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CNR NO. MHPU02-001077-2015

IN THE COURT OF 23rd JT.CIVIL JUDGE SENIOR DIVISION
PUNE
(Presided over by Madhuri R. Khanwe)

Spl.C.Suit No 312/2015.

Exh.135.

Mrs. Arusha Sampat Davkhar,
Age – 43 Years, Occu.- Agriculture,
R/at : Riddhi Towers, Viman Nagar,
Pune.

.....Plaintiff.

- Versus -

- 1. Mr. Arun Dnyanoba Gosavi,**
Age – 66 Years, Occu.- Agriculture,
R/at : Sr. No. 21/1/6, Bhalekar Nagar,
Pimplegurav, Pune-411061.
- 2. Mr. Ashok Dnyanoba Gosavi,**
Through LRs.
- 2(a) Mr. Mahesh Ashok Gosavi,**
Age – 28 Years, Occu.- Service.
- 2(b) Mr. Nilesh Ashok Gosavi,**
Age – 24 Years, Occu.- Service,
Both R/at : Nimgaon Mhalungi,
Tal. Shirur, Dist. Pune.
- 2(c) Ms. Pallavi Ashok Gosavi,**
(After marriage Pallavi Shashikant Bharti),
Age – 26 Years, Occu.- Housewife,
R/at : Chikhali, Pune 412114.
Through her Power of Attorney Holder,

- (1) Mr. Tanaji Vitthal Khade,**
Age – 43 Years, Occu.- Agriculture,
R/at : Rahulnagar, Sector No. 22,
Building No.2/12/A/10, Nigadi, Pune 411044,
- (2) Mr. Machhindra Fakkadrao Bangar**
Age – 43 Years, Occu.- Agriculture,
R/at : Sr. No. 52/1C, B-7/7,
Shantivan Society, Bhusari Colony,
Kothrud, Pune 411029.
- 3. Mr. Sonu Bandugir Gosavi,**
Through LR.
- 3(a) Smt. Kondabai Sonu Gosavi,**
Through LR.
- 3(b) Mr. Bacchugir Sonu Gosavi,**
Through LR.
- 3(b-1) Smt. Laxmibai Bacchugir Gosavi,**
Through LR,
- 3(b-2) Mr. Sanjay Bacchugir Gosavi,**
Age – 32 Years, Occu.- Service.
- 3(b-3) Mr. Vijay Bacchugir Gosavi,**
Age – 29 Years, Occu.- Business.
- 3(b-4) Smt. Kamini Bacchugir Gosavi,**
Age – 26 Years, Occu.- Housewife,
3(b-2 to 4 R/at: Near Juna Jakat Naka,
Opp. Shweta Minimarket, Sr.No. 191,
Lohgaon Road, Yerwada, Pune 411006.
- 3(c) Mr. Ravigir Sonu Gosavi**
Through LR,
- 3(c-1) Smt. Sindhubai Ravigir Gosavi,**
Age –40 Years, Occu.- Housewife.
- 3(c-2) Mr. Rahul Ravigir Gosavi,**
Age –22 Years, Occu.- Service,
Both R/at : Naruli Kuruli,
Tal. Daund, Dist. Pune

3(d) Mrs. Shakuntala Shankargir Gosavi,
Age – 60 Years, Occu.- Housewife,
Both R/at : Hingangaocha Mala,
Bhambure, Tal. Karjat, Dist. Ahmednagar

4. Mr. Dnyanoba Bandugir Gosavi,
Age – 71 Years, Occu.- Agriculture.

5. Mr. Shivaji Dnyanoba Gosavi,
Through LRs,

5(a) Smt. Sulabai Shivaji Gosavi,
Age – 50 Years, Occu.- Housewife.

5(b) Mr. Gurudatta Shivaji Gosavi,
Age – 30 Years, Occu.- Agriculture.

5(c) Mrs. Shobha Sandip Giri,
Age – 28 Years, Occu.- Service,
No. 4 to 5c R/at : Nimgaon Mhalungi,
Tal. Shirur, Dist. Pune.

.....Defendants.

