

ORDER BELOW EXHIBIT NO. 81 IN R.C.S. No. 31/2013

(Ramesh Vishwas Dongare Vs. Vishwas Sitaram Dongare & ors.)

This is an application moved by the applicant as per Order 16, Rule 1 of CPC seeking a permission to examine the defendant No.1 as his witness.

2. Plaintiff has contended that, in the present matter he has adduced the evidence and for several times summons were issued to the witness Govindrao Ganeshji Ukalle but his presence is not secured. It is further contended that, the another witness of sale deed i.e. Daryabai is no more and it has revealed that, the Govindrao Ukalle due to illness is unable to come at court. It is also contended that, in present matter plaintiff evidence was closed and thereafter, the defendant has failed to adduce the evidence and matter was kept for final arguments.

3. The plaintiff has also contended that, the defendant No.1 has executed the sale deed dated 19/04/2004 in favour of the defendant No.4 Kamlati Tejrao Dongare. It is also contended that, the defendant No.1 is the executant of said sale deed and said sale deed was done without consideration. Further, it is contended that, considering the nature of suit, the plaintiff has to be permitted to examine the defendant No.1. Hence, he prayed to allow the application.

4. The defendant No.1 to 8 have failed to file their say. The defendant No. 9 has filed say below Exh. 82 and has denied the entire contentions of application. Per contra, contended that, in present matter already sufficient opportunity was granted to the plaintiff and his evidence is closed and so permission can not be granted. Further, it is contended that, application is moved only with intent to prolong the matter. Considering all above aspect, she prayed for rejection of application.

5. Perused the entire record. It reveals that, in present matter, several opportunity to the plaintiff but presence of Govind Ukalle was not secured and hence, on 19/01/2024 plaintiff's evidence was closed. Further, record shows that, thereafter, the defendants failed to adduce their evidence and hence, on 12/04/2024 their evidence was closed and matter was fixed for final argument. The plaintiff has moved the present application contending that, the defendant No.1 is the executant of sale deed dated 19/04/2004 and so it is necessary to examine him.

6. After going through the plaint, it reveals that, the plaintiff has filed present suit for partition, declaration and perpetual injunction. Further, it reveals that, the plaintiff has come with the case that, the defendant No.1 has executed the sale deed dated 19/04/2004 in favour of defendant No.4, has contended that, the sale deed was without consideration. Accordingly, the plaintiff has sought a declaration that the sale deed is null and void and not

binding upon his share. From the record, it is evident that, sufficient opportunity was granted to the plaintiff. Further, it is also evident that, defendant No.1 and the others have not adduced their evidence.

7. From the entire record, it reveals that, the defendant No.1 is the father of present plaintiff. The suit is for partition. The Hon'ble Bombay High Court in the case of **Ravalnath Builders Vs. Sebastiano Escolastica Beatriz Nunes Mendonsa Beatriz Mendonca dated 19 October, 2011** has held that, *there is no bar for a party to call his opponent as a witness in a suit.*

8. In present matter, plaintiff is contending that, the witnesses of sale deed are not available and the defendant No.1 is the executant and hence, his evidence is necessary. Considering the nature of the dispute, the ratio laid down above, I hold that, one opportunity has to be given to the plaintiff and he has to be permitted to examine the defendant No.1 as the witness. This will not cause any prejudice to the defendant No.1 or the other defendants. Hence, considering all above aspect, I proceed to pass following order.

ORDER

1. Application is allowed.
2. Plaintiff is permitted to examine the defendant No.1 as a witness.

..4..

R.C.S. No.31/2013

3. Issue summons to the defendant No.1 and plaintiff is directed to pay the necessary fees.
4. Parties are directed to expedite the matter.

Karanja (Gha.)
Date:- 29/08/2024

(V.S. Wagh)
Civil Judge, J.D. Karanja (Gha.)
Dist. Wardha.