

Received on : 30.09.2014

Registered on : 30.09.2014

Decided on : 14.03.2017

Duration : 02Y.05M.14D

**IN THE COURT OF JOINT CIVIL JUDGE, SENIOR DIVISION,
PUNE, AT PUNE****[Presided over : By P. R. Ashturkar]****SPL.C.S.NO.1369/2014****EXH.NO.208**

- 1] Shri. Sitaram Sawtaji Mandlik
Age – 64 years, Occ -Retired,
R/at – At & Post – Panoli,
Tal – Parner, Dist -Ahmednagar.
- 2] Shri. Nanabhau Tatyaba Kolhe
Age – 45 years, Occ – Service,
R/at – Wadegavhan,
Tal – Parner, Dist -Ahmednagar.
- 3] Shri. Babaji Bhausahab Dawkhar
Age – 55 years, Occ – Service,
R/at – Joshiwada, Manas Building,
Shirur, Tal-Shirur, Dist-Pune.
- 4] Shri. Jayant Waman Bhedasgaonkar
Age – 58 years, Occ – Retired,
R/at – Flat No.8, Suyog Society,
Raikar Mala, Dhayari, Tal-Haveli,
Dist-Pune-411 041.
- 5] Shri. Shivaji Dhondibhau Pawar
Age – 60 years, Occ – Retired,
R/at – Vadgaon Amali, Tal-Parner,
Dist -Ahmednagar.
- 6] Shri. Vijay Prabhakar Khandare

Age – 35 years, Occ – Agriculturist,
R/at – At & Post – Wadegavhan,
Khandare Mala, Tal-Parner,
Dist -Ahmednagar.

7] Shri. Chandrakant Rajaram Vetel,
Age – 45 years, Occ – Service,
R/at – Shirur, Tal-Shirur, Dist-Pune.

8] Shri. Suresh Gajaram Naik
Age – 58 years, Occ – Retired,
R/at – Shirur, Tal-Shirur, Dist-Pune.

9] Shri. Subhash Gulabrao Pawar
Age – 53 years, Occ – Agriculturist,
R/at – Baburaonagar, Shirur,
Tal-Shirur, Dist-Pune.

10] Shri. Baba Gulabrao Pawar,
Age – 68 years, Occ – Retired,

11] Shri. Vinayakrao Pawar,
Age – 65 years, Occ – Retired,

12] Shri. Jalindar Gulabrao Pawar
Age – 63 years, Occ – Retired,

13] Shri. Vitthal Babasaheb Pawar
Age – 56 years, Occ – Agriculturist,

Plaintiffs No.10 to 13 R/at – At & Post -
Chinchni, Tal-Shirur, Dist-Pune.

14] Shri. Baban Gulabrao Pawar
Age – 55 years, Occ – Agriculturist
and labour,
R/at – Shirur, Tal-Shirur, Dist-Pune.

15] Shri. Kushabhau Shivaji Munjal
Age – 61 years, Occ – Agriculturist,

R/at – Kawathe Yamai, Tal-Shirur,
Dist-Pune-412218.

- 16] Shri. Bashir Dagadubhai Shaikh
Age – 50 years, Occ – Business,
R/at – Shirur, Tal-Shirur, Dist-Pune.
- 17] Shri. Dilip Meghraj Gelot
Age – 60 years, Occ – Retired,
R/at – At & Post – Nhavara,
Tal-Shirur, Dist-Pune.
- 18] Shri. Manohar Vishwanath Shinde
Age – 65 years, Occ – Retired,
R/at – Shirur, Tal-Shirur, Dist-Pune.
- 19] Shri. Dattatraya Bhimaji Padwal
Age – 58 years, Occ – Service,
R/at – At & Post – Sanvidane,
Tal-Shirur, Dist-Pune.
- 20] Smt. Surekha Pandharinath Shinde
Age – 50 years, Occ – Household,
R/at – At & Post – Parner,
Tal – Parner, Dist – Ahmednagar.
- 21] Shri. Jaysing Kisan Veer
Age – 65 years, Occ – Agriculturist,
R/at – At & Post – Bhambarde,
Tal-Shirur, Dist-Pune.
- All plaintiffs are members of
proposed Shri. Ganesh Co-operative
Housing Society.
- 22] Shri. Sanjay Shivaji Sonwane
Age – 50 years, Occ – Agriculturist,
R/at – Nirvi, Tal-Shirur, Dist-Pune.
- 23] Shri. Pandit Shivaji Sonwane