**SUIT FOR DECLARATION, PERMANENT INJUNCTION AND
CANCELLATION OF SALE-DEED.**

Ld. Advocate for plaintiff – Adv. Shri. S. B. Pawar.
Ld. Advocate for defendant no.1 and 2 (a to c) –
Adv. Shri. S.P.Dev.

:: J U D G M E N T ::

(Delivered on this 13th day of December 2019)

1] It is the case of plaintiff that, she has purchased suit property no.'A' i.e. Gat no.496/2,admeasuring 1H 81.5R situated at Nimgaon Mhalungi from Shivaji Gosavi and his son Gurudatta Shivaji Gosavi as per sale-deed, dtd.30/12/2010. It is surrounded by, to the East- out of Gat no.496, to the South-road, to the West-out of Gat no.496 and to the North-canal (Odha). The defendant no.1 and 2(a to c) through their power

of attorney Tanaji Vitthal Khade and Machindra Fakkadrao Bangar have got executed sale-deed of Gat no.496/2 and 496/3 through Court Commissioner on 27/01/2015 i.e. suit property no.'B'. It is surrounded by to the East-Gat no.496/4, to the South-road, to the West-Gat no.496/1 and to the North-canal (Odha).

2] The entire Gat no.496 was of 7H 27R (i.e. 6H 76R+Potkharab 0H 51R). Shivaji Gosavi had purchased 1H 81.5R of Gat no.496 from Sonu Gosavi as per sale-deed, dtd.20/05/1991 for the consideration of Rs.92,000/-. He had purchased land after obtaining requisite permission. On the same day, Sonu had delivered actual possession of land to Shivaji Gosavi.

3] The present plaintiff has purchased suit land as described in plaint para 1(a) from Shivaji and Gurudatta Gosavi vide sale-deed, dtd.30/12/2010 for the consideration of Rs.6,80,000/-. Since then, she is in possession being owner. She has planted fruit trees and made construction thereon. The defendants are not concerned with the land owned by her.

4] In fact defendant no.3- Shivaji Gosavi had not given any information in respect of R.C.S. No.243/1986 and its Judgment as well as Civil Appeal No.316/1994. Moreover, Arun and Ashok Gosavi have not preferred Appeal against said Judgment in respect of 30R land.

5] After execution of her sale-deed, dtd.30/12/2010, Ferfar no.3406 in revenue record was considered as 'Kachcha'.

Ashok Gosavi had raised objection against the said Ferfar. The defendant no.1 and 2 had issued notice to plaintiff, Shivaji and Gurudatta Gosavi. In the said notice sale-deed of 1H 50.5R was considered legally purchased. Beside this, said matter was referred to circle inspector for inquiry. It was decided and certified the Ferfar of 1H 50.5R land out of the suit property.

6] Actually, in view of Judgment and decree passed in R.C.S. No. 243/1986 in respect of suit property no. 1(B), Arun and Ashok Gosavi had filed Reg. Dkst. No. 32/1994. In the said matter, Court Commissioner has executed sale-deed on 27/01/2015 without consideration and without possession of land. On that basis, the defendants have started to disturb her possession in suit property no.1(A).

7] The defendant no.1 and 2(a to c) have filed their written statement and submitted that, they had registered their lis-pendency notice on 11/07/1990 before sub-registrar Shirur. In spite of that plaintiff has purchased suit land without any enquiry. Shivaji Gosavi had filed R.C.S.No. 110/1992 for ownership and Injunction. It was came to be dismissed. Similarly, Sonu Gosavi had filed same suit which was also dismissed. The plaintiff has purchased suit land without enquiry and therefore, she cannot take benefit of her own wrong.

8] In fact basically, there were two sons of Bandugir Gosavi i.e. Sonugir and Dnyanugir (Dnyanoba). The entire Gat no.496 was partitioned between them. The eastern half portion was came to the share of Sonu and western half portion was

came to the share of Dnyanu. Out of which Sonu had sold 3H 21R land of his share to his nephew i.e. sons of Dnyanoba (defendant no.1, his brother Ashok and Shivaji) as per sale-deeds dtd.19/03/1981. The mutation was carried out as per Ferfar no. 866, 867 and 868. However, thereafter revenue officer had declared those sale deed illegal and cancelled the entries made on that basis. Those were recorded as earlier Gat no.496/1-Dnyanoba and 496/2-Sonu. Therefore, defendants had filed R.C.S.No.243/1986 demanding execution of sale-deed by obtaining required permission.

