendant requested Machindra Chaugule to re-convey his land. Machindra Chaugule demanded Rs.5,00,000/- additionally.

3. The defendant further contended that, the defendant requested Machindra Chaugule time and again for execution of re-conveyance. The middleman in the transaction i.e. Balasaheb Misal's phone recording provides for the dealing between the defendant and Machindra Chaugule. The defendant denied to pay the additional amount. Therefore Machindra Chaugule executed sale deed of suit

property in favour of present plaintiff. Though a sale deed is executed in favour of plaintiff, the possession of the suit property is with the defendant. The said fact is required to be brought on record. Therefore, appointment of advocate as Court Commissioner is necessary. The defendant is ready to pay the Court Commissioner fees. The appointment of advocate as Court Commissioner would assist the Court in bringing the factum of possession of suit property on record. Hence, it is prayed that the application be allowed and advocate is appointed as Court Commissioner.

4. The plaintiff has filed say to present application at Exh.32. The plaintiff has denied all the contents in the application. The plaintiff has contended that the application is not maintainable. The defendant has filed present application to gather the evidence of possession. It is not sustainable in law to appoint Court Commissioner to find out the possession. The plaintiff is owner and in possession of suit property. The name of plaintiff is mutated to the revenue record of the suit property. The defendant has executed sale deed bearing Reg. No.2911/2020 in favour of Machindra Chaugule. Machindra Chaugule has executed sale deed bearing Reg. No.6100/2023 in favour of present plaintiff. The possession of the suit property is handed over to plaintiff by Machindra Chaugule. The defendant has transferred suit property to Machindra Chaugule and he has transferred the same to present plaintiff. Therefore, the defendant has no concerned with the suit property. The Court Commission cannot be appointed as claimed by the defendant. Hence, it is prayed that application be rejected.

5. Read the application, perused the record. Heard Ld. Advocate Shri. R. K. Parase for the defendant and Ld. Advocate Shri. R. R. Kedar for the plaintiff.

6. The present suit is for perpetual injunction. The plaintiff has claimed that he is the owner and in possession of suit property (more specifically described in para [1] of the suit). The plaintiff has claimed that he is the owner and in possession of suit property of virtue of the sale deed executed by Machindra Chaugule dt.06/10/2023 bearing Reg. No.6100/2023. The plaintiff has claimed that defendant has been obstructing his possession over the suit property.

7. The defendant has claimed that he executed a mortgage in favour of Machindra Chaugule of 1H-03.50R land in gat no.325 situated at village Ligadewadi, Tq. Sangola, Dist. Solapur. The defendant has specifically claimed that he is in possession of suit property. Further the defendant seeks appointment of advocate as Court Commissioner to ascertain his possession over the suit property. It is the settled position of law that a Court Commissioner cannot be appointed to collect the evidence of possession. It is notable that by way of present application the defendant express the seeks appointment of Court Commissioner to ascertain the possession. It appears that the present application is the indirect attempt of the defendant to collect the evidence of possession. However the same is not permissible by law.

8. Learned advocate for the plaintiff has relied on judgment in the case of **Chinnathambi Vs. Anjalai reported in 2006 SCC OnLine Mad 844**. In this case Hon'ble Madras High Court set aside order of Trial Court appointing advocate commissioner. It was held that it is well accepted principle of law that an advocate commissioner should not be appointed to find out the possession of the property which has to be adjudicated only by oral and documentary evidence. It is to be noted that by way of present application the defendant seeks appointment of advocate commissioner to find out possession of the

property. Thus in view of authority cited supra an advocate court commissioner should not be appointed to find out the possession of property.

9. Thus in the cumulative effect of facts and law it appears that the defendant seeks appointment of Court Commissioner to find out the possession. The same is against principle of law. Hence, the application of defendant is devoid of any merit and liable to be rejected. Resultantly, following order is passed.

ORDER

1. The application is rejected.
2. No order as to costs.

Place: Sangola
Date : 07/08/2025

(Smt. P.R. Kulkarni)
Civil Judge, J. D., Sangola