Age – 48 years, Occ – Labour,
R/at – Nirvi, Tal-Shirur, Dist-Pune.

.. Plaintiffs.

VERSUS

- 1] Shri. Sakharam Bhujangrao Sonwane
Age – 64 years, Occ – Agriculturist,
R/at – Nirvi, Tal-Shirur, Dist-Pune.
- 2] Shri. Dnyaneshwar Balasaheb Taware
Age – 35 years, Occ – Agriculturist,
R/at – Kawathe Yamai, Tal-Shirur,
Dist-Pune-412218.
- 3] Smt. Sulochana Balasaheb Taware
Age – 47 years, Occ – Household,
R/at – Kawathe Yamai, Tal-Shirur,
Dist-Pune-412218.
- 4] Sou. Jijabai Manohar Padwal
Age – 32 years, Occ – Household,
R/at – Shikrapur, Back side of
Shikrapur Grampanchayat,
Tal-Shirur, Dist-Pune.
- 5] Shri. Vilas Hiranman Gaikwad
Age – 40 years, Occ – Business/Agriculturist,
R/at – Sudarshan Colony, Wakad Road,
Thergaon, Pune -33.
- 6] Shri. Prakash Bhaurao Ghodke
Age – 40 years, Occ – Business/Agriculturist,
R/at – At & Post – Makni, Tal-Lohara,
Dist – Usmanabad.
- 7] Shri. Niteen Dnyaneshwar Daundkar
Age – 28 years, Occ – Agriculturist,
R/at – Ranjangaon Ganpati,
Tal-Shirur, Dist-Pune.

.. Defendants.

**SUIT FOR DECLARATION,
CANCELLATION OF REGISTERED
SALE-DEED AND PERPETUAL
INJUNCTION.****APPEARANCES :-****Shri. S. P. Deo, advocate for plaintiffs.****Suit proceeded without W. S. against defendants no.1 to 4.****Suit proceeded ex-parte against defendants no. 5 & 6.****Shri. Dhage-Patil, advocate for defendant No.7.****J U D G M E N T**
[Delivered on 14.03.2017]

This is a suit for declaration, cancellation of registered sale-deed and perpetual injunction.

2] Facts of the suit, in nut-shell, are as under,

The property i. e. all that piece and parcel of land situated at Shirur, Tal-Shirur, Dist-Pune, is as follows,

S. No.	Area	Akar	Boundaries			
			East	North	West	North
28/3	1H. 32Are	Rs.0.69 Ps.	S. No.27	Stream	S. No.64	Stream & S. No.51

Out of it, northern side area admeasuring 0 Hector 55 Are, adjacent to S. No.51 and its four boundaries are as under,

East	Out of S. No. 28/2
South	Out of S. No. 28/3
West	S. No. 64
North	Stream.

