

Presented on : 12.09.2001
Registered on : 12.09.2001
Decided on : 20.12.2012
Duration : 11Y. 2M. 9D

IN THE COURT OF JOINT CIVIL JUDGE JUNIOR DIVISION,

PIMPRI- AT PIMPRI, PUNE – 18.

(Presided over by A. P. Mohite)

Regular Civil Suit No. 198/2001

Exhibit No.55.

1. Walmiki Trimbak Kapote,
Age 67 yrs, Occupation Agricultural,
R/at- Power house chowk,
Pimpri Pune- 17.
2. Madhukar Pandarinath Sonar,
Age 53 yrs, Occupation Advocate,
R/at- Padam Society, Dairy Farm Road,
Pimpri Pune-17. **---PLAINTIFFS**

V/s.

1. Baban Shivram Jagtap,
Age 67 yrs, Occupation Business,
R/at- 902, Nadhenagar,
Kalewadi Pune -17.
2. Shivana Sayhasappa Mulge,
Age 50 yrs, Occupation Service,
R/-at S.No.33/2B/2/2/1, Shrinagar,
Rahatani, Kalewadi Pune-17. **--- DEFENDANTS**

**Suit for Declaration, Possession and
Injunction.**

Appearance:

Advocate for the Plaintiffs - Shri Thombare and Gavhane.
Advocate for Defendant No.2 - Miss Parab

J U D G M E N T

(Delivered on 20th day of December, 2012)

The plaintiffs have filed this suit for declaration and injunction in respect of the property admeasuring 1250 sq.feet and construction admeasuring 10 X 10 foot made over on it and out of the property bearing survey no. 33 hissa no. 2B/2/2/1 admeasuring 7R situated at Rahatani.

2. In nutshell case of plaintiffs are as under:-

The Plaintiffs have purchased the property bearing survey no. 33 hissa no. 2B/2/2/1 admeasuring 7R situated at Rahatani on 27.11.1989 under registered sale deed from Magan Maruti Tambe and others. The possession of said property was handed over to plaintiff on very day. The property was coming under area of Pradhikaran. Therefore, it was not got mutated to 7X12 extract. Thereafter, the Plaintiffs were decided in the month of October, 1997 to sale out due to financial difficulty. Defendant No.1 was estate agent and he was agreed to find out the customer for transaction. Therefore, the plaintiffs executed the General Power of Attorney in favour of defendant no. 1 on 15.10.1997 for the purpose of divication of plots, development of plots and to find out the customer. The plaintiffs were not given the rights of sale to defendant no.1. The

defendant no. 1 failed to find out the customers within limits of three months as per General Power of Attorney. It is further contended by the plaintiffs that defendant no.1 assured to plaintiffs that he is ready to purchase the property and accordingly the defendant no.1 issued two cheques out of one is for Rs. Two lakhs and other is for Rs. Two lakhs Fifty thousand of the bank of The Seva Vikas Co-operative Bank, Kalewadi branch and gave assurance to realise the amount and further assured that the remaining amount of transaction will be paid at the time of execution of sale deed. The plaintiffs believed on the words of defendant no.1 and deposited the cheques in the bank for honour. However, the cheques returned with dishonour. It is further contended that the defendant no.1 sold the suit property to defendant no.2 without having legal right. Therefore, the plaintiffs visited the suit property wherein they found that the defendant no.2 is threatening to make the construction over the suit property. So that the plaintiffs are constrained to file the suit for declaration and injunction.

3. Defendant no.1 is absent inspite of service of summons. Therefore, the suit is proceeded ex-parte against him.

4. The defendant no. 2 appeared and resisted the suit by filing written statement at Exh. 19. It is contented by defendant no. 2 that the boundaries mentioned are incorrect and it is not shown who out of two plaintiffs has remain in

possession and what portion of the property alleged to have been purchased by the plaintiffs. The name of plaintiffs are not entered in revenue record and so that plaintiffs have no right or title to file this suit. The plaintiffs had given the power of attorney to defendant no.1 who accordingly have contacted the persons who needed the property as stated in the plaint. The defendant no.2 also contacted the defendant no.1 and when he agreed to purchase the suit property. The defendant no.1 sold the suit property to defendant no.2 as a market value and after getting the full consideration. The sale deed is registered after full consideration is received to the defendant no.1 and defendant no.1 gave the two cheques to plaintiffs and the cheques were accepted by the plaintiffs acknowledging the power of defendant no.1 for sale of landed property. It is contended by defendant no.2 the court fee upon consideration of sale deed is not paid for suit of declaration and injunction. The suit has such having been not paid accordingly. Further, the necessary parties have not joined in the suit therefore, the suit is liable to dismissed. It is contended by defendant no.2 that the plaintiffs have accepted the transaction made by defendant no.1 with defendant no.2 by way of acknowledging receipt of the cheques mentioned in the plaint. The cheques issued by defendant no.1 in the name of plaintiffs having been accepted and presented in the bank so that it is fact that the plaintiffs have filed a criminal case under section 138 of Negotiable

