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CNR NO. MHPU02-001798-2010

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

Spl.C.Suit No 713/2010.

Exh.123.

Mrs. Leela Ashok Jain,
 Age – 45 Years, Occu.- Housewife,
 R/at : 512, Shaniwar Peth, Pune- 411030.
Through Power of Attorney Holder,
Mr. Ashok Shantilal Jain,
 Age – 49 Years, Occu.- Business,
 R/at : 512, Shaniwar Peth,
 Pune- 411030.

.....Plaintiff.

- Versus -

Mr. Arjun Maruti Khamkar,
 Age – 38 Years, Occu.- Business,
 R/at : Shri Nagar, Kalewadi,
 Pune – 411017.

.....Defendant.

SUIT FOR DECLARATION, POSSESSION, PERPETUAL
INJUNCTION AND FOR MANDATORY INJUNCTION.

 Ld. Advocate for plaintiff – Adv. Shri. D. V. Belsare.
 Ld. Advocate for defendant – Adv. Shri. N. K. Patil.

:: J U D G M E N T ::**(Delivered on this 4th day of January 2020)**

1] It is the case of plaintiff that, suit property is plot of land admeasuring about 1.25R and construction of shop thereon admeasuring about 12 ft/25ft situated at Sr. No. 47/1/4/2 situated at village Rahatni, Dist. Pune. It is surrounded by, to the East-property of Shri. Kisan Gangarao Chandere, to the South-property of Shri. Rangari, to the West-public road and to the North-property of Sau. Sunanda Patil. Suit property was previously owned and possessed by defendant. He sold the same to plaintiff as per sale-deed dtd.28/10/1996. However, it was registered on 02/02/2002 after payment of deficit stamp duty and penalty.

2] It is further submitted that, after execution of sale-deed on 28/10/1996, the defendant delivered possession of suit property to plaintiff. Since then, he is in possession of suit property being owner. Further, defendant started grocery shop in the year 2000 for which he requested the plaintiff to permit him to do the business in the suit property. As the defendant was acquainted to the plaintiff and he was starting a new business, plaintiff permitted him to start business in the suit premises to promote him. Accordingly, premises was let out to the defendant as her gratuitous licensee. It was specific understanding between plaintiff and defendant that, defendant will vacate suit premises as and when needed by the plaintiff.

3] However recently, suit property to the extent of 500 sq.ft from western side is acquired by P.C.M.C. for road

widening. Now the plaintiff possesses only 725 sq.ft. plot in the suit property. On 01/04/2010, she came to know that, after road widening the defendant without intimation to the plaintiff demolished the structure of shop and has encroached upon remaining property of plaintiff. He has started the construction work on the suit plot by digging pits for column. The act of defendant is illegal. He has no right either to demolish the structure of shop or to erect any new construction on the suit property. The plaintiff asked the defendant about his illegal act. However, he gave evasive answer. Hence, this suit.

4] On the contrary, defendant has submitted that, he never executed any sale-deed in respect of suit property in favour of plaintiff and therefore there is no question of plaintiffs possession in the land i.e. 725 Sq.ft. He has purchased suit property from one Bhanudas Jadhav by way of sale-deed dated 24/07/1991 for his grocery business. After purchase he started his grocery business thereon in the year 1992. He has obtained Shop Act License and since then he is running his grocery business thereon.

5] It is further submitted that, in the year 1999, the defendant was in need of Rs.1,05,000/- for the expansion of his business. They were having good relations. The plaintiff was running business of money lender. Therefore, defendant asked him for finance, plaintiff demanded him copy of his land. Considering their relations defendant gave one copy to the plaintiff and thereafter plaintiff gave Rs.1,05,000/- to the

defendant. The defendant had to repay the amount of Rs. 2,00,000/- to the plaintiff including interest. After expansion of his business he repaid the amount to the plaintiff time to time by cheques including interest and therefore, there is no question of execution of sale deed in his favour.

6] It is further submitted that, defendant had given copy of his property to the plaintiff with full trust. However, by taking disadvantage of the same, plaintiff did his forge signature and prepared false sale-deed in her favour. His brother Shri. Wadhichand Jain and Ashok Jain have signed the sale-deed as witnesses. Even on bare perusal of document the signatures are looking different. Similarly, he never handed over possession of suit property and therefore, there is no question of ownership of plaintiff. He is in possession of suit property since 28/10/1996 continuously and therefore, defendant became the owner of suit property by adverse possession. Hence, suit of the plaintiff is liable to be dismissed with cost.

7] Then Hon'ble predecessor of this court had framed following issues vide Exh.57 and I have given by finding thereon with the reasons given below.