(here-in-after, it be referred as the “suit property”)

The suit property was originally owned by one Sou. Vimal Kantilal Munot. She was intending to sell it. Most of the plaintiffs were serving in the State Transport Corporation of Shirur, Parner and Shreegonda. Therefore, with an intention to have their own house at Shirur, they planned to purchase land by creating housing society. They were unaware about the formalities and procedure regarding formation of the housing society. At that time, the defendant no. 1 and deceased Balasaheb Savaleram Taware accepted the responsibility to become promoters of the society. Meanwhile, Balasaheb Savaleram Taware died and defendants no. 2 to 4 are his legal heirs. The plaintiffs have decided amongst them, collected cash amount and handed over it to the aforesaid promoters. They collected amount as per their capacity to purchase either 1 or 2 Are land. They handed over proportionate amount to the aforesaid promoters and the promoters after collection, paid Rs. 85,000/- to the erstwhile owner Sou. Vimal Munot. Accordingly, registered sale-deed dated 24.11.1993 came to be executed. The plaintiffs were having entire trust on the promoters. The suit land was purchased for the benefit of the plaintiffs only and in the name of promoters, as trustees. Till 2008, no activity took place for formation of the society. However, as all the plaintiffs were having trust on the promoters, they just keep asking to the promoters regarding development. Meanwhile, development agreement regarding the suit property was executed in favour of defendants no. 5 and 6. It was informed to the plaintiffs that, the defendants no. 5 and 6 would develop the property by constructing building on it and the plaintiffs will get flats in proportionate to the amount

paid by them. At the same time, one power of attorney was also executed in favour of defendants no. 5 and 6. Thereafter, the defendants no. 5 and 6 executed agreement in favour of all the plaintiffs for handing over the flats admeasuring 450 sq. ft. or 900 sq. ft. as per their contribution.

3] In the beginning of the year 2013, some of the plaintiffs got to know that, the promoters of the housing society without any consent of the plaintiffs sold the suit property to defendant no. 7 by executing registered sale-deed dated 06.08.2012. As soon as, plaintiffs got to know this fact, the plaintiff no. 8 and 18 on 18.02.2013 sent notice to promoters. They never replied it. One criminal complaint is also filed in the Court of Ghodnadi regarding fraud.

4] The defendant no. 7 being an influential person, got his name mutated on the suit property soon after execution of the sale-deed. He is threatening to sell out the entire property and creation of third party interest in it. The plaintiffs are poor and retired persons. They have borrowed money as well as mortgaged ornaments to pay the amount for purchase of suit property. If at all, the defendant no. 7 would succeed to create third party interest, then, they may suffer irreparable loss. The suit property was originally purchased by the promoters for the proposed housing society. Despite knowing all the facts and taking disadvantage of the wrong entries in the revenue record, the defendant no. 7 had purchased the suit property. Hence, the present suit seeking declaration regarding ownership,

cancellation of registered sale-deed in favour of defendant no.7, possession as well as injunction.

5] Defendants no. 1 to 4 though appeared, failed to file their written statement, hence, suit proceeded without written statement against them. The defendants no. 5 and 6 duly served with summons, but, they remained absent. Hence, suit proceeded ex-parte against them.

6] The defendant no. 7 appeared and resisted the suit by filing written statement at Exh. 74. At the outset, it is submitted that, the plaintiffs have no right or locus-standi to file suit. The description of the suit property is denied. It is denied that, the plaintiffs contributed proportionate amount to purchase the suit property, in the name of housing society and through alleged promoters Shri. Sonwane and Shri. Taware. The plaintiffs were never members of the alleged society. Though, the property was purchased in the name of proposed “**Shree Ganesh Co-operative Housing Society**”, due to some unavoidable reasons, the aforesaid society never came into existence. In fact, the suit property was owned by defendant no. 1 and late Balasaheb Taware in their individual capacity. They executed development agreement as well as power of attorney in favour of defendants no. 5 and 6. Thereafter, due to inability, the defendants no. 5 and 6, got canceled those documents and since then, they have no any right, title or interest. As such, the agreements executed between defendants no. 5 and 6 and that of plaintiffs, are not enforceable. The defendant no. 7, thereafter,

purchased the suit property from defendants no. 1 and 2. He is bonafide purchaser of the suit property. He purchased the same after making due inquiry. Only because, now, he has started construction activities on the suit property, the plaintiffs with only motive to extract the money, filed this suit. Lastly, it is prayed that, suit be dismissed with costs.