9] In the said suit, defendant no.1 was directed to seek requisite permission and to execute sale-deed of 1H 7R land in favour of plaintiff no.1 and 1H 6R land in favour of plaintiff no. 2 within three months. It was further declared that, the defendant no.1 has no any concern with the suit properties and he was permanently restrained from causing any obstruction with the plaintiffs possession in the suit property.

10] Against the said Judgment, Sonu had preferred Civil Appeal No.316/1994 before Hon'ble District Court, Pune. It was came to be dismissed for default. Again Misc. Application No.1039/2013 was filed to admit the said appeal, it was also came to be dismissed. Therefore, present defendants had filed R.C.S. No.32/1994 for execution of sale-deed after obtaining permission of competent authority. In that proceeding, sale-deed dtd. 27/01/2015 was executed through Court Commissioner. The defendants were in possession of suit land as per earlier sale-deed.

11] Sonu had executed alleged sale-deed, dtd. 20/05/1991 in favour of Shivaji Gosavi during pendency of R.C.S. No.243/1986. On that basis Shivaji had filed R.C.S. No. 110/1992 for Permanent Injunction. In that suit sale-deed executed in his favour was declared illegal. Therefore, sale-deed executed by Shivaji in favour of plaintiff is itself becomes illegal. All entries made in the revenue record also are ab-initio void.

12] In the same suit defendant no.1 and 2(a to c) have filed their counter-claim and submitted that, plaintiff has made some illegal construction in the suit property by taking disadvantage of powers. Likewise, they have apprehension of dispossession by plaintiff on the basis of sale-deed executed in her favour. According to them, pot hissas of suit land have been changed, however land described in sale-deed, dtd. 27/01/2015 is the same land. Therefore, they claimed Permanent and Mandatory Injunction against the plaintiff.

13] The plaintiff has filed written statement to the counter-claim of defendants and claimed compensatory cost of Rs. 2,00,000/- from them.

14] Then Hon' predecessor of this court had framed following issues vide Exh.38 and I have given by finding thereon with the reasons given below.

Sr. No.	ISSUES	FINDINGS
1)	Does plaintiff prove that, she is entitled to declaration as against the suit property and the defendants as prayed	In the Negative.

	for ?.....	
2)	Does plaintiff prove that, she is entitled to claim the relief of cancellation of sale-deed, dated 27/01/2015?.....	In the Negative.
3)	Does plaintiff prove that, she is entitled to permanent injunction restraining defendant no.1, 2 in respect of the suit properties defined in plaint para No. 1-A and 1-B and in terms, as claimed for?.....	In the Partly affirmative
4)	Does plaintiff prove that, she is bonafide purchaser of the suit properties for value?.....	In the Negative.
5)	Do defendants no. 1, 2A to 2C prove that, they are entitled to counterclaim in terms of permanent injunction, restraining plaintiffs from obstructing their peaceful possession, as claimed for?.....	In the Affirmative.
6)	Do the defendants no. 1, 2A to 2C prove that, they are entitled to counterclaim in terms of mandatory injunction, as claimed for?.....	In the Negative
7)	Whether the plaintiffs are entitled to the compensatory costs of Rs.2,00,000/- from defendants no. 1, 2A to 2C?.....	In the Negative
8)	What decree and order ?.....	As per Final order.

