

**ORDER BELOW EXH. 29**

1- This is an application for restraining the defendant no.2 from creating any third party interest or alienation of suit properties mentioned in the plaint.

2- In brief, it is the case of the plaintiffs that;

The suit properties mentioned in the plaint are the properties owned by plaintiffs. The suit is filed for declaration and injunction against defendant no.1 and 2. Defendant no.2 in collusion with CTS office managed to mutate his name as owner and possessor of suit properties i.e. survey no.356, plot no.51, CTS No.6974/B-51, ad-measuring 58.50 Sq.Mtrs, Plot no.52, CTS No. 6974/B-52, ad-measuring 156.20 sq.Mtrs., Plot no.53, CTS No. 6974/B-53, ad-measuring 49.20 Sq.Mtrs. All plots situated at Nisarg Garden Colony, Station Road, Jalna.

The plaintiffs filed an appeal against mutation entries of defendant no.2 in the CTS office when they got knowledge about the same. The said appeal is pending. The defendant no.2 is taking disadvantage of his entries as owner and possessor of suit properties in CTS record and with the help of these entries he is trying to sale suit properties to third person with a view to deprive the right of plaintiffs. Therefore, the plaintiffs published the proclamation in respect of the suit properties in two local news papers and thereby informed the public at large about the litigation of properties pending in the court. Therefore, it is prayed that, the defendant no.2 may kindly be restrained from alienation of suit properties till final decision of the suit.

3- The defendant no.2 filed his say at Exh-32. It is his contention that, he purchased the suit properties through registered sale deed bearing no.2405/2013 dated 11-06-2013 from defendant no.1. Accordingly his name is entered in the P.R.card. The plaintiffs have not filed any appeal against the said entries. By way of registered sale deed, the defendant no.2 has become owner and possessor of the suit property. The plaintiffs have not challenged the sale deed executed in favour of defendant no.2 by defendant no.1. Plaintiffs have not mentioned about the sale deed executed in favour of defendant no.2. Therefore, it is prayed that, the application may kindly be rejected.

4- I heard the submission of Learned Counsels of plaintiff and defendant no.2.

5- From the contentions of both sides, following points arise for my consideration and I record the findings for the reasons to follow:

	<b><u>POINTS</u></b>	<b><u>FINDINGS</u></b>
1	Does the plaintiffs prove prima facie case in their favour ? :	No.
2	Whether the plaintiff will suffer irreparable loss if injunction is not granted ? :	No.
3	Whether balance of convenience lies in favour of the plaintiff ? :	No.
4	What order ? :	As per final order.

: **REASONS** :

**As to point Nos.1 to 3 :-**

6- The plaintiffs have relied on following documents. Copy of power of attorney executed in favour of Pankaj Lakhani, copy of order passed by District Superintendent of Land Record Jalna in file no. CTS/KAVI/2801/2013, copy of Roznama of Dy.Suptd. Of Land Records Jalna in file No.CTS/PB.3/CTS No.6974/B-49 to 53/2013, copy of order passed by Dy.Suptd. Of Land Records Jalna in file No. CTS/PB.3/CTS No.6974/B-49 to 53/2013,copy of sale deed bearing no.3200/1996, P.R. cards of CTS No.6974/B-51, 6974/B-52, 6974/B-53, copy of NA order, copy of letter issued by Chief Officer of Municipal Council Jalna for grant of final Lay Out, P.R. cards of CTS No.6974/B-52, 6974/B-53, copy of appeal memo, copies of Dainik Duniyadari and Dainik Parshwabhum, written statement filed by defendant no.2 before District Superintendent of Land Record, Jalna, judgment and order passed by District Superintendent of Land Record, letter issued by Executive Engineer Municipal Council Jalna to Town Planning office Jalna, letter issued by plaintiffs to District Superintendent of Land Record, letter issued by CEO to Nanbai Ghansi, 7/12 extract of survey no.356 and copy of Lay Out plan.

On the other hand, defendant no.2 has relied on following documents. Copy of sale deed executed by defendant no.1 in favour of defendant no.2, copy of form no.2 of General receipt of Municipal Council Jalna, copy of tax receipt, copy of letter issued by Municipal council Jalna to defendant no.2

7- Before discussing documents on record, it is necessary to mention undisputed facts of the case.

