

MHKO110007782021



Regular Civil Suit No. 101/2021.

(CNR No.MHKO110007782021)

ORDER BELOW EXH.05.

(Kanta Chawala Vs. Krishnath @ Kishor Kurane)

01. The plaintiff made the present application under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908 (in short 'C.P.C.').

Suit Property -

Landed property situated at Laxmiwadi, Tal. Hatkanangale, Dist. Kolhapur having Gat No.151/2, admeasuring area, H3.10R, size Rs.8.51 Ps. out of the said property, admeasuring area H1.04R, size Rs.2.84Ps., having following four boundaries.

Towards East - Gat No.135.

Towards West - Gat No.135.

Towards South - Gat No.151.

Towards North - Gat No.135.

And registered power of attorney bearing no.5439/2009, dated 14/10/2009, regarding the said property.

(The above mentioned property is the subject matter of the suit, hence for the sake of brevity hereinafter referred as "**suit property**")

Brief facts of the case of plaintiff are as under :

02. It is further submission of the plaintiffs that, defendants and their mother executed a registered power of attorney bearing no.5439/2009, dated 14/10/2009 in favour of the plaintiffs. The said power of attorney was in respect of the suit property. It is further submission of the plaintiff that,

defendants and their mother orally agreed that, they will sale the suit property to the Ashok Maniram Chawala and plaintiff no.2. Ashok Maniram Chawala was expired on 27/10/2014. After his death, the present plaintiff has got all the right mentioned in power of attorney. It is further submission of the plaintiff that, the government given the suit property to the mother of defendants for cultivating and yielding the income arising from the said property. Defendants are the heirs of deceased Indumati. Suit property was barren land. So, it was not possible to cultivate and yield the income from it. So, defendants decided to sale the suit property. Defendants alongwith their well-wishers negotiated with the predecessor of plaintiffs, i.e. Ashok Maniram Chawala and plaintiff no.2. Defendants agreed to sale the suit property to the deceased Ashok Maniram Chawala and plaintiff no.2 for the consideration of Rs.2,57,500/-.

03. It is further submission of the plaintiff the the suit property is class- II, land. So, selling the said, the prior permission of the District Collector, Kolhapur was necessary. When, Ashok Maniram Chawala and defendants made inquiry it came to their knowledge that, it will take much time for execution of sale deed, in respect of the suit property. So, they decided to execute the power of attorney in favour of Ashok Maniram Chawala and plaintiff no.2. Accordingly, registered power of attorney was executed between defendants and deceased Ashok Maniram Chawala and plaintiff no.2. On the day of execution of power of attorney, defendants accepted the consideration amount of Rs.2,57,500/-, in the presence of witnesses. Defendants deliver the possession of the suit property to the deceased Ashok Maniram Chawala and plaintiff no.2 on the day of execution of power of attorney.

04. It is further submission of the plaintiff that, defendant had

initiated necessary action to obtain the permission of District Collector, Kolhapur for selling the suit property. On 08/08/2020, in daily circulated news paper namely Pudhari, notice was published that, landed property located in Gat No.151/2 is being sold out. So, plaintiff no.2 immediately published a notice and appeal the people at large, not to enter in to any transaction in respect of the suit property. Plaintiffs has doubt that, defendant will not sale the suit property to them as per the oral agreement took place between deceased Ashok Maniram Chawala, plaintiff no.2 and defendants. On 19/12/2020, they sent a notice to the defendants, requesting them to obtain the necessary permission and to sale the suit property to them as decided by oral agreement. But, defendants did not reply to the said notice. Plaintiffs has doubt that, defendants is going to create third party interest in the suit property and they will obstruct the peaceful possession over the suit property. Hence, they constrained to institute the present suit along with the present application .