- R E A S O N S -

As to Issues No. 4 :-

15] At the outset it is to be noted that, according to plaintiff, she has purchased Gat no.496/2, area 1H 81.5R from Shivaji Gosavi. Therefore, issue no.4 regarding bonafide purchaser needs to be discussed first. To establish her case

plaintiff has filed her examination-in-chief as PW1-Arusha Sampat Dowkhar(Exh.45) and reiterated all the facts as stated in the plaint. She had further examined PW2-Gajanan Dinkar Pawar(Exh.90) and PW3-Ashokrao Ramchandra Chauhan (Exh.92). On the contrary, defendant no.1 and 2(a to c) have filed examination-in-chief of defendant no.1 as DW1-Arun Dnyanoba Gosavi(Exh.96) and DW2-Sunil Sampat Gorde (Exh.132). The plaintiff has filed pursis(Exh.134) and submitted that, they have not claimed any relief against defendant no.3 to 5. Heard Ld. Advocate for both parties at length. I have carefully gone through all the documents and citations placed on record.

16] Admittedly, there are series of litigations filed by earlier owners of disputed Gat no.496 in Civil Court as well as before Revenue Authorities. Therefore, before proceeding further it would be just and proper to see the history of earlier long standing series of litigations of suit land. Those are, one Bandugir Gosavi was original owner of entire disputed **Gat no.496, area 7H 27R** land. He had two sons i.e. Sonugir and Dnyanugir (Dnyanoba). The entire Gat no.496 was partitioned between the above-said two brothers ie.**3H 63.5R land each**. The eastern half portion of 3H 63.5R land was came to the share of Sonu Gosavi and western half portion of 3H 63.5R land was came to the share of Dnyanu Gosavi. Out of which Sonu Gosavi had sold 3H 21R land out of 3H 63.5R land of his share to his nephews i.e. sons of Dnyanoba (defendant no.1-Arun, his brother Ashok and Shivaji) as per sale-deeds, dtd.19/03/1981. Their mutation were carried out as per Ferfar no. 866, 867 and

868. However those sale-deeds were declared as null and void by Revenue officer for want of prior permission. Even mutation entries made on that basis were cancelled. Therefore, defendants had filed R.C.S. No.243/1986 demanding execution of sale-deed from Sonu Gosavi by obtaining required permission.

17] Said suit was decided on 28/02/1994 as per **Judgment (Exh.106)**. In the said suit, defendant no.1-Sonu was directed to seek requisite permission and to execute the sale-deed of 1H 7R land in favour of plaintiff no.1-Arun Gosavi and 1H 6R land in favour of plaintiff no.2-Ashok Gosavi within three months. It was further declared that, the defendant no.1 has no any concern with the suit properties and he was permanently restrained from causing any obstruction with the plaintiffs possession over the suit property. Against the said Judgment, Sonu Gosavi had preferred **Civil Appeal No.316/1994 (Exh.110)** before Hon'ble District Court, Pune. It was came to be dismissed for default on 21/02/2000. Again **Misc. Civil Application No.1039/2013** was filed by Sonu Gosavi Through LR's to admit the said appeal, it was also came to be dismissed as per **Judgment(Exh.112)** dated 04/03/2015.

18] In the meantime Sonu Gosavi had filed **RCS No.204/1989(Exh.107)** against Arun, Shivaji and Ashok Gosavi for possession of 3H 21R land as sale-deeds were declared as illegal by Revenue Officer. Said suit was withdrawn by plaintiff. Further Shivaji Gosavi had filed **R.C.S. No.110/1992** against Ashok and Arun Gosavi for Perpetual Injunction in respect of

Gat no.496/2, area 1H 85.5R. It was decided on merit and came to be dismissed as per **Judgment dated 02/12/1996(Exh.108)**.

19] Present defendants no.1 and 2 had filed **Reg. Dkst. No.32/1994** for execution of sale-deed after obtaining permission of competent authority in view of Judgment and decree dated 28/02/1994 passed in RCS no.243/1986. In that proceeding, sale-deed, dtd.27/01/2015 was executed through Court Commissioner. In the said Execution proceeding, J.Ds.ie.LRs of Sonu Gosavi had raised objection on the point of permission obtained by court commissioner as per **Exh.113** and prayed for permission to cross examine the court commissioner. Said application was rejected on 10/11/2014. Against the said order, they had preferred **Writ petition no.3931/2015** before Hon'ble High Court. It was dismissed as per **Judgment dated 11/03/2015(Exh.125)**.