7] In view of pleadings of plaintiffs as well as defendant no.7, following issues have been framed by my Learned Predecessor at Exh. 75, and I have recorded my findings thereon for the reasons given below,

SR. NO.	ISSUES	FINDINGS
1	Do the plaintiffs prove that, the defendant No.1 and late Shri. Balasaheb Savalaram Taware purchased the suit property by executing sale-deed dated 24.11.1993 for proposed Co-operative Housing Society ?	.. In the affirmative.
2	Do the plaintiffs prove that, they have paid consideration for the sale-deed dated 24.11.1993 ?	.. In the negative.
3	Does the defendant no.7 prove that, he is bonafide purchaser for value without notice ?	.. In the negative.
4	Whether the suit is within limitation ?	.. In the affirmative.
5	Do the plaintiffs prove that, sale-deed dated 06.08.2012 executed in favour of the defendant no.7 is void and illegal ?	.. In the affirmative.

6	Whether the plaintiffs are entitled to possession of the suit property ?	.. In the negative.
7	Whether the plaintiffs are entitled for perpetual injunction ?	.. In the negative.
8	What order and decree ?	.. As per final order.

REASONS

8] The plaintiff examined four witnesses, whereas, the defendant examined seven witnesses in support of its contention. They have also furnished and proved several documents on record. The documents would be discussed henceforth at relevant time.

AS TO ISSUE NO.1 :-

9] It is an admitted fact that, both the parties are relying on the registered sale-deed dated 24.11.1993. It is at Exh. 149. On perusal of the sale-deed, it is crystal clear that, the stamp was purchased in the name of Shri. Sakharam Bhujangrao Sonwane being promoter of proposed “**Shree Ganesh Co-operative Housing Society, (Indiranagar)**”. Thereafter, title/party clause of the document also shows that Shri. Sakharam Bhujangrao Sonwane and Balasaheb Savaleram Taware are mentioned in the capacity of promoters of the society. After execution of sale-deed, mutation entry bearing No. 3193 was prepared by revenue authority. Its extract (Exh. 87) also shows that, initially entry was taken in revenue record, in the name of proposed housing society and through defendant no.1 and deceased Taware. Thus, it is crystal clear that, the suit property was

purchased by the defendant no. 1 and late Balasaheb Taware by executing sale-deed dated 24.11.1993 for proposed co-operative society only. It was not at all purchased in their individual capacity as tried to be projected thereafter. Hence, I answer Issue No. 1 in the affirmative.

AS TO ISSUE NO.2 :-

10] This is very crucial and important issue. It is necessary to decide firstly the *locus-standi* of the plaintiffs and secondly evidence on record to show their alleged decision to create housing society and contribution in conformity to it. The defendants have come up with specific case that, the plaintiffs as mentioned in the title clause, are not at all members of the proposed housing society. They have no *locus-standi* even to file this suit. There is no evidence to show that they had contributed any amount towards consideration prior to sale deed. This takes me initially to the pleadings and to explore exactly the *locus* of the plaintiffs.

11] Needless to say the suit is not the one which is filed in the representative capacity. No permission, as such, required under order I rule 8 is ever sought in this suit. Even it is not the case of plaintiffs that the suit is filed in representative capacity by present plaintiffs for the benefit of all the members. The suit is thus in the nature of individual interest and right.

12] In the plaint averment the opening lines are very general and

vague. They are as follows,

"बहुतेक सर्वजण ड्रायव्हर कंडक्टर अशा प्रकारच्या हुद्द्याचे होते".

"सर्वजण अशा व्यवहारामध्ये अनभिज्ञ असल्यामुळे सोसायटी प्रमोट करून देईल अशा व्यक्तिंच्या शोधात असल्याने प्रतिवादी क्र. १ व श्री. बाळासाहेब सावळेराम तावरे यांनी नियोजित सोसायटीचे प्रमोटर म्हणून जबाबदारी स्वीकारली."

