


<u>MHKO190002512022</u> 	<u>ORDER PASSED BELOW EXH.5</u> <u>IN</u> <u>R.C.S No.107/2022</u> <u>Balwant Sadashiv Patil Vs. Babasaheb</u> <u>Sadashiv Patil, etc.1</u> <u>(Date:24/11/2022)</u>
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This application is filed on behalf of plaintiff, to grant the relief of temporary injunction restraining defendants, from causing an obstructing to the construction of the house of the plaintiff being started over following mentioned land

Description of Land:-

2. Land bearing No.900 admeasuring H 0.11 R situated at village Chandre, Tal. Radhanagari, Dist. Kolhapur. The construction has been started over the open space between Grampanchayat House property No.508 and Grampanchayat House property No.510, which is part and parcel of land bearing Gat No.900. The construction of house is subject matter of present suit. (Herein after referred to the suit property for the sake of brevity.)

Averments made in the application:-

3. It is averred in the application that, the plaintiff and defendants are real brothers. Defendants have been settled at Kolhapur due to their Job and Business purpose. The plaintiff was living along with parents at village Chandre in their ancestral house. He looked after and born all medical expenditure of their parents. The defendants and their sisters executed registered relinquishment deed bearing No.585/2013 dated 15/4/2013 in favour plaintiff, as the plaintiff looked after their parents and acquired name

and fame to the family in society. They abandoned their rights over suit property due to love and affection in favour of the plaintiff. The name of plaintiff came to be recorded in 7/12 extract of the suit property by virtue of registered relinquishment deed. There are two houses bearing Nos.508 and 510 situated over land bearing No. 900 situated at village Chandre. The Grampanchayat office also recorded name of plaintiff in Grampanchayat House property No.508 and 510 on the basis of registered relinquishment deed.

4. The plaintiff is in exclusive possession of suit property since 15/4/2013 along with two houses. The land revenue and Grampanchayat tax have been paid by the plaintiff. The plaintiff obtained loan of an amount of Rs.20,00,000/- from the Bank of India, Branch Kasaba Walve over suit property, by executing mortgage deed in favour of bank. The entry of registered mortgaged deed has been recorded in 7/12 extract of the suit property.

5. Grampanchayat House property bearing No.510 have been in dilapidated condition and House Property bearing No.508 is being shorted for the use of plaintiff. Therefore, the plaintiff has been started construction of new house over the open space between house property bearing No.508 and 510. The construction of plaintiff has been reached at level of column and putting. The defendants suddenly started obstruction to the construction being started by plaintiff over suit property by saying that they have equal share in suit property. Therefore, present suit is instituted for the relief of perpetual injunction wherein, present application is filed for the relief of temporary injunction.

6. Defendants opposed this application filing reply at Exh.15. It is

contention of defendants that, the plaintiff has given ambiguous and incorrect description of suit property. The plaintiff never looked after their mother in village Chandre. He kept their mother in old age home or retirement home. The medical expenses of mother were born by the plaintiff and defendants jointly, from the income received from joint family property. The plaintiff convinced to defendants as to separation of their joint account of the suit property, as it was inconvenient to defendants to give time to obtain benefit of government scheme of the suit property. The plaintiff got executed registered relinquishment deed dated 15/4/2013, pretending that contents of deed are separation of their joint account of the suit property to the defendants and their sisters. There was no free consent of defendants to the relinquishment deed. The consent of defendants was obtained to relinquishment deed by playing fraud and miss-representation. Defendants also did not have knowledge when the plaintiff acted upon relinquishment deed in Grampanchayat as well as revenue record of the suit property.

7. Defendants further submitted that, the suit property is their ancestral property. There is no partition effected by metes and bounds. Grampanchayat house property bearing No. 508 is in possession of defendants. They never relinquished their rights over suit property. Recently, defendants have decided to start the construction of the house over suit property. Hence they approached to Civil Engineer Pandurang Patil for drawing the map of proposed construction of Bungalow. Map and draft plans of construction has been drawn by Pandurang Patil a consulting engineer. Defendants purchased cement and building material from Dutt Store Chandre and Ajit General Stores Sangawadewadi. The plaintiff has filed present suit in order to grab the under construction house of the defendants. Therefore, the application below Exh.5 be rejected.

