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Registered on : 05.05.2012
Decided on : 17.12.2018
Duration : 6Ys.7Ms.12Ds.

IN THE COURT OF JOINT CIVIL JUDGE SENIOR DIVISION
PUNE : AT PUNE

(Presided over by : Rajesh K. Khomane)

SPL.C.S.NO.674/2012
CNR No.MHPU02-008367-2012

EXH. NO.156

- 1] Mr. Manish Suryakant Bhatewara
Age – 40 years, Occ – Business,
R/at – 68, Bhosale Nagar, Pune -7. Plaintiff.

Versus

- 1] Mr. Dynaneshwar Raghunath Tingare
Age – Adult, Occ – Agriculturist,
R/at – Village Dhanori, Tal-Haveli,
Dist – Pune.
- 2] Mr. Rajaram Raghunath Tingare
Age – Adult, Occ – Agriculturist,
R/at – Village Dhanori, Tal-Haveli,
Dist – Pune.
- 3] Pushpa Sidheshwar Tapkir
Age – Adult, Occ – Housewife,
R/at – Village Dhanori, Tal-Haveli,
Dist – Pune.
- 4] Mr. Ayyaz Mehboob Shaikh
Age – Adult, Occ – Agriculturist,
R/at – Village Dhanori, Tal-Haveli,
Dist – Pune.

- 5] Mr. Bharatkumar Jethmal Ramsina
Age – Adult, Occ -Business,
R/at – 480/1B, Rasta Peth, Leela Manik
Apartment, Near Santai Hotel,
Pune – 411 011.
- 6] Mr. Ambalal Jethmal Ramsina (Jain)
Age – Adult, Occ -Business,
R/at – F-202, DSK Chandradeep,
Mukundnagar, Pune – 411 037.
- 7] Mr. Vikram Arun Oswal
Age – 35 years, Occ – Business,
R/at – 8/2, Manoj Society, Pune-37.
- 8] Mr. Vijay Tirtharam Sharma
Age – 64 years, Occ – Business,
R/at : S-2, 201, Ganga Satellite Society,
Wanawadi, Pune – 40.
- 9] Mr. Rajendra Tirtharam Sharma
Age – 62 years, Occ – Business,
R/at : S-2, 201, Ganga Satellite Society,
Wanawadi, Pune – 40.
- 10] Mr. Jayant Tarachand Bafana
Age – 58 years, Occ – Business,
R/at – Bungalow No. 12,
Parasnis Colony, Gultekdi,
Pune – 37.
- 11] Mr. Ramchandra Shivram Bhalla
Age – Adult, Occ – Business,
R/at – S. No. 19/3/2 Dhanori, Pune.
- 12] Mr. Kanakdurga Ramchandra Bhalla
Age – Adult, Occ – Business,

R/at – S. No. 19/3/2, Dhanori, Pune. Defendants.

**SUIT FOR DECLARATION
WITH CONSEQUENTIAL RELIEF
OF INJUNCTION.**

Appearances :-

Shri. S.D. Panchpor, advocate for plaintiff.

Shri. D. Choudhari, advocate for defendant No.1.

**Suit proceeded without W.S. against defendants
No. 2, 3, 5, 7, 9 and 10.**

Shri. J. V. Pande, advocate for defendant No.4.

Shri. R. Sriniwasan, advocate for defendant No.6.

Shri. Nilesh Sancheti, advocate for defendant No.8.

Suit proceeded ex-parte against defendants No.11 and 12.

J U D G M E N T

[Delivered on 17.12.2018]

This is a suit for declaration with consequential relief of injunction.

2] Description of the property in dispute -

Plot No.2 admeasuring 10 gunthe, out of 81 gunthe in S. No. 19 Hissa No. 3/2, situated at Dhanori, Tal-Haveli, Dist-Pune, which is bounded as under,

Towards East	–	Land S.No.91 village Dhanori
Towards South	–	Part of land S. No.19/3/2 purchased by Bharatkumar Jethmal Ramsina
Towards West	–	Land S. No.19
Towards North	–	Land S. No.18.

(for the sake of convenience, the said plot is referred as the “suit plot”).