"आपसात ठरलेप्रमाणे वादींनी खरेदी रकमेसाठी रोख रक्कम जमा करून ती प्रतिवादी क्र. १ व कै. बाळासाहेब सावळेराम तावरे यांचेकडे सुपूर्त केली."

"जमिन खरेदीसाठी कुवतीप्रमाणे कोणी १ गुंठ्यासाठी व कोणी २ गुंठ्यासाठी ठरावाप्रमाणे रक्कम उपरोक्त प्रमोटर श्री. सोनवणे व श्री. तावरे यांचेकडे दिली."

13] This is sufficient enough to show the way, plaint is drafted. Mere cleaver pleadings can not come to the rescue of either party and one has to stand on own strong footing, to prove the claim. The words "बहुतेक, आपसात ठरलेप्रमाणे, कुवतीप्रमाणे व ठरावाप्रमाणे" fall very short, even to remotely support the contention of the plaintiffs. Very general pleadings without any strong evidence, thus results fatal to the own case of the plaintiffs.

14] There is no any specifications as to how many people initially assembled and decided to create housing society. There are no details as such to show what contribution, each of them paid. Even

there is no any such "ठराव" to show that, some of them were capable and intending to purchase less land or more land as contended. Apart from general pleading there is absolutely no averment to even show that there was meeting prior to decision of creation of housing society and contribution for purchase of land. In this regard now it would be necessary to go through evidence part to discover the truth.

15] PW-1 Manohar Vishwanath Shinde deposed at Exh. 81. In the evidence part, certain depositions, which are beyond pleadings are marked with 'red ink'. It is settled principle of law that, the evidence without pleadings and vice a versa, has no role to play. Apart from the portion in 'red ink' the evidence of PW-1 is exactly as per the plaint. There are no specifications even in the evidence in support of the vague pleadings, discussed above. There is no whisper of any meeting, its date, time or place, members or persons who were present while deciding formation of alleged society or part of contribution to be born by the members. The evidence is thus silent on this material point.

16] In the cross-examination, this witness unequivocally admitted that, no any meeting ever took place or minutes were reduced into writing regarding formation of proposed “**Shree Ganesh Co-operative Housing Society**”. If that is so, there is nothing on record to show that, even all the plaintiffs who are now arrayed in the title clause, have at least meet and decided to form housing society. He further admitted that, no any document is filed on record to show

that, any amount was paid to the promoters for the purchase of suit land. There is no documentary evidence on record that, the consideration was contributed by the plaintiffs at the time of execution of sale-deed dated 24.11.1993 or prior to it. Nonetheless, this witness admitted that, he has no any evidence to show that, for payment of contribution, he has either borrowed money or mortgaged any ornaments to take loan, for payment of consideration amount. The pleadings and admissions in the cross-examination, thus, make it explicitly clear that, the plaintiffs have nothing in the form of evidence either oral or in writing to show any prior meeting, their alleged decision of creation of housing society and contribution towards purchase of land.

17] It would be at this stage, equally important to see, as to how the plaintiffs have arrayed themselves in the title clause, claiming their rights against defendants. As already discussed, there is nothing on record to show that, initially certain meeting take place, minutes were reduced into writing and decision taken by all the interesting people firstly to form proposed housing society and secondly to appoint defendant no.1 and deceased Taware, as promoters. In absence of any such evidence on record, it is beyond acceptance that, these 23 peoples who are now arrayed as plaintiffs, were originally contributors, in the consideration amount towards the purchase of suit property. There is absolutely nothing on record to show participation or involvement of these peoples in the creation of proposed housing society and payment of consideration.