8. In support of this application plaintiff filed following documents.

Sr. No.	Name of Document	Exh.No.
1.	7/12 extrac of Gat No.900	....
2.	Village form No.8 of Grampanchayat Property No.508	....
3.	Village form No.8 of Grampanchayat Property No.510	....
4.	Relinquishment deed executed in favour of plaintiff.	....
5.	Copy of application given by the plaintiff to Grampanchayt Chandre for Construction permission.	....
6.	Copy of application given by the plaintiff to Grampanchayt Chandre for water connection.	....
7.	Receipt of Water Tax.	....
8.	Copy of mutation entry No.2755/b	....
9.	Copy of mutation entry No.2756/b	....
10.	Copy of mutation entry No.2090	....

9. Defendants filed following documents.

Sr. No.	Name of Document	Exh.No.
1.	Affidavit of witness namely Dilip Indrajit Kamble.	19
2.	Affidavit of witness namely Bhagwat Namdev Raut.	20
3.	Affidavit of witness namely Baburao Yashwant Patil.	21
4.	Affidavit of witness namely Arjun Dattatray Patil.	22
5.	Affidavit of witness namely Sadashiv Ramchandra Patil.	23
6.	Affidavit of witness namely Shankar Ananda	24

	Patil.	
7.	Affidavit of witness namely Dattatray Hari Patil.	25
8.	Copy of Heavy Rain Fall damage Survey made by Tahasildar, Radhanagari.	....
9.	Copy of order issued by B.D.O	....
10.	Copy of complaint No.SR/06/2021 before B.D.O	....
11.	Affidavit of Babasaheb Sadashiv Patil, Defendant No.1	30
13	Affidavit of Anuradha Patil	31
14.	Affidavit of Pandurang Patil	32
15.	Photographs of laying foundation stone of construction of house of defendant.	...
16.	Map of construction of house.	...
16.	Receipts of purchase of building materials.	...

10. Perused the application. Heard Ld. Counsel for plaintiff Shri. B.D. Shelke and Ld. Counsel for defendants Shri. V.B. Patil. Following points arise for my determination. I record my findings with reasons thereon as under.

Sr. No.	POINTS	FINDINGS
1.	Whether the plaintiff prove that there is prima-facie case in his favour?	In the negative.
2.	Whether the plaintiff prove that balance of convenience lies in his favour?	In the negative.
3.	Whether plaintiff prove that irreparable loss would cause to him, if temporary injunction not granted in his favour?	In the negative.
4.	What order?	As per final order.

SUBMISSIONS:-

11. Ld. Counsel for plaintiff Shri B. D. Shelake requested to the court to grant the relief of temporary injunction in favour of the plaintiff on following grounds.

A) The land bearing No. 900 admeasuring 0.11 R situated at village Chandre was an ancestral property of the plaintiff and defendants along with two houses bearing No.508 and 510 constructed thereon. The plaintiff looked after their parents in old aged and got name and fame to the family in the society hence, the defendants and their sisters relinquished their undivided shares incorporated in suit property to the plaintiff by executing registered relinquishment deed bearing No.585/2013 dated 15/04/2013 without accepting any consideration due to love and affection and gratitude to the plaintiff. In support of his argument he invited my attention towards registered relinquishment deed.

B) The name of plaintiff came to be recorded in 7/12 extract of the suit property by virtue of relinquishment deed by adopting due procedure of law laid down under the provision of the Maharashtra Land Revenue code. As the Grampanchayat house properties bearing No.508 and 510 were part and parcel of land bearing No.900, the Grampanchayat Office recorded name of plaintiff in Grampanchayat record of both these houses by virtue of registered relinquishment deed. In support of his argument, he invited my attention towards 7/12 extract and Grampanchayat record as to the suit property.

C) Grampanchayat Tax of house properties has been paid by the plaintiff since 2013 till now. The plaintiff also paid land revenue of the suit property. The plaintiff is in exclusive possession of the suit property by virtue of registered document since last nine to ten years. The possession of plaintiff

over suit property is settled, uninterrupted and long standing. The defendants never challenged registered relinquishment deed as well as revenue and Grampanchayat record before competent authority. Therefore, it has been attained finality. The defendants do not have whatsoever concerned with the title of the plaintiff over suit property.