20] Apart from that parties have placed on record following documents :-

Sr. No	List of Documents	Exh. No.
1	7/12 extract of Gat No.496/1 for the year 2012 to 2016.	57
2	7/12 extract of Gat No.496/2 for the year 2010 to 2011 and 2012 to 2016.	58,59
3	7/12 extract of Gat No.496/3 for the year 2012 to 2016.	60
4	Original Electricity Receipt, quotation and bill.	73-76
5	Copy of Judgment in R.T.S. Appeal No. 47/86 dated 03/05/1991.	61

6	Copy of Judgment in R.T.S. Appeal No. 96/91 dated 22/07/1992.	62
7	Copy of Judgment in R.T.S. Appeal No. 93/12 and 94/12 dated 18/04/1994.	63
8	Copy of Judgment in R.T.S. Appeal No. 197/94 dated 10/04/1996.	64
9	Copy of Judgment in R.T.S. Revision No. 138/85 dated 24/06/1986.	65
10	Copy of Judgment of Revenue department dated 24/06/1986.	66
11	Notice dated 24/02/2011.	53,67
12	Copy of Darkhast No.32/1994.	55,68
13	Notices dtd. 15/03/2017 issued by plaintiff.	77 to 82
14	Sale-deed dtd. 20/05/1991.	93
15	Sale-deed dtd. 30/12/2010	83
16	6 Photographs along with bill of suit property.	Art. B
17	Copy of Order dtd. 30/05/2011.	84
18	Copy of sale-deed dated 27/01/2015.	56
19	Application and order Dkst. No.32/1994.	54
20	Judgment and decree of RCS No.243/1986.	69,70
21	Khate utara of Gat no.496/2 in the name of plaintiff and 7/12 abstract and Ferfar of Gat no.496/2.	49,50 -52
22	Namuna 8 of property no.1286 and Tax Receipt in the name of Mahesh Ashok Gosavi.	98,99
23	Gaon namuna of Gat no.496/2, area 1H 07 R in the name of Arun Gosavi in 1985-86.	100
24	Gaon namuna of Gat no.496/3, area 1H 07 R in the name of Ashok Gosavi in 1983.	101
25	Document issued by Talathi on 15/09/1983 showing boundaries of Gat no.496/2.	102
26	Document showing boundaries of Gat no.496/3.	103

27	Gaon namuna of Gat no.496/2, area 1H 81.5R in the name of Shivaji in 1992-93, 2005-06.	104, 105
28	Ferfar entry of Gat no.496, area 1H 07 R each in the name of Arun, Shivaji and Ashok Gosavi with endorsement of its cancellation.	114 to 116
29	Sketch map of Gat no.496 issued by DILR.	117
30	Khate utara of Gat no.496/3 in the name of POA of defendant no.1 and 2(A to c) and Sunil Gorde issued on 29/12/2016.	118
31	Regd. Notice of lis pendence dated 11/07/1990.	119
32	7/12 abstract of Gat no.496/3, area 1H 56.5R in the name of LR's of Sonu, Ashok, POA and Sunil.	120
33	7/12 abstract of Gat no.496/1, area 6H 76R in the name of Dynanu and Sonu Gosavi from 1975 - 1988.	121
34	7/12 abstract of cancelled entries of Gat no.496/2 to 4, area 1H 7R each in the name of Arun, Ashok and Shivaji Gosavi from 1981 - 1986.	122 to 124
35	Hand written Sketch map of Gat no.496 showing sub Gat numbers.	Art. A to D

21] As stated earlier, plaintiff has come with the case of bonafide purchaser of suit property as described in plaint para 1(A). The R.C.S. No. 243/1986 filed by Arun and Ashok Gosavi against Sonu, Dynanoba and Shivaji Gosavi was decreed on 28/02/1994. During pendency of said suit, notice of lis-pendency was registered by Arun and Ashok in the office of Sub-registrar Shirur on 11/07/1090 as per Exh.119. Moreover, R.C.S. No. 204/1989 filed by Sonu Gosavi against Arun, Ashok and Shivaji Gosavi for recovery of possession of same land was withdrawn by him. Even R.C.S. No. 110/1992 filed by Shivaji