3] **Case of the plaintiff :-**

The defendant No.1 Raghunath Tingare was karta of Hindu Undivided Family. Out of the income of Joint Family property, Raghunath Tingare purchased S. No. 19 admeasuring 81 gunthe situated at Dhanori in the year 1974. Raghunath Tingare was in need of financial assistance for the benefit of his joint family. So, he decided to sell S. No. 19 by dividing it into various plots. Accordingly, he prepared layout plan and divided S. No. 19 into six plots. Out of them ,the plaintiff purchased plot No.2, which is suit plot, from Raghunath Tingare for consideration amount of Rs. 81,000/- on 12.01.1996 vide registered sale-deed No. 260/96 and the plaintiff became owner of the suit plot. Physical possession of the suit plot was delivered on the day of execution of the sale-deed.

4] The plaintiff further contends that when he applied for entering his name in revenue record defendant No.4 raised objection for it and claimed his ownership over the suit plot on basis of sale deed which was executed in favour of his deceased father by Raghunath Tingare. However, such document of sale-deed was never executed by Raghunath Tingare. The defendant No.4 prepared fraudulent document of sale-deed. So the plaintiff

claims declaration that such sale deed is fraudulent document.

5] According to the plaintiff, he is lawful possessor of the suit plot but defendant no.4 causing obstruction in his peaceful possession over the suit plot. Therefore, the plaintiff is seeking consequential relief of injunction against the defendant no.4. Alternative the plaintiff prays for damages of Rs. 68,00,000/-.

6] Defendants No.4 resisted the suit by filing his written statement at Exh. 85. Defendant No.1 contested suit to the extent part claim of the suit by filing his written statement at Exh. 74. Defendants No. 5, 6 and 10 have admitted claim of the plaintiff by filing their written statement at Exh. 49, 45 and 47. Whereas, defendants No.7, 8, 9, 11 and 12 remained absent in spite of service of summons, hence, suit is proceeded ex-parte against them.

7] The defendant No.1 supports the case of plaintiff except claim of damages. He denies that, he is liable to pay damages to the plaintiff.

8] The defendant No.4 in his written statement admits the ownership of Raghunath Tingare over the suit land. However, he denies that, false and fabricated document of sale-

deed executed in respect of suit plot was prepared. According to him, his father Mehboob Amin purchased the land admeasuring 56 gunthe out of land S. No. 19/3/2 situated at Dhanori. Raghunath Tingare who was the owner of the land S. No.19/3/2 sold out of 56 gunthe land to his father on 24.10.1980, for consideration of Rs. 28,000/- by executing sale-deed. But, when the sale-deed was presented for registration, Sub-Registrar raised objection for the ULC permission. However, after clearing the objection sale-deed was executed on 31.12.2001 vide Sr. No. 15741/2001. On the strength of sale-deed his father became owner of 56 gunthe land. Therefore, Raghunath Tingare did not have any legal right to execute subsequent sale-deed in respect of suit plot. Hence, sale-deed executed in favour of the plaintiff is void-ab-initio. He further pleads that, his father during his lifetime, was possessing suit plot and after his sad demise, suit plot is in his possession.

9] Following issues are framed at Exh. 91. I give my findings thereon along with reasons.

Sr. No.	ISSUES	FINDINGS
1	Whether plaintiff proves that, he purchased suit plot by registered sale-deed dated 12.01.1996 ?	..Yes.

2	Whether defendant No.4 proves that, original owner Raghunath Tingare executed sale-deed in respect of suit plot in favour of his father Mehboob Amin Shaikh on 24.10.1980 ?	..No.
3	Whether defendant No.4 proves that, sale-deed dated 24.10.1980 was duly registered in the office of Sub-Registrar, Haveli No.2, Pune on 31.12.2001 at Sr. No. 15741 ?	..No.
4	Whether defendant No.4 proves that, sale-deed dated 24.10.1980 executed in favour of his father, viz. Mehboob Amin Shaikh, is valid document ?	..No.
5	Whether defendant No.4 proves that, original owner Raghunath Tingare had no title to execute subsequent sale-deed in respect of suit plot, in favour of plaintiff ?	..No.
6	Whether plaintiff proves that, he has acquired valid title in respect of the suit plot ?	..Yes.
7	Whether plaintiff is entitled to declare as owner of the suit plot ?	..Yes.
8	Whether the plaintiff is entitled to relief of injunction as prayed ? Alternatively, whether plaintiff is entitled for damages of Rs. 68,00,000/- as prayed ?	..Yes. ..Does not survive.

