

R.C.S. No. 59/2018
Manoj -V/s.- Prabhakar
Exh. 64 continue

ORDER BELOW EXH. 64.

(Dated - 11/03/2024)

The plaintiff prayed for calling duty officer from the office Police Commissioner, Nagpur as witness in the suit. Read application and say filed by the learned Counsel for the defendant no.2. Heard learned Counsel Shri. Petkar for the plaintiff and learned Counsel Shri. Kashyap for the defendant no.2.

02] Learned Counsel for the plaintiff vehemently submitted that on 20.08.2021, the deceased defendant no.1 lodged the Police complaint with the Police Commissioner, Nagpur. Hence, the plaintiff wants to prove the said report. The learned Counsel for defendant no.2 opposed calling of the said witness and vehemently submitted that the plaintiff has not filed the list of witnesses in the suit. The suit is abated against the defendant no.1.

03] The suit is filed to declare the partition deed of ancestral property is illegal and not binding upon the plaintiff. The plaintiff further prayed to declare the Gift-Deeds executed by the defendant no.1 in favour of defendant no.2 and 3 are illegal, and not binding upon the plaintiff. The plaintiff further prayed for perpetual injunction to restrain the defendants from disturbing possession of the plaintiff over the suit property.

04] Considering the pleadings of rival parties to the suit, on 17.12.2019, my learned predecessor framed issues vide Exh.24. The plaintiff examined himself and suit is pending for further witnesses. The burden is casted upon the defendants to prove separate property of the defendant no.1 and the burden to prove possession of the plaintiff over the suit property and execution of Gift-deeds dated 10.08.2018 and

30.08.2018 during pendency of the suit, is casted upon the plaintiff.

05] The defendant no.1 to 3 jointly filed written statement below Exh.18 and thereby prayed to dismiss the suit with heavy costs. The civil suit is based on the civil right of the parties with regard the property in question in the suit. The purpose will not serve by calling the witness to prove filling of police report. It reflects from the record that on 08.03.2021, the defendant no.1 lodged the police report against the defendant no.2 and his children about forcible execution of Gift-Deed. On 31.07.2023, the Police Station Officer of Police Station, Sindi Rly. issued letter to the plaintiff informing that the station dairy note on 5.10.2021 about referring of defendant no.1 to Kasturba Hospital, Sewagram for treatment is maintained. There are no documents to indicate further investigation in that respects. The plaintiff may collect the documents with regard the investigation, if any, conducted by the police due to report by the defendant no.1. Thus, in order to prove lodging of the police report only, the duty officer from the office of Police Commissioner, Nagpur can not be called. Calling of such witness will not serve the purpose. Hence, the application is rejected.

Seloo.

Date – 11/03/2024.

(V.M. Bansod)
Civil Judge Jr. Division
Seloo