Instruments Act and the said Act supports to the defendants. It is contended by defendant no.2 that defendant no.1 has right to sale of the suit property on the basis of power of attorney and plaintiffs have admitted agreement between plaintiffs and defendant no.1. It is further submitted by defendant no.2 that there was no any cause of action with the plaintiffs to file the suit and the suit is filed without appropriate court fee stamps under valuing the suit and suit be dismissed.

5. On the above rival pleadings, the issues are framed at Exh. 31 and I have re-produced as below and given my findings thereon with reasons as below:-

<u>ISSUES</u>	<u>FINDINGS</u>
1. Whether plaintiffs prove that the sale deed executed by defendant no.1 in favour of defendant no.2 is without valid authority and it is void and not binding upon plaintiffs?	..In the affirmative.
2. Whether plaintiffs prove that they have not received consideration of suit property from defendant no.1?	..In the affirmative.
3. Whether plaintiffs proves that construction of defendant no.2 over suit property is illegal?	..In the affirmative.

4. Whether plaintiffs proves that defendant no.2 tried to alienate the suit property?	..In the affirmative.
5. Whether plaintiffs is entitled for perpetual injunction?	..In the affirmative.
6. Whether plaintiffs are entitled for mandatory injunction?	..In the affirmative.
7. What order and decree?	As per final order.

REASONS.

6. In order to prove the suit claim the plaintiffs have examined P.W. No.1 Walmiki Trimbak Kapote, on affidavit Exh.34. No other witnesses have examined by plaintiffs and closed the evidence by filing pursis Exh.47. Except the oral evidence of P.W. No.1 Walmiki Kapote the plaintiffs have produced the following documents in the evidence:-

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|---|---------|
| a. A letter dated 10.7.2012 of Sub-Registrar Haveli. | Exh.42 |
| b. The Certified copy of deposition of PW. No2 Rangnath Thoke in RCS No.195/10. | Exh.43 |
| c. A letter dated 28.7.00 by Controller of Stamp of Maharashtra State. | Exh.44 |
| d. A letter dated 4.7.2012 of Jt. District Registrar | Exh.45. |
| e. A copy of sale deed executed by defendant no.1 in | Exh.46. |

- favour of defendant no.2.
- f. A copy of receipt regarding sale deed executed Exh.52
 - g. A copy of sale deed executed by Madan Tambe in
favour of plaintiffs on 27.11.1989. Exh.53
 - h. A copy of General Power of Attorney executed by
plaintiffs in favour of defendant no.1. Exh.54.

7. Defendant no. 1 remained absent and the suit is proceeded ex-parte against him. Defendant no. 2 appeared and resisted the suit by filing written statement, but he is failed to remain present in the Court and to examine the witnesses.

AS TO POINT NO.1 TO 6 -

8. The point no. 1 to 6 are discussed altogether because the evidence of plaintiffs is one and similar. I have scrutinized the oral as well as documentary evidence adduced by plaintiffs on record. The plaintiffs have claimed the relief of declaration, possession and injunction in this suit and have examined Walmiki Kapote on affidavit. Further, the plaintiffs have produced the documentary evidence. The main crux of the suit is that the transaction made by defendant no.1 in favour of defendant no.2 is legal or ill-legal on the basis of General Power of Attorney. There are in all six suits pending in this court about same nature against defendant no.1 and other defendants who purchased the properties of plaintiffs. In view of section 34 of the Specific Relief Act, the plaintiffs have claimed the legal right over suit property and subsequently declaration regarding the transaction of the defendants is null and void. In fact, considering the pleadings of the defendants in other suits, there

is no dispute about the ownership of the property S.No. 33 hissa no. 2B/2/2/1 admeasuring 7R belonging to plaintiffs. As regards the ownership, the plaintiffs have produced the copy of sale deed Exh.53 and in supporting of this the oral evidence Exh.34. The said evidence is not challenged by the defendants. Therefore, in view of Section 101 of the Indian Evidence Act, the evidence adduced by the plaintiffs is believable and trustworthy.

