

**IN THE COURT OF 8<sup>th</sup> JOINT CIVIL JUDGE, SENIOR DIVISION, PUNE**

**Spl. Civil Suit No. 1675/2015.**

**Shri. Dilip Mahadu Raut & 1**

**... Plaintiffs.**

**V/s.**

**Edifis properties private limited & Other**

**... Defendants.**

**ORDER BELOW EXH.5**

1. This is an application filed by plaintiffs U/s 39 Rule 1 & 2 of Code of Civil Procedure against defendants.

2. To this application, defendant no. 2 filed its say at Exh.20. The defendant no. 1 adopted the say of defendant no. 2 by filing pursis at Exh.31 dated 13/04/2017.

3. Heard learned advocate Shri. G.R.Shinde for plaintiffs and learned advocate Shri. G.K.Draavid for defendant no. 2 at length.

4. Upon the rival contentions, documents filed on record and the arguments advanced at bar, the following points arise, for determination to which findings are given with suitable reasoning's thereto.

| <b>Sr. No.</b> | <b>Points for determination</b>                      | <b>Findings</b>       |
|----------------|------------------------------------------------------|-----------------------|
| <b>1</b>       | Whether plaintiffs are made out a prima facie case ? | <b>... Negative.</b>  |
| <b>2</b>       | To whom there will be an irreparable loss ?          | <b>To defendants.</b> |
| <b>3</b>       | In whose favour the balance of convenience           | <b>To defendants.</b> |

|   |              |                          |
|---|--------------|--------------------------|
|   | lies ?       |                          |
| 4 | What order ? | Application is rejected. |

### :R E A S O N S :

5. As to point no. 1 :-

The plaintiff has filed the present suit for cancellation of a sale deed dated 07/01/2015, a development agreement and a power of attorney dated 14/01/2008.

6. The suit property came to the share of Shri. Mahadu Ramchandra Raut in oral partition. He died on 22/06/2009. He is the husband of plaintiff no. 2 and father of plaintiff no.1. He, during his lifetime along-with plaintiff no. 1 executed a registered development agreement and a registered power of attorney, both of them, dated 14/01/2008 in favour of defendant no. 1. They have received the consideration price from defendant no. 1 under the development agreement. The defendant no. 1 sold the suit property to defendant no. 2 by way of a registered sale deed dated 07/01/2015.

7. This being so, after the death of Shri. Mahadu Ramchandra Raut, one blank draft of sale deed proposed to be got executed from plaintiff no. 2 was sent by a firm named Maharashtra Construction Company through its partner Shri. Prakash Damodar Loharkar and Shri. Vipin Ramesh Dnyane, who are purportedly or allegedly claiming through defendant no. 1 and 2. The plaintiffs contend that, the said dealing of defendant no. 1 & 2 with

Maharashtra Construction Company is illegal, fraudulent and is without their knowledge and is done behind their back. Therefore, the said dealing is not binding upon their undivided share in the suit property. Furthermore, after the death of Shri. Mahadu Ramchandra Raut, the development agreement and power of attorney executed by him also got extinguished. Apart from it, the power of attorney was executed by Shri. Mahadu Ramchandra Raut in favour of Shri. Nilesh Satish Kanade in person and not to the company of defendant no. 1, of which he is a director. Furthermore, the sale deed executed on 07/01/2015 by defendant no. 1 company, in favour of defendant no. 2 and others including the plaintiff no. 1, was signed by Mr. Uday @ Yuvraj Uttam Sinha Nimbalkar on behalf of defendant no.1 is not legal and binding upon plaintiffs. Therefore, plaintiffs have lost faith and confidence in Shri. Nilesh Satish Kanade and, for this reason, they want to revoke the authority given to him under the power of attorney and the development agreement dated 14/01/2008 and sale deed dated 07/01/2015 by him in favour of defendant no. 2. The plaintiffs apprehends that, during the pendency of the present matter, the defendants may create third party interest in the suit property. Hence, they filed the present application along-with suit.

8. On the other hand, defendants through their say at Exh.20 denied the contents mentioned in the application being false and baseless. They contended that, the present suit is not maintainable, it is bad for non-jonder of necessary parties and the plaintiffs has not locus standi to file the present suit.

