

MHJN020006452022

RCS No.143/2022

Sham & ors V/s. Ramesh & Ors.

ORDER BELOW EXH.05

Plaintiffs moved present application under Order XXXIX Rule 1 & 2 of Code of Civil Procedure and prayed for restraining defendant No.1 from alienating as well as obstructing their possession over plot No.58 area 600 Sq. Feet out of land block No.57 area 81R situated Mouza Indewadi, Tq. & Dist. Jalna. (Hereinafter called as **“suit property”**).

2. It is case of plaintiffs that suit property is their ancestral land out of which 81R land has been converted into non-agricultural purpose and 85 plots have been prepared in layout. The suit property was recorded in the name of Madhavappa @ Mahadeoappa i.e. father of plaintiff No.1 to 3 whereas husband of plaintiff No.4. Madhavappa has been died on 13.02.2020 due to old age and after his death the mutation has been effected in the name of all plaintiffs. In the life time, Madhavappa had executed General Power of Attorney (GPA) in favour of defendant No.2 for the non-agricultural land area 81R. Wherein the power of only presenting documents for registration of 85 plots have given to defendant No.2.

The power of executing sale-deed was never assigned to the defendant No.2. In spite of that the defendant No.2 sale-out the plot No.58 out of suit property to defendant No.01 through registered sale-deed dt. 19.03.2020. On the day of sale-deed plaintiffs' father was not alive. Apparently the sale-deed in question is bogus. Therefore, the said sale-deed is liable to be cancelled. Therefore, plaintiffs have filed present suit for declaration and cancellation of sale-deed alongwith perpetual injunction.

3. As per plaintiffs, they have proved prima facie case, balance of convenience lies in their favour and they will suffer irreparable loss if injunction is not granted. Therefore they prayed for allowing this application.

4. The present application has been proceeded without say of defendant No.1 to 6.

5. The defendant No.7 i.e. Gramsevak of Village Panchayat Indewadi filed his say (Exh.19) and submits that no document of NA of Block No.57 is available with Village Panchayat. Only on the basis of sale-deed, the mutation of plot No.58 came to be recorded in the name of defendant No.1. The mutation is only for the purpose of collection of taxes upon the property situated within local area of village Panchayat. They never made any entry back behind the plaintiffs. Therefore, finally he

prayed for dismissal of suit against him and rejection of present application.

6. On the basis of above pleadings, following points arose for my determination and I have recorded my finding against each of them for following reasons :

Sr. No.	Points	Findings
1.	Whether plaintiff has proved prima-facie case ?	... Yes.
2.	Whether balance of convenience lies in favour of plaintiff ?	... Yes.
3.	Whether plaintiff will suffer irreparable loss, if injunction is not granted ?	... Yes.
4.	What order ?	... Application is allowed.

REASONS FOR THE FINDINGS

7. Perused the application alongwith with documents. Heard learned advocate Shri S. Y. Shinde for plaintiff and Shri Korde for defendant No.7.

AS TO POINT NOS. 1 TO 4 :-

8. All points are intermingled, hence taken together for discussion .

9. At the outset, it is to be noted that plaintiffs have to pass triple test to get the discretionary relief Under Order XXXIX Rule 1& 2 of Code of Civil Procedure. First test is the prima facie case wherein the plaintiffs are required to prove the chance of success on merit. Further they required to prove balance of convenience and irreparable loss.

10. In case at hand, the defendant No.1 is purchaser whereas deceased defendant No.2 is GPA holder of the father of plaintiffs. Defendants No.3 and 4 are Collector, Tehshildar who appears to be formal parties. Further defendant No.5 is Circle Officer and defendant No.6 is Talathi who are also formal parties to the suit. The defendant No.7 is Gramsevak of Village Panchayat Indewadi, who has mutated the suit property in the name of defendant No.1 on the basis of sale-deed in question.

11. The record shows that initially the suit property was recorded in the name of plaintiffs' father Madhavappa. Moreover, 81R land was converted into NA and 85 plots have been prepared over it. Deceased Madhavappa had executed the GPA in favour of deceased defendant No.2 Shivaji to authorizing him to act on his behalf to present documents of plots for registration before Sub-registrar Office. Said GPA appears to be executed on 04.11.2019 and same is also attached with sale-deed in question. The Power of

attorney document nowhere mentioned the power of sale-purchase of plots over suit property. Said authorization was limited to the extent of presenting the documents of sale-deed before Sub-registrar office. As such it is very much clear that deceased defendant No.2 was not authorized to sale-out the plots over suit property on behalf of deceased Madhavappa.

12. It is very surprising to note here that plaintiffs' father Madhavappa appears to be died on 13.02.2020 as per the death certificate attached with list (Exh.04). In spite of that the defendant No.2 had sale-out the suit plot on behalf of deceased Madhavappa in favour of defendant No.1 on 19.03.2020. Apparently the sale-deed has been executed after the death of owner i.e. deceased Madhavappa. As such prima facie the sale-deed is void and does not create any title in favour of defendant No.1.

13. Another aspect is that the defendant No.2 was not authorized to sale-out the suit plots since he was not authorized for the same. As per Order III Rule 1 & 2 of CPC, any person can be appointed as recognised agent to do some act on behalf of principal. In case at hand the defendant No.1 was recognized agent of deceased Madhavappa only to act on his behalf to present the documents of plots before Sub-registrar for presentation. Moreover, said GPA seizes to exist on the death of Madhavappa. Therefore,

the GPA become invalid on 13.02.2020 i.e. date of death of Principal. Therefore, the act of defendant No.2 of executing sale-deed on 19.03.2020 in favour of defendant No.1 is without authorization and hence it is illegal. The defendant No.2 was never authorized to sale-out the suit plot on behalf of deceased Madhavappa. As such I found force in the submission of plaintiffs that the sale-deed is void ab-initio.

14. So far as the defendant No.7 is concern, he is village Officer of village panchayat who had mutated the name of defendant No.1 on the basis of registered sale-deed. Needless to mention here that mutation is not a document of title, but it is only for fiscal purpose i.e. collection of taxes. The plaintiffs proved the prima facie case against defendant No.1. Obviously balance of convenience follows the prima facie case. Moreover, plaintiffs being legal heirs of deceased Madhavappa, their right is involved in the suit plots. If defendant No.1 is not restrained then obviously plaintiffs are going to deprive to enjoy their own land. Therefore, till the decision of main suit, defendants are liable to be temporary restrained vide order XXXIX Rule 1 and 2 of C.P.C.

15. In view of above discussion, I have answered point no.1 to 3 in ***Affirmative***. As a result, the application deserves to be allowed. Hence, in answer to point No. 4, I passed following order.

ORDER

1. The application (Exh.5) is allowed.
2. The defendant no.1 is temporarily restrained from obstructing the possession of plaintiffs over suit plot No.58 out of Block No.57 and also restrained from alienating as well as creating any third party interest over the suit property, till the disposal of main suit.
3. Cost in main cause.

Date : 02.05.2023

(Dr. Vikas G. Karmore)
3rd Jt. Civil Judge S. D.
Jalna.

ENDORSEMENT

Date of order :- 02.05.2023
Dictated on :- 02.05.2023
Translation ready on :- 03.05.2023
Check On :- 03.05.2023
PO signed on :- 03.05.2023
Date of Upload :- 03.05.2023

CERTIFICATE

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

Sd/-
[G. J. Bhise]
Stenographer L.G.