

R.C.S.No. 147/2014
Prashant Vs. Hanmant

Order Below Exh.34
(Passed on 30/6/2023)

This is an application filed by defendant No.2 to 5 for appointment of Court Commissioner so as to make local inspection of the suit property under Order 26 Rule 9 of the Civil Procedure Code. It is contended by the defendants that the present suit has been filed for specific performance of contract against the defendants. It is the case of plaintiffs that they have taken possession of the suit property on the day of agreement, itself and as per the terms of said agreement, the predecessors of defendants were to obtain necessary permission within three years. It was also agreed that unless such permission is obtained the effect of said agreement will be in force. The defendants have sent legal notice dtd. 27.05.2014 to the plaintiffs and refused to execute the sale-deed of 30 R area of the suit property. The defendants have denied the contentions in the plaint by filing their written statement. They have specifically mentioned that the plaintiffs are not in possession of the portion of 30 R as mentioned in the agreement dtd. 02.05.1997. On the basis of said agreement, the plaintiffs are obstructing the peaceful possession of defendants. Even, they used language of damaging the crops in the suit field. Therefore, it is also required to seek relief of temporary injunction against them. Ultimately, the defendants have contended that looking to the case of plaintiffs, it becomes necessary to bring on record the actual possession of the concerned party. Hence, he prayed to appoint the Court Commissioner so as to ascertain the factum of possession in the suit property.

2. The present application has been resisted by the plaintiffs by filing their say below it. They contended that the present application has been filed only with a view to collect evidence, which is not permissible in law and therefore, the present application be rejected.

3. On the basis of rival submissions of both the sides, following points arise for my determination, to which I record my findings with the reasons as under -

Sr.No.	Points for Determination	Findings
1.	Whether the Court Commissioner is required to be appointed to make local inspection of the suit property as prayed by the defendants ?	No.
2.	What Order ?	As per final order.

REASONS:-

4. Heard Learned Advocate Mr. D.S.Shinde for defendant No.2 to 5 and Learned Advocate Mr. N.M.Wadikar for the plaintiffs, at length. Learned Advocate Mr. Shinde submitted that the Court Commissioner is required to be appointed so as to ascertain the factual position and status of the parties in respect of alleged possession of the suit property. On the other hand, Learned Advocate Mr. Wadikar submitted that the Court Commissioner cannot be appointed so as to ascertain the fact as to who is in possession of the suit property.

As to Point No.1 & 2 -

5. The present suit has been filed for specific performance of contract/agreement dtd.02.05.1997. It is prayed by the plaintiffs that the defendants be directed to obtain necessary permission of the competent authority for execution of the sale-deed and to execute the sale-deed accordingly. They have also alternatively prayed to execute the sale-deed by the officer of the Court in the event of failure of defendants. The plaintiffs have filed original agreement to sale dtd.02.05.1997. Its prima facie perusal shows that the predecessors of defendants namely Raghunath Mahadev Pol and defendant Hanmant Raghunath Pol executed an agreement to sale the suit property for sale consideration of Rs.82,500/- to the plaintiffs. It is styled as 'विना कब्जाचे साठेखत'. Its further perusal shows that it was resolved between the parties to hand over possession of the suit property at the time of execution of sale-deed.

6. It is well settled principle that the Court Commissioner cannot be appointed so as to ascertain the factum of possession. It is also pertinent to mention here that the plaintiffs have come with a case that the possession has been handed over to them. In such circumstances, the Court Commissioner cannot be appointed so as to ascertain fact as to who is in actual possession of the suit property. This is a suit for specific performance of contract on the basis of agreement dtd. 02.05.1997. The plaintiffs have to prove their case by leading cogent and reliable evidence. The prayer of defendants in respect of the appointment of Court Commissioner cannot be allowed in such eventuality. In the above discussion, the application is liable to be rejected. Hence, I answer point No.1 in the negative and in answer to point No.2, I pass following order.

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ORDER

1. The application (Exh. 34) is hereby rejected.
2. Cost in main cause.

(Dictated and Pronounced in open Court.)

Date : 30.06.2023

(R.M. Bhende)
2nd Jt. Civil Judge Jr. Dn. Wai.