Gosavi against Arun and Ashok Gosavi for perpetual injunction was come to be dismissed on 02/12/1996. Furthermore, there were directions in R.C.S. No. 243/1986 that defendant no.1- Sonu Gosavi has no any concern with the suit properties and he was permanently restrained from causing any obstruction with the plaintiff's possession over the suit properties. So Sonu and Shivaji Gosavi both were aware of all the litigations of Gat no.496. Inspite of that, Sonu Gosavi had executed sale-deed (Exh.93) of 1H 81.5R land out of gat no.496 in favour of Shivaji Gosavi on 20/05/1991 during pendency of suit.

22] Another point needs to be noted that, petition writer P.W.2-Ashok Chavan (Exh.92) is the resident of Khed, Dist. Pune. He had prepared the draft of sale- deed, dtd. 20/05/1991 and it was registered in the office of Sub-registrar Pune instead of Shirur within whose jurisdiction the property is situated. The predecessor in title had notice of all the earlier transactions in fact he is real brother of Arun and Ashok Gosavi. Even basic sale purchase transaction of gat no.496 was taken place between them. Inspite of that, after purchase he had sold the same 1H 81.5R land to present plaintiff. Even plaintiff had not taken any search nor published any notice in the newspaper which was her duty as a buyer before purchase of the immovable property. Therefore, in the circumstances plaintiff cannot be said to be a bonafide purchaser and therefore, I answer issue no. 4 in the negative.

As to Issues No. 1 and 2 :-

23] The plaintiff has claimed declaration and cancellation of sale-deed of suit property dtd. 27/01/2015. As stated earlier, said sale-deed dtd. 27/01/2015 is executed in Reg.Dkst. No.32/1994 through Court Commissioner in view of decree dtd.28/02/1994 passed in R.C.S.No.243/1986 after deciding all the objections of J.Ds. and after decision of litigations between the parties. Ld. Advocate for plaintiff pointed out the names of vendor including Dnyanoba Gosavi and others in the bracketed arrow of vendor who were not directed to execute the sale-deed. I do absolutely agree with this submission of Ld. Advocate for plaintiff. Only defendant no.1-Sonu Gosavi was directed to execute the sale-deed. However, while executing sale-deed through court commissioner, bracketed arrow was marked in front of name of all the defendants. So certainly there is a mistake of bracketed arrow shown in front of names of Dnyanoba and Shivaji through LR's. However, remaining contents of sale-deed have been drafted as per the decree of earlier civil suit no.243/1986 and therefore, only on that ground said sale-deed cannot be directed to be cancelled.

24] Moreover according to plaintiff, Gat no. 496/2, area 1H 7R and Gat no. 496/3, 1H 6R have been mentioned in sale-deed(Exh.56). Further boundaries have been mentioned i.e. to the East-Gat no.496/4, to the South-road, to the West-Gat no. 496/1 and to the North-canal(odha). In the same way, in the sale-deed(Exh.83) executed by Shivaji Gosavi in favour of plaintiff ie.Arusha Davkhar, Gat no.496/2 and area 1H 81.5R

has been mentioned. It is surrounded by, to the East- land out of Gat no.496, to the South-road, to the West-land out of Gat no.496 and to the North-canal(odha) as mentioned in earlier sale-deed(Exh.93) executed by Sonu Gosavi in favour of Shivaji Gosavi. No sub-Gat numbers of Gat no.496 have been mentioned in the sale-deed(Exh.93) of Shivaji from Sonu Gosavi. However, while executing the sale-deed in favour of plaintiff Gat no.496/2 has been mentioned.

25] It means that, during pendency of litigations Gat numbers have been divided in to sub-Gat numbers and same have been mentioned in the sale-deeds. Gat number has been divided in to sub-Gat numbers long back as per 7/12 abstract Exh.100 to 105 and Exh.121 to 124. As per 7/12 abstract Exh.124 of Gat no.496/4, area 1H 7R was entered in the name of Shivaji Gosavi in the year 1981 to 1986. Inspite of that plaintiff has shown the same boundaries in her sale-deed in the year 2010 as mentioned in the earlier sale-deed of the year 1991. So certainly her land is difficult to ascertain as per boundaries mentioned in her sale-deed.