9. Apart from above, they further contended that, Late Shri. Mahadu Ramchandra Raut along-with plaintiff no. 1 alienated all their rights in the suit property in favour of defendant no.1 in the year 2008. The plaintiff no. 2, who is the wife of Late Shri. Mahadu Ramchandra Raut does not had any independent right, title or interest in the suit property during the lifetime of Shri. Mahadu Ramchandra Raut. Therefore, the plaintiff no. 2 have no reason to raise any dispute against defendants. There is no cause of action for plaintiffs to file the present suit.

10. Furthermore, Late Shri. Mahadu Ramchandra Raut, plaintiff no. 1 and other members of the Raut family have executed a registered development agreement and a power of attorney in favour of defendant no. 1. The said power of attorney is irrevocable U/s. 202 of Indian Contract Act, 1872. Moreover, Late Shri. Mahadu Ramchandra Raut and plaintiff no. 1 have received the entire consideration amount of Rs. 5,38,80,000/- from defendant no. 1. Under these circumstances, the plaintiffs do not have any right to challenge the power of attorney and development agreement, dated 14/01/2008, by Late Shri. Mahadu Ramchandra Raut and plaintiff no. 1 in favour of defendant no.1. On the basis of these documents, the defendant no. 1 executed sale deed in favour of defendant no. 2 on dated 07/01/2015. Lastly, prayed for rejection of application.

11. The plaintiffs in support of their contention filed certain documents below Exh.3. Whereas, defendants filed certain document below Exh.23.

12. The learned advocate Shri. Shinde, for plaintiffs vehemently argued that, after the death of Shri. Mahadu Ramchandra Raut, the power of attorney executed by him does not survives. Moreover, the power of attorney was executed in favour of Shri. Nilesh Satish Kanade and not to the company of defendant no. 1. The defendants have not got executed any document from the legal heirs of Shri. Mahadu Ramchandra Raut, after his death. Furthermore, the defendant no. 1 has not taken the legal heirs of Shri. Mahadu Ramchandra Raut as a party to the sale deed of the year 2015 executed in favour of defendant no. 2. Moreover, the resolution passed by defendant no. 1 company in favour of Shri. Yuvraj Uttam Sinha Nimbalkar, who executed the sale deed of the year 2015 in favour of defendant no. 2 is illegal, as no authority can be assigned to him by virtue of power of attorney executed by Late Shri. Mahadu Ramchandra Raut. The same is against Section 184 of Indian Contract Act, 1872. In support of their contention plaintiffs relied upon a ruling reported in LAWS (SC)-2012-7-76, Civil Appeal No. 4841 of 2012, Church of Christ Charitable Trust Vs. Ponniamman Education Trust. This authority was cited to draw the attention of this court to the observation made therein in para no. 14 in respect of the meaning of power of attorney.

13. On the other hand, the learned advocate Shri. Dravid, for defendants seriously assailed the contentions raised by the plaintiffs in their arguments. He contended that, Late Shri. Mahadu Ramchandra Raut along-with his son i.e. plaintiff no. 1 transferred all their rights in favour of defendant no. 1 by executing development agreement and power of attorney. Nothing remained

with them. They have also received the entire consideration amount of Rs. 5,38,80,000/-. Therefore, after the death of Shri. Mahadu Ramchandra Raut, the power of attorney and development agreement does not become invalid or void. The rights have been transferred to defendant no. 1. Furthermore, the defendant no. 2 does not have any independent right during the lifetime of Shri. Mahadu Ramchandra Raut. Under these circumstances, the plaintiffs have no right at all to take any objection to the sale deed executed by defendant no. 1 in favour of defendant no. 2.

14. In support of its contention defendant no. 1 & 2 relied upon the following citations :-

1. AIR 1969 SC 73, Seth Loon Karan Sethiya Vs. Ivan E. John and ors.

This authority is cited to point out that, the power of attorney is coupled with interest then, the same is not revocable.