18] No doubt that, to substantiate their claim, the plaintiffs have filed some agreements executed in their favour by defendants no. 6 and 7. These agreements are at Exh, 92 and 121 to 139. If at all, these agreements are seen, then there are only 19 agreements on record. There are no agreement regarding plaintiffs no. 3, 6 or 19. Even it can be seen that, the plaintiff no. 6, who is added, is not having agreement in his own name. The agreement is in the name of one shri. Prabhakar Khandare. At the most, it can be presumed that, plaintiff no. 6 may be legal heir of Prabhakar Khandare. Needless to say, the plaint is silent regarding this fact too. The plaintiffs have strongly relied on these agreements mentioned above to show that, they are and were members of the proposed society as well as have interest in the suit property. It is thus necessary to see atleast whether this claim appears to be sustainable or not.

19] All above agreements were executed before one Notary Shri. Devram Bhaguji Dhumal. The plaintiffs have also examined him as a witness. He has filed original register in the Court, showing entries of agreements executed between various plaintiffs and defendants no. 5 and 6. It is pertinent to note that, in the same register, there are certain entries of the people viz. Ajay Kisan Bhalerao, Balasaheb Baban Bhalerao, Sahebrao Balaji Chavan, Vishwanath Genu Gavade, Prakash Mohinirao Walkekar, Vilas Vithoba Dande, Suresh Subhash Fergade, Fakir Shaikh & Chandrakant Prabhakar Gaikwad showing that, they are also having some right to the extent of 450 sq. ft. or 900 sq. ft. flat in the suit property. However, the name of all above persons find no place in the title clause, under the heading of

plaintiffs or defendants. The plaint is absolutely silent or incapable to justify the aforesaid fact. The plaintiffs have caused production of notary register. Thus, it is necessary to read all the entries in the register to unfurl truth. Either party can not be allowed to read only convenient entries and overlook other. It was utmost necessary for the plaintiffs either to add all these persons as party to the suit or justify their non involvement.

20] This is very important to discuss and take this fact seriously because the plaintiffs have utterly failed to show that, only they are the people/members, who have right in the suit property excluding others. It appears that, they have self proclaimed themselves as plaintiffs, without any substantial evidence. Non implementing the aforesaid persons either as plaintiffs or defendants once again gives fatal blow to the theory of the plaintiffs. It was necessary for the plaintiffs to come with cogent evidence to show that, only they have initially assembled and decided to create housing society and contributed to the proportionate of their interest. In absence of any such cogent evidence, plaintiffs utterly failed even to show their *locus-standi*.

21] As far as contribution part is concerned, the plaintiffs have filed account extract of bank account of proposed housing society and certain deposit receipts. They have also examined one witness from bank. PW-3, Kundlik Bapurao Kokade, is the Development Officer of Pune District Central Co-operative Bank Ltd. In the aforesaid bank the account bearing No. 17/17463 was opened. In

the examination in chief, this witness nowhere disclosed as to on what date, the aforesaid account was opened. However, in the cross-examination, he deposed that, the account was opened on 10.11.1994. This date plays vital role keeping in the mind the date of sale-deed. The sale deed was executed on 24.11.1993. That means the bank account was opened almost after one year after sale deed. Admittedly, the entire consideration of Rs. 85,000/- was paid on the day of execution of sale deed. Thus, there shall be some evidence on record to show alleged proportionate contribution by the plaintiff prior to execution. Truly speaking, to that effect, there is absolutely no evidence on record. Even PW-1 also admitted this fact. Thus, there is nothing on record to show a contribution of single penny before or at the time of execution of sale deed.

22] According to plaintiffs, when they have decided to form housing society, bank account was opened with prior permission of the concerned authority of Co-operative society. It was then opened in the name of society and it was being operated by deceased Taware. As already discussed, there is neither any concrete pleading nor cogent evidence on record to show the alleged consideration and contribution by the plaintiffs. If at all, as per the version of plaintiffs, they have contributed to the consideration amount and deposited the money in the bank account, that should have been prior to execution of registered sale-deed only. However, the evidence shows that, the account itself was opened almost after one year from the date of execution of sale deed.