26] Apart from that, admittedly Sonu Gosavi had filed RCS no.204/1989 against Arun, Ashok and Shivaji Gosavi for possession of land sold to them. So it is crystal clear that Sonu had delivered possession of land to them at the time of earlier sale-purchase transaction in the year 1981. Even possession of Arun and Ashok were held in earlier Judgment of RCS no.243/1986. However, there is nothing on record to show re-

delivery of their possession to Sonu Gosavi. On the contrary, the plaintiff has steps in the shoes of Shivaji Gosavi who had knowledge of all the litigations since beginning. Therefore at this stage, sale-deed between Sonu and Arun and Ashok dated 27/01/2015 executed through court cannot be said to be illegal.

27] Moreover as observed in earlier Judgment of RCS no.243/1986, Shivaji Gosavi had no objection to part performance of contract by Sonu in favour of Ashok and Arun Gosavi. In the same suit, as per additional issue, sale-deed dtd. 20/05/1991 executed by Sonu Gosavi in favour of Shivaji Gosavi was held not binding on plaintiffs (i.e. Arun and Ashok) to the extent of 30R land. His sale-deed was considered to the extent of 1H 50.5R land only. So basically, wrong area was mentioned in the sale-deed, dtd.20/05/1991 executed in favour of Shivaji Gosavi and therefore area and boundaries mentioned in the sale-deed of plaintiff on the basis of said sale-deed are certainly wrong. Therefore present sale-deed executed through Court commissioner is considered as legal. I therefore answer issue no. 1 and 2 in the negative.

As to Issues No. 3 and 5 :-

28] Both parties have claimed Permanent Injunction against each other and therefore both issues are taken together for discussion. Admittedly, plaintiff has purchased 1H 81.5R land from Shivaji Gosavi out of Gat no.496 and defendant no.1 and 2 i.e. Arun and Ashok Gosavi have purchased 1H 7R and 1H 6R i.e. total 2H 13R from Sonu Gosavi as per decree passed in

R.C.S.No.243/1986 through Court Commissioner. Both parties have purchased land out of Eastern half portion of Sonu Gosavi ie.Total 3H 63.5R land. As stated earlier, the predecessor of plaintiff and defendants had filed several litigations. Even in the execution proceeding i.e.Reg. Dkst. No.32/1994, J.Ds. ie. Sonu Gosavi through LR's had raised objection in respect of permission obtained by Court Commissioner for execution of sale-deed. The dispute went up to Hon'ble High Court in writ petition no. 3931/2015 wherein order of Trial Court was confirmed. According to defendants, they are in possession as per earlier sale-deed executed by Sonu Gosavi in their favour in the year 1981. On the contrary, plaintiff has claimed her possession as per sale-deed of Shivaji Gosavi in the year 1991. Admittedly, plaintiff's predecessor in Title ie.Shivaji Gosavi had not preferred any Appeal against the Judgment in RCS No.243/1986, wherein it was observed that, Shivaji Gosavi was entitled to purchase only 1H 50.5R land out of Total 3H 63.5R land of Sonu Gosavi excluding 2H 13R land purchased by Arun and Ashok Gosavi. So certainly, plaintiff is entitled to retain possession of 1H 50.5R land only.