12. Ld. Counsel Shri. B. D. Shelke submitted that the registered instrument i.e. the relinquishment deed attach presumptive value of its genuineness and correctness. There is no prima facie evidence adduced on record which rebut the presumption of relinquishment deed. He further submitted that the plaintiff filed an application before Grampanchayat Office for obtaining construction permission over suit property. He applied for obtaining water supply quotation. The plaintiff has started construction of new house between the open space of Grampanchayat house property bearing No.508 and 510. The defendants have no way concerned with the exclusive title and possession of plaintiff over suit property, since they voluntarily and legally relinquished their rights over suit property to the plaintiff. The defendants started obstruction to the construction of house being started by plaintiff over suit property. Therefore, the present suit is instituted for the relief of perpetual injunction.

13. He further submitted that the plaintiff has prima-facie proved his case by filing registered relinquishment deed, Grampanchayat and revenue record. Balance of convenience also lies in favor of plaintiff as he expended huge amount for construction work. If temporary injunction is not passed in favor of plaintiff, he may suffer irreparable loss.

14. Per contra, Ld. Counsel for defendants Shri. Patil submitted that

the plaintiff got executed relinquishment deed by playing fraud with defendants. There was no free consent of the defendants to the relinquishment deed. There was no intention of defendants and their sister to relinquish their undivided interest incorporated in suit property by executing deed in question. Suit property is ancestral joint Hindu family property of the plaintiff and defendants. There was no partition effected by metes and bounds. The defendants have started construction over the open space between the Grampanchayat house property bearing No.508 and 510. The construction has been reached at the column level. Before starting construction, the defendants approached to the Civil Engineer in order to draw the map or plan of the house proposed to be constructed over suit property. In support of his argument, the attention of the Court has been drawn towards the map prepared by Civil Engineer Shri. Patil. Ld. Counsel for defendants further submitted that the defendants purchased the cements and building materials. The receipts in this regard have been filed on record. The defendants also filed the affidavits of Civil Engineer and adjoining Land holder in order to prove the fact in issue of the construction is being started by defendants over suit property. The plaintiff prima-facie failed to prove his case. The balance of convenience lies in favor of defendants. If temporary injunction is granted in favor of plaintiff, defendants would be loss their rights of construction as well as under constructed house. Hence application be rejected .

As to points No.1 to 3 :-

15. Having considered the arguments of both counsels in the light of documents filed on record, following questions arise before me, which needs to be answered by recording prima-facie findings.

a) Whether defendants prima facie rebutted presumption attached to

registered relinquishment deed by adducing cogent satisfactory evidence, if yes, what is its consequence?

b) Who has started construction over suit property?

16. Needless to say that, the court is going to record prima facie answer of these questions. It is settled that the court has power to peruse the documentary evidence on record without its formal proof.

17. Admittedly, relinquishment deed in question is duly registered under the provision of The Registration Act 1908. From perusal of pleading of defendants, it emerge that execution of a relinquishment deed in question is not disputed by defendants. What has been disputed or denied by defendants as to relinquishment deed can be answered its contents. According to pleading of defendants, the plaintiff had played fraud with them on the pretext that, contents of deed are drafted to separate their joint account as to suit property, in order to obtain government benefits. The prima facie question arise before me whether contents of register document can be permitted to contradict by adducing oral as well as documentary evidence. In this regard, I want to state here **Sections 91 and 92 of the Indian Evidence Act, which are material sections in respect of oral evidence of the documents reduced into writing.**

"92. Exclusion of evidence of oral agreement.-When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms :

Proviso (1). - Any fact may be proved which would invalidate any

document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, [want or failure] of consideration, or mistake in fact or law.

18. As per Section 92 Proviso (1), evidence can be adduced to contradict the document. Oral evidence as per the provisions of Section 92 Proviso (1) is applicable and the defendants can adduce the oral evidence to contradict the document. "Plea to invalidate any document proved in accordance with section 91 is available where a case is made out of fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law. "proviso (1) of Section 92 permits leading of oral evidence of any fact which would invalidate any document, at the instance of any party to such document of their representatives in interest. Proviso

19. After considering Section 92 proviso (1) of the Indian Evidence Act, I am to state here that oral evidence can be permitted to contradict the registered document. In another words, it can be stated that defendants can be permitted to adduce prima-facie evidence with regard to fraud, intimidation, illegality of document in question and same can be prima facie considered to contradict the contents of document.