Sr. No.	ISSUES	FINDINGS
1)	Does plaintiff prove that, she had purchased suit property from the defendant vide sale-deed dtd. 28/10/1996 which was registered on 02/02/2002 by Sr.No. 4183 on 28/07/2002 ?.....	In the affirmative.
2)	Does plaintiff prove that, possession of	

	suit property was delivered to her as a owner after execution of sale-deed dtd. 28/10/1996 and thereby the suit property was in possession of the plaintiff ?.....	In the affirmative.
3)	Does plaintiff prove that, on 01/04/2010 she came to know that, the defendant has demolished the structure of shop of the plaintiff and encroached upon the remaining property by digging pits for columns though the defendant has no right therefor ?.....	In the partly affirmative.
4)	Does plaintiff prove that, suit property was given to the defendant in the year of 2000 as a gratuitous licensee of plaintiff for carrying grocery shop?.....	In the affirmative.
4A)	Does plaintiff prove that, defendant has encroached upon suit land after acquisition of 500 Sq. ft. land by P.C.M.C.?.....	In the partly affirmative.
4B)	Does defendant prove that, there was transaction of hand loan and he has repaid the same?.....	In the negative.
5)	Does plaintiff prove that, she is entitled for vacant possession of the suit property as prayed in prayer clause?.....	In the affirmative.
6)	Whether plaintiff is entitled for the mandatory injunction as prayed ?.....	Does not survive.
7)	Whether the plaintiff is entitled for the perpetual injunction as prayed in prayer clause?.....	In the affirmative.
8)	What decree and order ?.....	As per Final order.

- REASONS -

As to Issues No.1 and 4(B) :-

8] Both the above-said issues are interconnected and

same evidence has to be considered for adjudication of the same. Therefore, they both are taken together for discussion. Heard Ld. Advocate for both parties. I have carefully gone through the written notes of arguments placed on record by both parties. To establish her case plaintiff has examined her power of attorney as P.W.1-Ashok Shantilal Jain (Exh.62) by filing his evidence affidavit and reiterated all the facts as stated in the plaint. The defendant has examined himself as D.W.1-Arjun Maruti Khamkar (Exh.85), D.W.2-Prashant Manohar Brid (Exh.107) and D.W.3-Sagar Sitaram Bhargude (Exh.112). Apart from that, both parties have placed on record following documents :-

Sr. No	List of Documents	Exh. No.
1	Power of Attorney executed by plaintiff.	68
2	Sale-deed dtd. 28/10/1996 executed between the plaintiff and defendant.	69
3	Index II of suit property.	70
4	Tax receipts of suit property issued by P.C.M.C.	71
5	Copy of order passed in Criminal Revision No. 427/2011.	72
6	Statement of account of Bharat Traders issued by Pimpri Chinchwad Sahakari Bank.	110
7	Statement of account of Bharat Traders issued by Vishveshwar Sahakari Bank Ltd.	115

9] According to plaintiff, she has purchased suit property vide sale-deed dtd. 28/10/1996 which was registered in the year 2002. On the contrary, defence of defendant is that,

there were hand loan transaction and he had repaid the same with interest. Sale-deed dtd. 28/10/1996 (Exh.69) shows that, defendant Arjun Maruti Khamkar has sold 1225 sq.ft/125 sq. mtrs land along with construction standing thereon situated in Sr.No.47/1/4/2 to Leela Ashok Jain for the consideration of Rs.1,05,000/-. Said sale-deed was registered on 24/07/2002. The receipt of consideration amount is not disputed by the defendant. In fact according to him, he had taken hand loan of Rs.1,05,000/- from plaintiff for his business and handed over the document of his property for security purpose. However, there is absolutely nothing on record to show the same. Sale-deed(Exh.69) reveals that, it is purely a sale-purchase transaction of suit property.

10] Even the defendant is not confirm about the year of his hand loan transaction with the plaintiff. As per his written statement(Exh.21), hand loan transaction was taken place in the year 1999 and as per his evidence affidavit(Exh.85) it was taken place in the year 1996. Moreover as per defence, defendant had taken hand loan of Rs.1,05,000/- from the plaintiff and repaid the amount of Rs.2,00,000/- along with interest. To show the repayments, defendant has examined bank employees D.W.2 Prashant Brid (Exh. 107) and D.W.3 Sagar Bhargude (Exh. 112). They have produced on record statement of account of Bharat Traders. Both the witnesses have pointed out entries of some amount time to time debited from the account of Bharat Traders by cheques to plaintiff Leela Ashok Jain. However first of all, it is to be noted that, there is no any documentary evidence to show

the hand loan transaction taken place between plaintiff and defendant or between plaintiff and Bharat Traders.

11] Furthermore there is no evidence to show any repayments towards hand loan as stated by defendant. Even as per statement, the total amount paid by Bharat Traders is only Rs.1,49,000/- and not of Rs.2,00,000/-. No doubt, P.W.1-Ashok Jain has admitted the receipt of amount of Rs.1,50,000/-, but not towards the repayment of hand loan amount. According to him, he received the said amount against grocery material purchased by him for defendant on credit. There is no any other evidence to support his defence. Even defendant has not taken efforts for cancellation of said registered sale-deed till today which is in existence since 1996. Hence, I am constrained to hold that, defendant has failed to prove his defence of hand loan transaction with the plaintiff and therefore, I answer issue no. 1 in the affirmative and issue no. 4(B) in the negative.