9	What order and decree ?	.. As per final order.
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REASONS

AS TO ISSUE NO.1 :-

10] It is the case of the plaintiff that, he purchased suit plot by registered sale-deed from original owner Raghunath Tingare. To substantiate this fact, the plaintiff has examined himself at Exh.107. His examination-in-chief is re-production of the plaint. He specifically states that, Raghunath Tingare was the original owner of the suit plot. Raghunath Tingare, his wife Vatsalabai and their sons Dnyaneshwar and Rajaram were the owners of the suit plot. They were in financial need. So, they decided to sell the suit plot. The plaintiff was intending to purchase the suit plot, so, meeting was arranged between them. After negotiations Raghunath Tingare and his family members sold the suit plot to the plaintiff for the valuable consideration of Rs. 90,000/- by executing sale-deed at Sr. No. 260/96.

11] To substantiate oral evidence of the plaintiff, original copy of sale-deed is filed on record at Exh.118. On perusal of the same, it appears that, on 12.01.1996, Raghunath Tingare his sons Dnyaneshwar and Rajaram and his wife Vatsalabai executed registered sale-deed in favour of present plaintiff in respect of suit plot for valuable consideration of Rs.

90,000/-. There is no counter evidence to rebut this documentary evidence. Defendants No.5, 6 and 10 have admitted claim of the plaintiff. Defendant No.1 has also admitted the fact of execution of sale deed in favour of plaintiff. Suit is proceeded ex-parte against defendants No. 7, 8, 9, 11 and 12. After filing written statement the defendant No.4 did not turn. Thus evidence led by the plaintiff on this point is remained unchallenged. Oral evidence of the plaintiff corroborate the document of sale-deed (Exh.118) Thus, sufficient evidence is on record to prove the fact that, Raghunath Tingare sold the suit plot to the plaintiff for valuable consideration of Rs 90,000/-, by executing registered sale-deed No. 260/96 on 12.01.1996. So, I have replied Issue No. 1 in the affirmative.

AS TO ISSUES NO. 2, 3 AND 4 :-

12] All these issues are inter-linked with each other, therefore, they are discussed altogether. The defendant No.4 specifically pleads that, the original owner Raghunath Tingare sold 56 gunthe land including suit plot to his deceased father viz. Shaikh Mehboob Amin on 24.10.1980. According to him, said sale-deed executed on 24.10.1980 for valuable consideration of Rs. 28,000/-. However, when the sale-deed was presented for registration, on that day, Sub-Registrar Office raised objection about ULC permission. Therefore, on the same day, document

could not be registered. After clearing objection, again the document was presented for registration on 31.12.2001 and on the same day, it was registered vide Sr. No. 15741/01.

13] I have considered this pleading of defendant No.4. The burden lies on the defendant No.4 to prove the fact of execution of sale-deed in favour of his father. However, after filing written statement, defendant No.4 did not turn to the Court. The defendant No.4 has to prove this fact by adducing convincing and reliable evidence. However, he has not led oral or documentary evidence to prove his title over the suit plot. He could have produce the copy of alleged sale-deed dated 24.10.1980. But, surprisingly he has not filed said document. Here it is important to note that, the defendant no.4 did not produce the alleged sale deed in spite of direction vide Exh. 93 and 95 under Order 11 Rule 4 of Code of Civil Procedure. Therefore, adverse inference can be drawn against him. In case of **S.P.Chengalvaraya Naidu (dead) by L.Rs. V/s. Jagannath (dead) by L.Rs. and others reported in AIR 1994 Supreme Court 853**, the Hon'ble Supreme Court observed as under,

“A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation.”

