

MHPU130012782014



Presented on - 06-11-2014
Registered on--01-12-2014
Decided on - 21-12-2021
Duration - 7 Y- 0 M- 20 D

IN THE COURT OF CIVIL JUDGE, JUNIOR DIVISION,

SASWAD, TQ. PURANDAR DIST. PUNE.

(Presided Over by N.H. Tikhe)

R.C.S. No. 309/2014

Exh.61

Shri Anna Gulab Nimbalkar
Aged about - 34 years,
Occu :- Agriculture,
R/o. Katraj, Gujar Nimbalkarwadi
Tal. Haveli, Dist. Pune.

-- Plaintiff

-Verses-

- 1.** Shri Atul Hanumant Waikar
Aged about - 44 years, Occu: Agriculture
- 2.** Smt. Nanda Hanumant Waikar
Aged about - 52 years, Occu: Household
Both R/at. Pisarve, Tal. Purandar,
Dist. Pune.
- 3.** Mrs. Varsha Chandrakant Bagal
Aged about - 30 years, Occu: Agriculture
R/at. Someshwar Hol Murum, Tal. Baramati,
Dist. Pune.
- 4.** Mrs. Shubhangi Mahesh Jagtap
Aged about - 28 years, Occu: Agriculture
R/at. Rajewadi, Tal. Purandar,
Dist. Pune.
- 5.** Shri. Maruti Dnyanoba Waikar
Aged about - 60 years, Occu: Agriculture
R/at. Pisarve, Tal. Purandar,
Dist. Pune.

--Defendant

**Suit for Specific Performance of Contract,
Declaration and Perpetual Injunction.**

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 Mr.S.R. Ibhad, learned advocate for plaintiff.
 Mr. R.V. Kale, learned advocate for defendant no.1 and 2.
 Ex-parte against defendant no. 3 and 4
 Mr. H.S. Bhagat, learned advocate for defendant no. 5.

**JUDGMENT
(Delivered on this 21th December, 2021)**

This is a suit for suit for specific performance of contract, declaration and perpetual injunction..

2. Narrated shortly, the plaintiff's case is that the defendants no.1 to 4 are his relatives. The property situated at Mouja Pisarve, Tal. Purandar, Dist. Pune bearing field block no. 878, admeasuring H.R.0.43.83 out of total area admeasuring H.R.2.63 is owned by defendant no. 1 to 4. This property is bounded by :-

Towards East : Remaining portion of field block no. 878.

Towards West: Field block no. 855.

Towards North: Field block no. 904 and 905.

Towards South: Remaining portion of field block no. 878.

(Aforesaid property is hereinafter referred to as "suit property").

3. It is the case of plaintiff that, the suit property was fallen to the share of defendant no. 1 to 4 in family partition between themselves and defendant no. 5. The defendant no. 1 to 4 were in need of money and they decided to sale the suit property. Therefore, they agreed

to sale the suit property to plaintiff for consideration of Rs. 2,50,000/-. It was agreed between them that the plaintiff shall pay Rs. 2,50,000/- to them and they shall deliver possession of suit property to him on the same date. Accordingly, the plaintiff as paid Rs. 2,50,000/- to them on 06/03/2012, they placed the plaintiff in possession of suit property and all of them reached to Saswad for execution and registration of Sale Deed of suit property. Thereafter, the stamp papers worth Rs. 5,000/- were purchased in the name of defendant no. 1 and Sale Deed of suit property was prepared thereon on the say of defendant. This document was signed by the plaintiff as well as defendant no. 1 to 4 in the presence of the witnesses. Thereafter, this document was presented for registration in the office of Sub-Registrar, Purandar. Meanwhile, defendant no. 5 informed them that a suit is pending in the court in respect of that property and injunction granted therein. Therefore, the Sale Deed could not be registered on that date.

4. It is submitted by plaintiff that, the defendant no. 1 to 4 had agreed to execute and register Sale Deed of suit property after entering in to compromise with defendant no.5 and after vacating said injunction order. Said order is vacated on 19/10/2013. Thereafter, the plaintiff has demanded execution and registration of Sale Deed to defendant no. 1 to 4 by notice dated 30/09/2014. However, they failed to comply the notice. On the other hand they are disturbing his possession over suit property and threatening to alienate it.

Therefore, present suit came to be filed.

5. The defendant no. 1 and 2 failed to file written statement. Therefore, the suit is proceeded without their written statement. The defendant no. 3 and 4 failed to appear inspite of service of summons. Therefore, the suit is proceeded Ex-parte against them. The defendant no. 5 filed his written statement at Exh. 29 and denied the plaintiff's claim. According to him the partition of agricultural land bearing field block no. 878 situated at Mouja Pisarve, Tal. Purandar, Dist. Pune is yet not taken place between him and defendant no. 1 to 4. Therefore, the transaction entered in to between the plaintiff and defendant no. 1 to 4 is void. He submitted that, he is having a right of pre-emption to purchase the suit property from defendant no. 1 to 4.