As to Issues No. 2 :-

12] So far as the possession is concerned, according to defendant, he had never executed any sale-deed in favour of plaintiff nor delivered possession of suit property. Sale-deed in dispute is forged document prepared by plaintiff by misusing the property documents handed over at the time of taking hand loan. It is pertinent to note that, as stated earlier the defendant has failed to show that he had taken any hand loan from the plaintiff and repaid the same. Admittedly, he had got knowledge about the said sale-deed in the year 1996. In spite of that till

today he has not taken efforts nor raised any objection anywhere against the forged sale-deed executed by the plaintiff except Criminal Proceeding. Even there is no any document showing re-conveyance of said sale-purchase transaction.

13] On the contrary, registered sale-deed(Exh.69) reveals that, possession was delivered on the same day. It is still in existence. There is no reason to disbelieve the sale-deed (Exh.69). The defendant has produced several xerox copies of documents on record to show his possession. However, he has not taken efforts to produce their originals nor proved the same as per law. Therefore, it can be clearly said that, possession of suit property was delivered to the plaintiff as per sale-deed. Hence, issue no. 2 is accordingly answered in the affirmative.

As to Issues No. 4 :-

14] It is further case of plaintiff that, the defendant was allowed to run grocery shop in the suit property as their gratuitous licensee in the year 2000. Said fact is absolutely denied by the defendant. According to him, he is running his grocery shop since the year 1992. The plaintiff has stated that possession of shop was delivered to him in the year 1996. As stated earlier, there is no any other documentary evidence against the registered sale-deed(Exh.69) executed by defendant in favour of plaintiff. Even there is no dispute of receipt of consideration amount. Said sale-deed(Exh.69) is still in existence and as per sale-deed, possession was delivered on the same day. There is no any concrete evidence to show that,

possession was not delivered or it is a nominal or forge document got executed by plaintiff without the consent of defendant. Further there is nothing to show the nature of defendant's possession in the suit property. So definitely, defendant should not have been in possession of suit property and if he is in possession, it should be with the consent of purchaser that is the plaintiff. Therefore, I answer issue no. 4 accordingly in the affirmative.

As to Issues No. 3 and 4(A) :-

15] It is not disputed that, 500 Sq.Ft. Land from the suit property has been acquired by P.C.M.C. in the year 2010. Moreover, the defendant has constructed *Ota* to the western side of property and raised Pandal thereon. Some part of suit property was acquired for road widening. Both the parties have placed on record several photographs of suit property showing situation of spot at different levels. However, they both have not taken efforts to prove the same and therefore, it is difficult to ascertain the exact situation on spot on the basis of those photographs. Moreover, there is no any measurement map showing exact measurement of suit property. At the same time it is to be noted that, the defendant has admitted construction on the suit property and therefore, present issues have been answered in the partly affirmative.

As to Issues No.5 to 7 :-

16] As stated earlier the defendant has failed to establish his probable defence in respect of hand loan obtained from

plaintiff and its repayment instead of sale-purchase transaction. On the contrary, plaintiff has proved sale purchase transaction in view of registered sale-deed(Exh.69). He has further succeeded to establish fact of delivery of possession as per the sale-deed and permissive possession of defendant. Therefore, certainly, the plaintiff is entitled to get vacant possession of suit property as claimed. As relief of vacant possession has been granted, there is no need to grant mandatory injunction against the defendant. I therefore answer issue no. 5 accordingly, in the affirmative and issue no. 6 does not survive.

17] As regards the perpetual injunction is concerned, as on today the defendant is in possession of suit property. However the plaintiff is owner of suit property as per registered sale-deed available on record. So certainly, she is entitled for recovery of possession and till then she is further entitled to get relief of injunction till the possession is delivered by the defendant to her restraining the defendant from raising any construction in the suit property and permanently restrained from disturbing plaintiff's possession after delivery of possession. I therefore answer issue no. 7 in the affirmative.

As to Issues No.8 :-

18] As discussed at length and in view of finding of all the above issues, the plaintiff has succeeded to establish her probable case by adducing cogent evidence on record. Hence, she is entitled for decree as claimed. I therefore answer this issue accordingly with following order.

ORDER

1.	Suit is decreed with cost.
2.	It is declared that, the defendant is trespasser in the suit property.
3.	The defendant is directed to hand over vacant possession of suit property to the plaintiff within three months from today.
4.	The defendant himself, his agent, servant or any person acting on his behalf are hereby restrained from raising any construction in the suit property till delivery of possession to the plaintiff and permanently restrained from disturbing plaintiff's possession after delivery of possession.
4.	Decree be drawn up accordingly.
5.	Dictated, typed and Pronounced in open court.

Pune.

Date : 04/01/2020.

(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 : 04/01/2020

Signed by
presiding officer on : 04/01/2020

Uploaded on : 06/01/2020