23] Nonetheless, there is not a single entry from 1994 to 2002 or thereafter to show that, any amount was ever deposited in the aforesaid account of the society. The entries, on record shows that, the account is dormant/in-operational. Whatever entries are seen, they are regarding interest on the amount lying in that dormant account. Thus, mere production of account extract or deposit receipts do not help the contentions of plaintiff either.

24] Resultantly, the plaintiffs have failed to show that, they have contributed and paid consideration for the sale-deed dated 24.11.1993. They have even failed to show any locus-standi. There is absolutely no justification as to how only these 23 peoples are claiming themselves as plaintiffs excluding the name of other persons in whose favour documents were executed, before Notary. I, therefore, hold that, plaintiffs failed to prove that, they have paid proportionate consideration for the sale-deed dated 24.11.1993. I, therefore, answer Issue No. 2 in the negative.

AS TO ISSUE NO. 3 :-

25] According to defendant no. 7, he is the bonafide purchaser of suit property for value without notice. He deposed at Exh. 151. He deposed that, after taking all due care and caution, he purchased the suit property. However, in the cross-examination, he deposed that, though, he is developer since 2010, he is unaware that, before purchasing any property, due caution should be taken. He is unaware that, there shall be a public notice or receipt of search

report before purchasing any property. He admitted that, neither any public notice was issued nor any search report was obtained before purchasing the suit property. This is sufficient enough to show the conduct of defendant no. 7 and amount of alleged due caution taken by him. The defendant is trying to portrait innocence to hide his own wrong deeds.

26] He further deposed that, he has purchased the suit property only looking to the entry in 7x12 extract. Needless to say, the entries in 7x12 extract are only for the fiscal purpose. One can not take shelter of such entries to rescue itself, from the clutches of legal consequences. The defendant is not lay man. More particularly, when the defendant specifically pleaded that is renowned and prestigious builder and developer, he must be having minimal knowledge regarding precautions to be taken before purchasing property.

27] This witness further very boldly admitted that, he has purchased the suit property by keeping faith in the words of vendor. He never obtained original sale-deed from the erstwhile owners. Even if, the sale-deed of the defendant no. 7 (Exh. 162) dated 06.08.2012 is seen, it is crystal clear that, there is not a single recital in the entire sale-deed regarding flow of ownership, right, title or interest from the previous owners. There is no any history regarding such flow of the title of present vendors. Needless to say, the document of such nature, shall contain specific history regarding flow of title and ownership and that too at least previous

transaction. Very absence of such recital once again shows that, they do not find place in the document purposefully. The defendant no. 7 come up with the specific defence of bonafide purchaser for value without notice and thus he has to show the precautions he took before purchase. He can not just say that he saw entries in 7/12 extract, relied on the bare words of vendors and on the sole basis of entries and words he purchased suit property. If this only is his defence, then he shall thank himself for such prudence.

28] This takes me to the payment of consideration. In para 10 of the aforesaid document, it is mentioned that, the defendant no.7 paid Rs. 13,20,000/- and that too in cash, without any receipt. In cross-examination, without specifically answering on this point, defendant no. 7 again portrayed his card of innocence. He deposed that, his personal diary may be having noting, as to how the payments were made time to time. It is not at all digestible that, the defendant no.7 despite huge payment in cash, do not remember the stages of such payment. It is also pertinent to note that, the transaction took place only two years back. As such, it can not be hold that, due to time gap, this witness is unable to re-collect regarding payment.