20. Keeping in mind above mentioned proposition of law, I have decided to peruse what kind of quality of evidence adduced by defendants to contradict the contents of relinquishment deed in question. The defendants filed on record certified copy of application dated 16/02/2019 which was addressed to Grampanchayat office Chandre. I want to reproduce here material contents of application which are as under in Marathi :-

" विषय: वारसांची संमती न घेता वडीलोपार्जित मिळकतीला नाव लावणेच्या ठरावा बाबत – महोदय, माझे वडील श्री, सदाशिव तुकाराम पाटील हे हयात असताना व त्यांनी स्वतःचे नावे सन २०११ पर्यंत ग्रामपंचायत घरफाळ्याची रक्कम जमा केली असून त्याची पोहोच पावती घेतलेली आहे, असे असताना त्यांच्या नावाची घर मिळकत हि बळवंत सदाशिव पाटील यांचे नावे कशी लागली या बाबत खुलासा व सोबतच्या अर्जाची नक्कल मिळावी".

(Translated in English as- Sub: Application for issuance of copy of resolution as to recording name in ancestral property without obtaining consent of other legal heirs:-

My father namely Sadashiv Patil deposited Grampanchayat tax till 2011 in his life time. Despite of depositing tax, the name of my father came to be deleted and new entry of Balwant Sadashiv Patil recorded in place of my father's name. Issue the copy of resolution on the basis of which, the name of my father came to be deleted from house property alongwith documents.)

21. After considering contents of application dated 16/02/2019 I am to state here that defendant No.1 sought an information from Grampanchayat office in respect of documents on the basis of which name of his father came to be deleted from the house properties. It is pertinent to note that present suit is instituted on 19/03/2022. The defendant No.1 moved this application on 16/02/2019. It can be said that defendant No.1 moved application before institution of suit. If it assume that, defendants were aware about the contents of the registered relinquishment deed in question, he never filed an application dated 16/02/2019 praying therein to provide information in respect of documents on the basis of which name of plaintiff recorded in Grampanchayat house properties. The previous conduct of defendant No.1 before institution of suit plays an important role in order to show that whether

they were aware of the contents of registered relinquishment deed or not. There are another independent and oral evidence which contradicts contents of registered relinquishment deed which needs to be considered while deciding this application on merits.

22. The witness Anuradha Vilas Patil is sister of plaintiff and defendants. She filed an affidavit before the court. From perusal of an affidavit it emerge that on 15/04/2013 she and other sisters executed registered relinquishment deed bearing No.585/2013 in favour of plaintiff and defendants in respect of their ancestral property. There was no intention of defendants alongwith other sisters to relinquish their undivided share incorporated in land bearing Gat No.900 alongwith house property. The plaintiff got executed registered relinquishment deed bearing No.584/2013 dated 15/03/2013 by playing fraud. The question arise before me as to why real sister of plaintiff namely Anuradha Patil filed affidavit against plaintiff. There is no reason to disbelieve the contents of her affidavit as she was remained present at the time of execution of relinquishment deed in question. The defendants filed affidavits of following witnesses in order to prove that the construction of the house has been started by them over suit property. In order to avoid repetition, it is being submitted in tabular form.

Sr. No.	Name of person	In what capacity he is deposing.	Brief facts in deposition.
1.	Pandurang G. Patil	Consulting Engineer	He deposed that map and proposed plan of Bunglow of plaintiff situated at Village Chandre has been drawn by him by visiting suit property. Proposed building map has been filed on record.
2.	Dilip Indrajit Kamble	Contractor of construction.	He deposed that he constructed foundation of bunglow of defendant

