

MHWS100010012016



ORDER BELOW EXH.43 IN R.C.S. NO.43 OF 2016

(Madhaorao Zaburao Deshmukh Vs. Sudhakar Gyanrao Deshmukh)

(Dated 07th June, 2023)

1. The defendants by way of this application craves to appoint the court commissioner for ascertaining the factual position of the suit property.
2. It is the case of defendants that plaintiff has sold the suit property in the Year-2003 on hundred rupees bond paper. The defendants have executed the said document in presence of witnesses. On the same day, the possession of the suit property is handed over by the plaintiff. The reason behind the execution of the bond is that the execution of sale deed of suit property is barred as the property is admeasuring of 920 square foot. The defendants used the suit property for cattle shed. Suit property is in possession of defendants since 2003. As the sale deed has not been executed, the mutation entry is in the name of plaintiff. Due to the said fact the plaintiff has filed the present false suit. Therefore, it is necessary to ascertain whether there is a cattle shed and the factual position of the suit property.
3. The learned advocate for plaintiff filed say and submitted that it is a settled law that, court commissioner cannot be appointed for collection of the evidence. By way of this application defendants wants to collect the evidence which is not permissible. Hence, prayed to reject the application.
4. Heard Shri.D.R.Rokade learned advocate for the defendants

and Shri.V.R.Lahoti learned advocate for plaintiff. Considering the application and say the following points arise for my determination. I have recorded my findings are recorded thereon for the reasons ensuing:-

<u>SR.NO.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the court commissioner is requisite or proper for the purpose of elucidating the matter in dispute ?	No.
2.	What order?	Application is Rejected.

REASONS

AS TO POINT NO.1 :-

5. At the outset, it is pertinent to note that the suit is for permanent injunction. Matter is pending for evidence of defendants. It is the case of plaintiff that he has erected cattle shed. It is his ancestral property. The defendants are also claiming their possession by way of sale deed. The defendants submitted that there is cattle shed. The grounds mentioned is not the real dispute in controversy. The real dispute in controversy is whether the plaintiff is in possession of the suit property and defendants are trying to obstruct the possession of the plaintiff. It is not in dispute whether the suit property is in existence and from what point of time there is tin shed erected by defendants. If the court commissioner is allowed for ascertaining the factual position then it may result in collection of evidence.

6. It is necessary to refer the Judgment of Hon'ble Bombay High Court in the case of Sanjay Namdeo Khandare Vs. Sahebrao Kachru Khandare, Civil Revision Application 990 of 1998 wherein the "Hon'ble High Court reiterated that, "Court Commissioner cannot be appointed for

collection of evidence”.

7. In the present case, by filing of this application defendants are trying to collect the evidence of factual position of suit property. It is also necessary to refer the Judgment of Hon'ble Madhya Pradesh High Court in the case of Smt.Teena Pandey Vs. Dr.Karnesh Pandey MP.No.2406/2019 wherein it has been held that, “issue of possession is to be decided on the basis of evidence only.”

8. The present case is not based on the allegation of encroachment. The plaintiff has adduced his evidence. Therefore, only the oral and documentary evidence is needed for ascertaining the truth.

9. Considering the submission and documents on record it appears that, issue of possession needs to be resolved on the basis of evidence only. At this juncture, defendants failed to satisfy the necessity to appoint the appointment of court commissioner. Thus, in my opinion the court commissioner is not necessary. Hence, I answer point No.1 in negative. In view of the point No.2, I pass the following order :-

ORDER

1. Application is rejected.
2. Cost in main cause.
(Dictated and pronounced in open court)

Place : Malegaon
Date : 07.06.2023

(Pravin U.Kulkarni)
Jt. Civil Judge (J.D.) Malegaon
Dist. Washim.

CERTIFICATE

I affirm that the contents of this P.D.F file Order is same word to word, as per the original Order.

Name of Stenographer : **Shivam B. Patange (L.G.)**

Name of Court : P.U.Kulkarni

Jt. C.J.J.D. and J.M.F.C., Malegaon.

Date of Order : 07.06.2023

Order Signed by : 08.06.2023

Presiding Officer on

Order Uploaded on : 08.06.2023