29] Moreover both parties are claiming their long standing possession over the suit land. Undisputedly, initially it was one Gat no.496 when they received possession and subsequently, said Gat no.496 was divided in to sub-Gat numbers. However except documents, there is nothing on record to ascertain the fact of actual physical possession of both parties on spot. There may be dispute of identification of land and

boundary dispute even in future. However they have not measured their land in dispute nor corrected their actual boundaries. As per evidence of defendant no.1-Arun Gosavi (Exh.96), their partition suit is still pending before Hon'ble High Court. Both parties have not raised any objection before Revenue Authority in respect of their actual physical possession nor brought on record in the present suit. Therefore, apart from dispute of their actual possession, identification of land and ownership as per their sale-deed, plaintiff is entitled to protect her possession to the extent of 1H 50.5R land only and defendants are entitled to protect their possession over 2H 13R land as per their sale-deed dated 27/01/2015 in the original Eastern half share ie.3H 63.5R land of Sonu Gosavi in Gat no.496 from the disturbance of others. I therefore answer issue no. 3 accordingly, in the partly affirmative and issued no. 5 in the affirmative.

As to Issues No. 6 :-

30] The defendants have submitted that, plaintiff be directed to remove or demolish construction if any raised by her in the suit property. As per cross examination of D.W.1-Arun Gosavi, there are well, fruit trees, cattle shed, Goat shed, R.C.C. construction and compound fencing in the area of 1H 81.5R. Even in the earlier sale-deed dtd. 20/05/1991 the well and construction of cattle shed and house were in existence in the land Gat no.496. However, there is no specification of area nor their any evidence to show that in which particular area the above said constructions and trees are in existence. Admittedly,

in the earlier suit only 30R land is held excess in the land mentioned in sale-deed of plaintiff. No doubt the defendants are in possession of their area since first sale-purchase transaction of 1981 and there is no change in their area. However there is change in the area of plaintiff as per earlier Judgment. However there is no any map or measurement to show authentic exact area in actual physical possession on spot as per sale-deed of plaintiff or any demarcation after Judgment of RCS no.243/1986. Therefore, in the absence of concrete evidence of illegal possession, it is difficult to direct the plaintiff to demolish any construction. I therefore, answer issue no. 6 in the negative.

As to Issues No. 7 :-

31] The plaintiff has demanded compensatory cost of Rs. 2,00,000/-from the defendants. According to her, defendants are trying to disturb her possession without any reason and therefore they are liable to pay compensatory cost to her. As per section 35(A) of Civil Procedure Code, compensatory cost can be granted in respect of false or vexatious claim or defence. In the present suit both the parties have come on the basis of sale-deeds executed in their favour. As stated earlier, there were series of litigations between her predecessor in title and defendants or their ancestors. Moreover, still there is dispute of actual physical possession as per earlier Judgment, plaintiff is in possession of excess 31R land. So in the circumstances it cannot be said that, there is false or vexatious defence. Therefore, she is not entitled for any compensatory cost. I therefore answer issue no.7 in the negative.

As to Issues No. 8 :-

32] As discussed at length, both the parties have succeeded to show their actual purchased area as per earlier litigations in 3H 63.5R land owned by Sonu Gosavi in Gat no.496. Therefore, they are entitled to protect their areas and entitled for decree of Permanent injunctions against each other. I therefore answer issue no. 8 accordingly with following order.

ORDER

1.	Suit is partly decreed.
2.	The counter claim filed by defendant no. 1, 2(a to c) is partly decreed.
3.	Both parties to bear their own cost.
4.	The defendant no. 1, 2(a to c) themselves, their agent, servant or any person acting on their behalf are hereby permanently restrained from disturbing plaintiff's possession to the extent of 1H 50.5R land in Gat no. 496 subject to identification of her land.
5.	The plaintiff herself, her agent, servant or any person acting on her behalf are hereby permanently restrained from disturbing defendants possession to the extent of 2H 13R land in Gat no. 496 subject to identification of their land.
6.	Decree be drawn up accordingly.
7.	Dictated, typed and Pronounced in open court.

Pune.
Date : 13/12/2019.

(Madhuri R. Khanwe)
23rd Jt. Civil Judge (S.D.), Pune.

Certificate

“ I affirms that the contents of ther P.D.F. file Judgment are same word for word as per original Judgment.

Name of Steno : M.S. Kondhare

Court Name : Hon'ble Madhuri. R. Khanwe,
23rd Jt. C.J.S.D., Pune.

Date of order : 13/12/2019

Signed by
presiding officer on : 13/12/2019

Uploaded on : 17/12/2019