			No.1 @ 125 rupees per Sq.ft over suit property on the request of defendant No.1.
3.	Bhagwan Namdev Raut	Running business of Fabrication.	He deposed that in the year of 2019 he completed fabrication work over suit property on the request of defendant No.2. The house property was damaged due to rain. He received charges of Rs.11,500/- from defendant No.2.
4.	Baburao Yashwant Patil	Neighborer	He deposed that defendants are in possession of house properties. The construction has been started over suit property by defendant NO.1. He is acquainted with the facts of construction being carried out by defendants since he is neighborer of suit property.
5.	a.Arjun Dattatray Patil b.Sadashiv Ramchandra Patil. c.Shankar Ananda Patil.	Resident of Village Chandre.	They deposed that defendant No.1 is in possession of suit property and he has started construction of house property over suit property. They personally seen the construction of house property.
6.	Dattatray Hari Patil	Relative of plaintiffs and defendants.	He deposed that defendants are in possession of house properties. The construction has been started over suit property by defendant No.1. He is acquainted with the facts of constructed being carried out by defendants since he is relative defendants and plaintiff.
7.	Anuradha Vilas Patil.	Sister of plaintiff and defendants.	She deposed that suit property is their ancestral property. They have settled their dispute and relinquished their right over an agricultural land and other properties except house

			properties in favour of the plaintiff and defendants. She deposed that they executed registered relinquishment deed No.585/2013 in the office of Joint Registrar, Radhanagari. However she did not decided to relinquish their right in Gat No.900 in favour of plaintiff. The plaintiff cheated them and get executed the registered relinquishment deed in his favour.
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23. The record also reveals that defendants have filed on record certified copy issued by Tahasil Office, Radhanagari. From perusal of certified copy dated 06/07/2022, it emerge that the Government of Maharashtra sanctioned compensation amount to defendant No.1 in the year of 2019, as his house situated at village Chandre was damaged due to heavy rain fall. The order of Government of Maharashtra has been issued in the name of defendant No.1 before institution of suit, which reflect the possession of defendant No.1 over house property situated at village Chandre. The record also reveals that defendants filed on record photographs. From perusal of original photographs, it appears that the defendant laid foundation stone of the house with offering religious pooja over suit property. The list of articles for performing pooja given by priest also filed on record. The defendants also filed on record receipts of bills of purchasing building materials dated 13/03/2022, 15/03/2022, 18/03/2022 which are definitely before institution of suit. From perusal of receipts it appears that it has been recorded in the name of Sachin Babasaheb Patil who appears to be son of defendant No.1 namely Babasaheb Patil.

24. After considering above mentioned evidence I am to state here that prima-facie defendants established that they have started construction

over suit property by adducing cogent and satisfactory evidence. Per contra, the plaintiff failed to adduce evidence in respect of the construction is being started by him over suit property. No counter affidavits have been filed on record in order to prove contrary on behalf of plaintiff. The Ld. Counsel for plaintiff Shri. B. D. Shelke invited my attention towards the applications dated 16/03/2022 filed by plaintiff for granting construction permission and allowing water supply quotation over suit property. In this regard, I am to state here that these applications have been filed to grampanchayat office after institution of suit in order to collect the evidence in his favour. There is no evidence before the court which shows that the grampanchayat office has granted construction permission to the plaintiff over suit property by adopting due procedure of law laid down under Bombay Village Panchayat Act and Bombay Village Panchayat Rules. If it is assume that the plaintiff has started construction over suit property as per the argument advanced by Ld. Counsel Shri. B. D. Shelke, the question arise before me as to why plaintiff did not file on record entire documentary evidence as to starting construction over suit property in similar manner of defendants. In the light of above discussion I come to conclusion that, it was not intention of defendants to relinquish their rights over house property in favour of plaintiff by execution relinquishment deed. If it was intention of defendants to relinquish their rights over suit property vide registered relinquishment deed, they never started construction over the property in respect of which they abandoned their rights and carried risk of expending huge amount for construction. The defendants have prima facie contradict the contents of relinquishment deed by adducing cogent and satisfactory evidence vide Section 92 proviso 1 of the Evidence Act.

25. The plaintiff failed to prima facie prove that he has been started construction over suit property. Per contra defendants proved that they have

been started construction over suit property. Balance of convenience lies in favour of defendants. If the court passed an order of temporary injunction and thereby restrained to defendants from carrying out further construction, defendant would be suffered irreparable loss, as they expended huge amount over construction. There is no comparative loss of plaintiff as it is not proved that he has started construction over suit property. Hence, I record the answer of Points No.1 to 3 in the negative and to answer Point No.4 I pass upcoming order.

- ORDER -

Application below Exh.5 is hereby rejected.

Date:24/11/2022

(S. G. Shinde)
Civil Judge Junior Division,
Radhanagari.