05. Suit is being proceeded without written statement of both the defendants.

06. Heard arguments of Ld. Counsels for the plaintiff at length. Considering the pleadings of plaintiff and documents filed on record, following points arose for my determination. I have given my findings to each of them with reasons as below :

<u>Sr.No.</u>	<u>POINTS.</u>	<u>FINDINGS</u>
1)	Whether plaintiff has prima facie case ?	<i>In Negative.</i>
2)	Whether balance of convenience lies in favour of plaintiff ?	<i>In Negative.</i>

3)	Whether plaintiff shall suffer irreparable loss if the temporary injunction is not granted against defendants ?	<i>In Negative.</i>
4)	What order ?	<i>As per final order.</i>

REASONS

07. In order to prove her case, plaintiff has relied upon following documents.

Sr. No.	Document	Exhibit
1.	Copy of 7/12 extract of Gat no.151/2.	3/1
2.	Power of attorney dated 14/10/09	3/2
3.	Copy of death certificate of Ashok Chawala	3/3
4.	Copy of letter dated 29/09/10	3/4
5.	Copy of letter dated 03/09/10	3/5
6.	Copy of notice dated 19/12/20	3/6
7.	Acknowledgment dated 26/12/2020.	3/7
8.	Returned Envelope	3/8
9.	Copy of paper publication notice dated 07/08/2020	3/9
10.	Copy of paper publication notice dated 11/08/2020	3/10
11.	Copy of agreement to sale.	10/1
12	Copy of letter from Collector office	11/2

AS TO POINT NO.1 TO 4 :-

08. The point No.1 to 4 are interlinked with each other, hence to avoid the repetition, I have taken up them together for discussion.

09. It is submission of the ld. advocate appearing for the plaintiff that, defendants and their mother orally agreed to sale the suit property to the deceased Ashok Maniram Chawala and to plaintiff no.2. Deceased Ashok Chawala is the husband of plaintiff no.1 and father of plaintiff no.2. It is also submission of the plaintiffs that, as per the oral agreement defendants and their mother executed registered power of attorney bearing no.5439/2009, dated 14/10/2009. In support of their submission plaintiffs produced on record original power of attorney vide Exh.3/2.

10. Before dealing with the instant application, it is necessary to consider here the judgment of Hon'ble Supreme Court in, **Ghanshyam Vs. Yogendra Rathi, (Civil Appeal No.7527-7528 of 2012)** that, *“A will or general power of attorney (“GPA”) cannot be recognized as title documents or documents conferring right in any immovable property.”*

11. In the judgment of Hon'ble Supreme Court in, **Suraj Lamp & Industries Pvt. Ltd., Vs. State of Haryana and others (Special Leave Petition (c) No. 13917 of 2009)**, that, *“A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the granter authorizes the grantee to do the act specified therein, on behalf of granter, which when executed will be binding on the granter as if done by him (see section 1A and section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee.”*

12. Therefore, a SA/GPA/WILL transaction does not convey any title nor create any interest in an immovable property. The observations by

Delhi High Court, in Asha M. Jain Vs. Canara Bank -94 (2001) DLT 84, that, “concept of power of attorney sales have been recognized as a mode of transaction” when dealing with transactions by way of SA/GPA/WILL are unwarranted and not justified, unintendedly misleading the general public into thinking that SA/GPA/WILL transactions are some kind of recognized or accepted mode of transfer and that it can be a valid substitute for a sale deed. Such decision to the extent they recognize or accept SA/GPA/WILL transactions as concluded transfers, as contrasted from an agreement to transfer, are not good law.

13. Now let's deal with the instant application. It is the specific case of the plaintiffs that, defendant and their mother orally agreed to sale the suit property to them. For that purpose defendants also executed registered power of attorney in their favour. If, we consider the fact of the instant application, it is crystal clear that, plaintiffs claiming their possession over the suit property by way of power of attorney in question. But, as per supra cited judgments of Hon'ble Supreme Court, no title or interest of the immovable property shall be conveyed by way of power of attorney. So, considering the supra cited judgment it is crystal clear that, the case of the plaintiffs is weak and prima facie there is no any chance of his being succeeded in the suit. On the other hand it is the settled principle of the law that, if the main relief shall not be granted then, interim relief in that respect also granted. Hence, considering above discussion, I am of the candid opinion that, plaintiffs failed to established prima facie case, in their favour. So, hardship is also not causing to the plaintiff and balance of convenience is not in their favour. So considering above discussion, I answer issue No.1 to 3 in negative and to answer issue No.4, I pass the following order :-

ORDER

- 1] The application (Exh.5) is hereby rejected.
- 2] The application (Exh.5) is disposed off accordingly.

Date : 28/08/2023.

(L.M.Pathan)
Civil Judge Junior Division,
Peth-Vadgaon.