6. My Id. Predecessor has framed issues at Exh. 39. They are reproduced below alongwith my findings thereon for the reasons as follows:

	Issues	Findings
1	Whether plaintiff prove that defendant no. 1 to 4 have agreed to sell the suit property for Rs. 2,50,000/- by executing an agreement for sale dated.06/03/2012 ?	Yes.
2	Whether defendant no. 5 prove that, the suit property is ancestral	

	and joint family property of himself and defendant no. 1 to 4 ?	No.
3	Whether the plaintiff prove that he is in settled possession of the suit property ?	Yes.
4	Whether plaintiff prove that defendants are causing obstruction to his possession over the suit property ?	Yes.
5	Is plaintiff entitled to relief of specific performance as sought ?	Yes.
6	Is plaintiff entitled to relief of perpetual injunction as sought ?	Yes.
7	Is plaintiff entitled to relief of declaration as sought ?	Yes.
8	What order and decree ?	As per final order

REASONS

7. In order to prove his claim, the plaintiff Anna has examined himself as PW-1 at Exh.41, Gulab PW-2 at Exh.45 and Gorakh PW-3 at Exh. 46. He has also produced a Sale Deed at Exh.48, copy of notice at Exh. 49, postal receipt at Exh. 50 to 52 and 7/12 extract of suit property at Exh. 53. No oral or documentary evidence is adduced by the contesting defendant.

8. As to issue no. 1 :

The plaintiff Anna PW-1 deposed that, he had failed Rs. 2,50,000/- to defendant no. 1 to 4 under the Sale Deed dated 06/03/2012 which is marked at Exh.48. He admitted the contents of Sale Deed at Exh. 48 to be correct and signed by him. He stated that, it also bear signatures of defendant no. 1 to 4 and that of the attesting witnesses. He stated that, the possession of suit property was handed over to defendant no. 1 to 4 to him while executing said document. Gulab PW-2 and Gorakh PW-3 are attesting witnesses to Sale Deed at Exh.48. Their evidence is repetition of what has been stated by Anna PW-1. The Sale Deed at Exh.48 is best evidence for decision on this issue. The existence, condition and contents of this document is duly proved in evidence of Anna PW-1, Gulab PW-2 and Gorakh PW-3. The defendants failed to cross-examine these witnesses and no-cross orders came to be passed against defendants. Therefore, oral evidence of these witnesses and the contents of Sale Deed at Exh. 48 remained unchallenged. Hence, it can be safely relied upon.

9. Sale Deed at Exh. 48 shows that, Rs. 2,50,000/- was paid by plaintiff to defendant no. 1 to 4 and they had executed this document, but a refrain from getting it registered in favour of plaintiff. Therefore, I answer issued no. 1 in the affirmative.

10. As to issue no. 2 :

The burdon lies on defendant no. 5 to prove that, the suit property is ancestral and joint Family property of himself and defendant no. 1 to 4. However, no evidence is adduced by him to prove this fact. Therefore, this fact remained not proved. Hence, I answer issue no. 2 in the negative.

11. As to issue no. 3 and 4 :

The contents of Para No. 6 in Sale Deed at Exh. 48 show that, the defendant no. 1 to 4 have put the plaintiff in possession of suit property on the day of its execution i.e. on 06/03/2012. Therefore, the possession of plaintiff over the suit property is to the knowledge of the defendants. His entry on the suit property is legal one. The oral evidence adduced by plaintiff show that, the defendants are obstructing to his possession over the suit property. The defendant no. 5 is denying his right and interest in the suit property. It shows that, defendants are causing obstruction to his possession over suit property. Therefore, I answer issue no. 3 and 4 in the affirmative.

12. As to issue no. 5 to 8 :

It is proved by plaintiff that, he has performed his part of contract by payment of Rs. 2,50,000/- to defendant no. 1 to 4. As the injunction order in respect of suit property is deposed to have vacated, there is no

legal impediment in decreeing specific performance of said contract. Considering the oral evidence adduced by plaintiff it also becomes necessary to grant consequential reliefs of declaration and perpetual injunction in favour of the plaintiff. Hence, I answer issue no. 5 to 7 in the affirmative and in answer to issue no. 8, I pass the following order.

ORDER

- 1)** The suit stands decreed with costs.
- 2)** The defendant no. 1 to 4 shall execute the registered Sale Deed of suit property specifically described in Para No. 1 of the plaint in favour of plaintiff, failing which the plaintiff will be entitled to get it executed through the court.
- 3)** It is hereby declared that, the plaintiff is in lawful possession of the suit property specifically described in Para No. 1 of the plaint .
- 4)** The defendant no. 1 to 4 or any person on their behalf are perpetually restrained from disturbing the possession of plaintiff over the suit property or from alienating or otherwise encumbering the suit property or from changing its nature.
- 5)** Preliminary decree be drawn up accordingly.

Place : Saswad.

N.H. Tikhe

Date :- 21-12-2021.

Civil Judge Junior Division,
Saswad.

CERTIFICATE

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

Name of Steno : M.R. Pawar, Stenographer, (Grade III)

Court Name : Shri. N. H. Tikhe
Civil Judge Jr. Division, Saswad.

Date of Order : 21/12/2021

Judgment signed by presiding officer on : 21/12/2021

Judgment uploaded on : 21/12/2021