- i- The area of survey no.356 adm. 1H 60 R.
- ii- Plaintiff no.1 is the daughter and plaintiff no.2 is the grand daughter of deceased Nanbai.
- iii- Premji Ghansi is the son of Nanbai.
- iv- The suit property was purchased by Nanbai in 1969.
- v- Nanbai filed application for NA permission of survey no.356 in the office of Collector in the year 1990.
- vi- Permission of NA granted in favour of Nanbai in 1995.
- vii- The approved Lay Out of survey no.356 adm. 1H 60 R.

8- It is the contention of defendant no.2 that, plaintiffs have no concern with the suit properties. He has purchased the suit properties from defendant no.1 through registered sale deed. The plaintiffs never challenged the said entries executed in favour of defendant no.2.

According to plaintiffs, Nanbai was the original owner and possessor of survey no.356 adm. 1 H 60 R. She purchased the said properties vide registered sale deed dated 18<sup>th</sup> April, 1969 and accordingly her name was recorded in the 7/12 extract. By order dated 17<sup>th</sup> June,1995, NA permission of entire survey no.356 was allowed. On 18<sup>th</sup> May 1995, as per the report of Town Planning Officer Jalna,

the Chief Officer, Municipal Council Jalna granted provisional Lay Out. Nanbai executed General Power of Attorney in favour of her husband to transfer entire area of 1 H 60 R in favour of plaintiffs. On the basis of said authority, the husband of Nanbai moved an application for mutating the names of plaintiffs. Accordingly, the revenue authority incorporated the names of plaintiffs in the 7/12 extract vide mutation entry no.2892.

9- It is not disputed that Nanbai was owner of survey no.356. The copy of sale deed bearing no.3200/1996 executed in favour of defendant no.1 in respect of plot no.51 to 53 by Power of Attorney Holder Premji Dhansi shows that, 258 Sq.Mtrs area of plot no.51 to 53 was sold to defendant no.1. The copy of sale deed filed by defendant no.2 shows that the said area was sold by defendant no.1 to defendant no.2. The name of defendant no.1 was recorded in the PR card of suit property in the year 2013 vide order of Dy.Suptd. Of Land Records dated 04-06-2013. The plaintiffs have preferred appeal with application of delay condonation against the order of Dy.Suptd. Of land Records Jalna and the said proceeding is pending.

The plaintiffs have sought the relief of cancellation of sale deeds executed in favour of defendant no.1 and 2. It is matter of evidence whether plaintiffs have any right in the suit properties. At this stage, prima facie case and balance of convenience exist in favour of defendants in view of execution of registered sale deeds by the Power of Attorney Holder of Nanbai. Though, the sale deed was executed in favour of defendant no.1 in the year 1996 and his name was recorded in the year 2013, it does not mean that, the defendant no.1 has no right in

the suit properties because the original owner Nanbai executed the said sale deed in favour of defendant no.1. The tax receipts filed by defendant no.2 prima facie shows that, he being the owner of suit properties, has paid the taxes of suit properties.

Accordingly, plaintiffs will not suffer any irreparable loss if the relief of injunction is not granted in their favour because the provisions of sec. 52 of Transfer of Property Act will apply to transfer pendente lite. Therefore, at this stage in view of forgoing discussion, I am of the opinion that, the plaintiffs are not entitled for the relief of temporary injunction in respect of suit properties. Therefore, point nos.1 to 3 are answered in the negative and for the answer to point no.4, I proceed to pass following order.

**ORDER**

- a- The application Exh-29 rejected.
- b- Costs in cause.

Date : 31-03-2016

Sd/-  
(Jayshri R.Pulate)  
2<sup>nd</sup> Jt.Civil Judge (S.D.),  
Jalna.

**CERTIFICATE**

I affirm that the contents of this PDF file are word to word as per original order.

Name of Steno : Bobde S.V.  
Name of Court : 2<sup>nd</sup> Jt. Civil Judge (S.D.), Jalna  
Date of PDF : 04-04-2016

Sd/-  
(Bobde S.V.)  
Stenographer.