29] It is also necessary to mention here that, on the day when defendant no. 7 executed sale-deed, on the same day, the documents like Development Agreement and Power of Attorney executed between the defendant no. 1, deceased Taware and defendants no. 5 and 6 were canceled. Even, the registered sale-

deed executed in favor of defendant no. 7 includes 7x12 extract of the suit property. Though, defendant no. 7 tried to conveniently depose that, he has no knowledge regarding previous transaction, the 7x12 extract annexed with the sale deed clearly shows mutation entry no. 3193 (Exh. 87), just below the name of defendant no. 1 and deceased Taware. This mutation entry No. 3193 is nothing but entry regarding the suit property, which was mutated after sale-deed dated 24.11.1993. In the said mutation entry, it is specifically mentioned that, the suit property was purchased in the name of proposed housing society only. Once that is so, on the day of execution of sale deed the vendors themselves were not having absolute title to cause the sale in favour of defendant no. 7. Thus, from the entire evidence, it is crystal clear that, the defendant no. 7 has paid for the purchase of the risk. He eventually purchased the risk by entering into the sale-deed of the suit property, which was not at all exclusively owned by the defendant no.1 and deceased Taware. He has to face music for purchasing risk and face the consequence. Thus, I hold that, the defendant no. 7 failed to prove that, he is bonafide purchaser of the suit property for value without notice. Hence, I answer Issue No.3 in the negative.

AS TO ISSUE NO.4 :-

30] As far as limitation is concerned, the suit is based on title. As such, the objection regarding limitation as raised by the defendant no. 7 do not hold any base. Hence, I hold that, the suit is within limitation.

AS TO ISSUE NO.5 :-

31] Though the issue is framed, causing burden on the shoulder of the plaintiffs, it can be independently decided looking to the legal position of law. As already discussed, the sale-deed dated 06.08.2012 executed in between defendant no. 7, failed to show that, the defendant no. 7 is bonafide purchaser for value without notice. Apart from that, the sale-deed dated 24.11.1993 clearly shows that, the suit property was purchased by the defendant no. 1 and deceased Taware for forming housing society. Mutation entry (Exh. 87) bearing No. 3193 also shows that, soon after execution of the sale-deed, revenue authority mutated the name of housing society. The real dispute started only when writing 7x12 extract, the then concerned officer either inadvertently or purposefully mentioned the name of defendant no. 1 and deceased Taware only. The name of housing society was caused to be disappeared. However, this do not bring an end of the real position and status of the property. The suit property was undoubtedly purchased in the name of proposed housing society only and defendant no. 1 and deceased Taware were only Chief Promoters. They were not at all having any exclusive ownership or title over the suit property. The defendant no. 7 has entered into the transaction regarding suit property by taking risk. As the vendors of the suit property were not having any right, title or interest, the same can not be handed over to the defendants. As such, the sale-deed dated 06.08.2012 executed in favour of defendant no. 7 is void and illegal. Hence, I answer Issue no. 5 in the affirmative.

AS TO ISSUES NO. 6 & 7 :-

32] As far as Issues no. 6 and 7 are concerned, as already discussed, the plaintiffs have utterly failed to show any locus-standi. They have even failed to show that, they were the only persons, who initially assembled and decided to form housing society. They failed to establish contribution part to the extent of their proportionate interest. They even failed to justify as to why certain persons in whose favour, agreements were executed by the defendants no. 6 and 7 are not party to the suit. In such contingency, these plaintiffs are not entitled for the reliefs as sought. Hence, I answer Issues no.6 and 7 in the negative.

33] In sequel, I pass the following order.

ORDER

- (1) Suit stands dismissed.
- (2) In present circumstances, no order as to costs.
- (3) Decree be drawn up accordingly.

[Dictated and pronounced in open Court]

Date – 14.03.2017.

(P. R. Ashturkar)
Jt. Civil Judge, S. D. Pune.

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

Name of Steno	Sou. C. N. Jagtap
Court Name	P. R.Ashturkar Jt. Civil Judge, S. D. Pune.
Date	14.03.2017
Judgment signed by Presiding Officer on	29.03.2017
Judgment uploaded on	29.03.2017