2. Shanti Budhiya Vesta Patel & Ors Vs. Nirmala Jayprakash Tiwari & Ors, on 21 April, 2010.

This authority is cited to point out the observation made therein with respect to Section 202 of Indian Contract Act, 1872.

3. Shanti Budhiya Vesta Patel Vs. Nirmala Jayprakash Tiwari and others, on 12 October, 2007.

This authority is cited to point out that, the power of attorney is coupled with interest then, the same is not revocable.

15. Perused application, say and pleadings of both the parties. It is not disputed that, Late Shri. Mahadu Ramchandra Raut along-with his son i.e. plaintiff no. 1 transferred all their rights in

the suit property in favour of defendant no. 1 by executing development agreement and power of attorney. They have also admitted to have received the entire consideration amount Rs. 5,38,80,000/- in respect of their giving of rights in suit property for development in favour of defendant no. 1.

16. The only dispute which is raised by the plaintiffs is that, after the death of Shri. Mahadu Ramchandra Raut, the power of attorney executed by him does not survive. Similarly, the legal heirs of deceased Shri. Mahadu Ramchandra Raut, i.e. his wife plaintiff no. 2 has acquired right in the suit property after the death of Shri. Mahadu Ramchandra Raut. Furthermore, the power of attorney was executed in favour of Shri Nilesh Satish Kanade in person and not in favour of defendant no. 1 company. So, defendant no. 1 does not have any right to provide authority to Shri. Yuvraj Uttam Shinha Nimbalkar, on the basis of power of attorney executed by Late Shri. Mahadu Ramchandra Raut in favour of Shri. Nilesh Satish Kanade. In view of this, the plaintiffs contend that, the sale deed executed by defendant no.1 in favour of defendant no. 2 on dated 07/01/2015 is illegal and not binding upon them.

17. From the perusal of the documents and the contentions mentioned in the respective pleadings clearly goes to show that, by virtue of the development agreement and power of attorney, the rights in the suit property have been transferred in favour of defendant no. 1 for development of suit property by accepting the entire consideration amount of Rs. 5,38,80,000/-. Under these circumstances, it can't be said that, the said power of attorney does not survive after the death of Shri. Mahadu Ramchandra Raut. The

authorities cited by the defendants squarely applies to the present case at this juncture.

18. Whereas, the contention raised by the plaintiffs that, the development agreement and power of attorney stands revoked, repudiated and is liable to be canceled. Similarly, the sale deed dated 07/01/2015 is illegal and not binding upon the plaintiffs. All these aspects can't be decided merely on the basis of rival oral contentions and documents. Nothing can be said at this moment. The parties have to prove their contentions by leading their respective evidence. The court can't held a mini trial at this interim stage.

19. As, the development rights coupled with interest in the suit property in favour of defendant no. 1 was brought into existence by Late Shri. Mahadu Ramchandra Raut and his son i.e. plaintiff no. 1 by executing development agreement and power of attorney, dated 14/01/2008, by accepting the entire consideration amount from defendant no.1. In view of this, it would not be proper to restrain the defendants from developing the suit property.

20. The plaintiffs are not able to make out a prima facie case. Therefore, the plaintiffs are not entitled for interim injunction. In view of this, the answer to point no. 1 is given in negative.

21. As to point no. 2 & 3:-

The plaintiffs are not able to make out a prima facie case hence, if the injunction is not granted, then no hardship will be caused to plaintiffs. The balance of convenience lies in favour of defendants.



22. As to point no. 4 :-

In view of the finding given to the aforesaid point no. 1 to 3 the application deserves to be rejected. Hence, the following order.

O R D E R

1. The application below Exh.5 stands rejected.
2. No order as to costs.

Place :- Pune

Date :- 07<sup>th</sup> December, 2017.

Sd/-xxx

(M. M. Rao)

8<sup>th</sup> Joint Civil Judge, S.D. Pune.

### Certificate

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

Name of Steno :- Mr. B.M.Salve

Court Name :- Shri. M.M.Rao

8<sup>th</sup> Jt.C.J.S.D.Pune.

Date :- 07/12/2017.

Judgment signed by presiding officer on :- 07/12/2017.

Judgment uploaded on :- 08/12/2017.