In case of **Ishwarbhai C. Patel V/s. Harihar Behara and others**

reported in AIR 1999 Supreme Court 1341, the Hon'ble Apex Court has held that,

“The party abstained from the witness box and not made any statement on oath, in support of his pleading in the written statement, adverse inference can be drawn against him.”

14] In the present case, though defendant No.4 claims that, the registered sale-deed in respect of suit plot executed by the original owner Raghunath Tingare in favour of his father, Shaikh Mehboob Amin, but, he neither produced such document on record nor entered into witness box to prove this fact.

15] As per contention of the defendant No.4, the sale-deed was registered on 31.12.2001 at Sr. No. 15741/01. However, copy of death certificate (Exh.142) indicates that, the original owner Raghunath Tingare was no more on 31.12.2001. He died on 11.01.2001. In such circumstances, the case of the defendant No.4 that alleged sale-deed was registered on 31.12.2001, is not appearing probable.

16] It is the case of defendant no.4 that alleged sale deed was presented on 24.10.1980 for registration at Sr.No.4258/80, but objection in respect of ULC permission was raised so it was kept pending. After clearing objection alleged

sale deed was registered on 31.12.2001 at Sr. No. 15742/01. However, if we go through the evidence of officer of the Sub-Registrar office Haveli-2 Pune, Satish Gaikwad, who is examined at Exh.121 as PW-2, it can be seen that, there is no entry about registration of alleged sale-deed either on 31.12.2001 at Sr. No. 15742/01 or 24.10.1980 at Sr. No.4258/80 in day book register or thumb impression register maintained in his office (Exh. 124, 126 and 127). Therefore, there is no evidence on record to prove that, sale-deed in respect of suit plot executed in favour of father of defendant no.4 viz. Shaikh Mehboob Amin by original owner Raghunath Tingare on 24.10.1980, registered in the office of Sub-Registrar, Haveli-2 on 31.12.2001 at Sr.No. 15741. Hence, I have replied Issues No. 2, 3 and 4 in the negative.

AS TO ISSUE NO.5 :-

17] Already I have held that, the defendant No.4 has failed to prove the fact that, original owner of the suit plot Raghunath Tingare sold the suit plot to his father Shaikh Mehboob Amin. Therefore, on 12.01.1996, Raghunath Tingare acquired valid title over the suit plot. Consequently, the sale-deed executed by Raghunath Tingare, his sons and his wife on 12.01.1996 in respect of suit plot is valid. Hence, I have replied Issue No.5 in the negative.

AS TO ISSUES NO.6 AND 7 :-

18] Plaintiff has successfully proved that, he purchased suit plot on 12.01.1996 for valuable consideration of Rs. 90,000/- from original owner Raghunath Tingare, so, he became owner of the suit plot on the basis of registered sale-deed. The title of the suit plot transferred in favour of plaintiff by sale-deed. As such, he acquired valid title. The ownership of suit plot is passed in favour of the plaintiff by registered sale-deed, hence, he is lawful owner of the suit plot. Therefore, I have replied Issues No. 6 and 7 in the affirmative.

AS TO ISSUE NO.8 :-

19] As per contention of the plaintiff, he is in possession of the suit plot. The defendant No.4 is causing obstruction in the peaceful possession over the suit plot. So, he is entitled for relief of injunction as prayed. As such, I have replied Issue No. 8 in the affirmative.

AS TO ISSUE NO.9 :-

20] The plaintiff has proved valid title over the suit plot. He is in possession of the suit plot. Hence, suit deserves to be decreed. In the result, I pass following order.

O R D E R

- 1] Suit is decreed with costs.
- 2] It is hereby declared that, the plaintiff is owner of the suit plot.
- 3] The defendant No.4 is hereby restrained from causing obstruction in the peaceful possession over the suit plot.
- 4] Decree be drawn up accordingly.
[Dictated and declared in the open Court].

Date : 17.12.2018.

(Rajesh K. Khomane)
Joint Civil Judge, Sr. Dvn. 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	Rajesh K. Khomane Addl.Small Causes Judge, and Civil Judge, Sr. Divn. Pune.
Date	17.12.2018
Judgment signed by Presiding Officer on	20.12.2018
Judgment uploaded on	20.12.2018