9. The advocate for plaintiffs brought attention to the court towards copy of General Power of Attorney Exh.54. Therefore, I have scrutinized the said copy wherein the plaintiffs were empowered to defendant no.1 to make the transaction for three months only, in between the specific period from 15.10.1997 onwards upto three months. As regards this transaction effected by defendants, I have scrutinized the copy of sale deed Exh.46 executed by defendant no.1 in favour of defendant no.2. The said sale deed is executed by defendants on 2.6.1998. Considering the period of General Power of Attorney and sale deed executed by defendants, the defendant no.1 has executed the sale deed in favour of defendant no.2 of the suit properties beyond his power. As regards this, the plaintiffs have claiming the transaction null and void. Further, as regards this the plaintiffs were preferred the applications regarding allegations against Sub-Registrar and defendants about the transaction is null and void. For that the plaintiffs have produced the evidence of witness P.W.No.2 Ranganath Thoke in RCS No.

195/2001 and a letter of Controller Court Fees and Stamps Exh. 44. I have produced the letter Exh.44, its supports to the case of plaintiffs regarding the transaction is ill-legal.

10. So far as, the Power of Attorney Exh.54, I have gone through the provisions of Indian Registration Act, 1908. The Section 17 of Registration Act, establishes the necessity for registration with regards to certain classes of documents and Section 49 provides that any documents which required to be register is not registered it is not effective to execute. Therefore, I have re-produced the Section 17 and Section 49 of Registration Act.

Section 17- Documents of which registration is compulsory-(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force namely,-

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

Section 49- Effect of non-registration of documents required to be registered- No document required by section 17 [or by any provision of the Transfer of Property Act, 1882 (4 of 1882),] to be registered shall-

(a) affect any immovable property comprised

therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power; unless it has been registered:

[Provided that an unregistered document affecting immovable property and required by this Act, or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as evidence of any collateral transaction not required to be effected by registered instrument.]

11. With this regard, I humbly submit that the purpose of registration is to provide information to people whom a deal with property. Here in this suit, as General Power of Attorney is not registered in view of Section 17 of Registration Act, it cannot affect upon the transaction made by the defendants of suit properties because General Power of Attorney is un-registered document and the transfer of suit properties made by defendant no.1 in favour of defendant no.2 will not affect legally.

12. So, far as the prayer of mandatory injunction, plaintiffs have relied on the oral evidence as well as documentary evidence. The said evidence is not challenged by the defendants therefore, it is presumed to be true and believable.

13. Thus, on the above discussion it is clear that,

the suit property is owned by plaintiffs which is transferred by defendant no.1 in favour of defendant no.2 on the basis of unregistered General Power of Attorney which Act cannot transfer the legal title to defendant no.2. Therefore, it can be said the transaction made by the defendants on the basis of General Power of Attorney is null and void. On the other hand, in view of sale deed of the plaintiffs, plaintiffs appears to be owner and it is required to protect the possession of plaintiffs. Therefore, on the above discussions I have answered points no. 1 to 6 in the affirmative and in answer to point no.7, I pass the following order:-

ORDER

1. The suit is decreed with costs.
2. It is hereby decreed that the sale deed executed by defendant no.1 in favour of defendant no.2 on 2nd June, 1998 document no. 3805/98 is null and void and not binding upon plaintiffs.
3. The defendant no.1 and 2 are hereby restrained permanently to make any alienation with anybody and further they are restrained to make any construction or any obstruction over the suit property.
4. The defendant no.2 is directed to deliver the vacant possession of the suit property within

three months from the date of decree.

5. In case, the defendant no.2 is failed to deliver the vacant possession of the suit property within three months from the date of decree the plaintiffs are entitled to get possession through court.

6. Decree be drawn accordingly.
(Judgment is delivered and pronounced in the open court.)

Date 20.12.2012.

(Anand P. Mohite)
Jt. Civil Judge Junior Division,
Pimpri.

Note : “ I affirm that the contents of this P.D.F. file judgment are same word for word as per original judgment.”

Name of the Jr. Clerk : Smt. T. U. Urankar.

Court Name : Shri A.P. Mohite Jt CJJD, Pimpri Pune.

Date : 20.12.2012.

Judgment signed by Presiding Officer on : 20.12.2012.

Judgment uploaded on : 20.12.2012.

