

**ORDER BELOW EXH. 118 IN R.C.S. No. 64/2012**  
**( Tanibai Vs. Mohan and others )**

**CNR NO. MHLA13-000017-2012**

1. The present application is filed by the defendant no. 6 for reopening of evidence.

2. By filing present application it is submitted by the defendant no. 6 that the plaintiff is mother of defendant no. 1 to 5 and 9 and step mother of defendant no. 7 & 8. The defendant no. 6 is the purchaser of the suit land. The defendant nos. 1 to 5 and 7 to 10 are the members of joint Hindu family and they are having joint and ancestral landed property at village Bhokaramba, Tal. Renapur. The present suit is filed by the plaintiff for declaration of ownership and declaration regarding the compromise decree drawn in R.C.S. No. 376/2008 is not binding on her as well as declaration regarding the sale deed no. 1353/2009 is null and void. She also prayed for the relief of perpetual injunction. The defendant nos. 5 & 6 appeared in the present matter and they denied the allegations made in the plaint. The defendant no. 5 sold the suit property to the present defendant no. 6. Since then the defendant no. 6 is owner and possessor of the suit land. Therefore, defendant no. 6 is a bonafide purchaser for consideration. The defendant no. 6 after due enquiry about previous litigation, court decrees, mutation entries and actual physical possession of defendant no. 5 over the suit property, before purchase and after satisfaction he has purchased the suit property legally.

3. In the present matter the issues have been framed at Exh. 40. As per issue no. 5, the burden cast upon defendant no. 6 to prove that he is the bonafide purchaser of the suit property for value and without notice. The defendant no. 6 is residing at Pune for the purpose

of his business since last 5 to 6 years. He is suffering from spinal cord injury and not able to travel from Pune to Renapur for the purpose of the attending the Court proceeding. Therefore, as per the advise of his advocate he executed a power of attorney in favour of his father regarding the present proceeding. The power of attorney holder for defendant no. 6 filed his affidavit of examination in chief at Exh. 101 and upon the instructions of previous advocate filed evidence close pursis at Exh. 116 dated 23/8/2016. But he has not intimated this fact to defendant no. 6. Now it is necessary for the defendant no. 6 to lead evidence in order to prove issue no. 5 by leading his oral evidence. Therefore he has filed the present application for permitting him to reopen his evidence. It will not cause any prejudice to the plaintiff as she will get an opportunity to cross examine the defendant no. 6.

4. The plaintiff has filed her say on the present application at Exh. 122 and stated that the present application is baseless which is filed at the time of final argument. The defendant no. 6 appeared but did not file his written statement, hence he has no right to adduce oral evidence. The defendant no. 6 is adopted the written statement of defendant no. 5 by filing pursis at Exh. 34. The power of attorney holder of defendant no. 6 had filed his affidavit of examination in chief and thereafter he filed evidence close pursis and now the matter is for final argument. At this stage this application is filed only to fill up the lacuna in respect of issue no. 5. Therefore, application may be rejected.

5. Heard both the sides. The ld. advocate for the defendant no. 6 submitted that the facts which are within the knowledge of defendant no. 6 can be brought before Court through leading oral evidence of defendant no. 6. For the reasons mentioned in the application it is necessary to give an opportunity to reopen the evidence of defendant no. 6. In order to substantiate his argument he relied on

the judgment of the Hon'ble Apex Court in the case of *Damara Venkata Krishna Rao Vs. Gurujipalli Satwathamma reported in SLP NO. 1828/2007.* He relied on the judgment of the Hon'ble Apex Court in the case of *K.K. Velusamy Vs.N.N. Palaniswami reported in 2011(3) ALIMR 455*He further relied on the judgment of the Hon'ble Bombay High Court in the case of *Hamit Jabbar Atar Vs. Vitthal Narayant Mule a;nd other decided in Writ Petition no. 7926/2015.*

6. On the other hand the ld. adv. for the plaintiff submitted that the present application is not tenable as ample opportunity is given to the defendant no. 6 in order to lead his evidence. The defendant no. 6 has already lead his evidence through power of attorney holder. The power of attorney holder of defendant no. 6 himself has filed evidence close pursis, therefore, the present application is only file to fill up the lacuna and to prolong the matter. Therefore, application may be rejected.

7. After hearing both the parties. I have perused the record. After perusal of record it is seen that the defendant no. 1 to 5 executed an agreement dated 11/6/2004 in favour of plaintiff and allotted land Gat no. 160 adm. 1 H 7 R to plaintiff for her maintenance with possession. Therefore, the plaintiff is owner and possessor of the suit property. Further it is a case of the plaintiff that defendant no. 3 filed R.C.S. No. 376/2008 against plaintiff and defendant no. 1 to 4, 5 and 7 to 10 by misguiding the plaintiff. In the said suit thumb mark of plaintiff was obtained and compromise deed was executed. It is the case of the plaintiff that the defendant no. 5 without any right executed sale deed no. 1353/2009 in favour of defendant no. 6 showing wrong boundaries. In the present suit the plaintiff has sought declaration as the sale deed bearing no. 1353/2009 is null and void. Further it is seen that the defendant no. 6 appeared and adopted the written statement

filed by the defendant no. 5. The power of attorney holder of defendant no. 6 filed evidence close pursis. According to defendant no. 6, the said evidence close pursis was filed without informing him. Therefore, in order to prove that he is a bonafide purchaser for value without notice, it is necessary to give an opportunity to him to lead his evidence.

8. The defendant no. 6 has filed medical certificate, which shows that he is suffering from low back pain and he was advised to take bed rest and to avoid travelling. The defendant no. 6 has also filed a deed showing that the power of attorney which was executed in favour of his father was cancelled. Considering the contents of the application and the issue framed at Sr.No. 5 it is necessary to given an opportunity to the defendant no. 6 to lead his oral evidence, it will not cause any prejudice to the plaintiff as she will get an opportunity to cross examine the defendant no. 6 as well as the witnesses of defendant no. 6 if any. Now it is also to be seen that the matter was for final argument. before filing of the present application much time has been spent due to filing of present application. Therefore it is necessary to saddle costs on the defendant no. 6. Hence, I pass the following order.

**ORDER**

1. The application is allowed subject to costs of Rs. 5000/- (Rs. Five Thousands). Out of amount of Costs, Rs. 2000/- (Two thousand) be given to the plaintiff and remaining amount of Rs. 3000/- (Three thousands) be credited to the Government.
2. The defendant no. 6 is directed to lead his oral evidence and evidence of witnesses if any after depositing the costs on next date, without fail.

**Dated 15/7/2019**

**( O. M. Mali )  
Civil Judge J.D. Renapur.**