

RCS 04/2019
Natthu Vs. Atul and other

ORDER BELOW EXHIBIT – 5
(Passed on this 19th day of April,2022)

1. Averments of the plaintiff are given in nutshell as under:-

Averments of the plaintiff :-

It is averred that the plaintiff is retired government servant. The suit property was purchased by the plaintiff in the name of her mother namely Rukmabai w/o Lataru Warkar. The suit property was purchased from independent own income of the plaintiff. The defendant no.2 is brother of plaintiff. Defendant no.2 had played fraud with the plaintiff by taking undue advantage of mentally ill condition of mother and prepared illegal will in favour of defendant no.1. Defendants have kept in dark about execution of Will. In fact Rukmabai w/o Lataru Warkar had no right to transfer or alienate the suit property to anyone. The plaintiff has right, title and interest in the suit property as purchased from his own income. Therefore, the present application is filed to restrain the defendants from alienating or transferring the suit property.

2. Defendants have filed say at Exh.22 and strongly resisted the application. The defendants have denied all the averments of the plaintiff and contended that the plaintiff has not filed any single document to show that he had purchased the suit property from his own independent income. The defendant no.2 has taken care of his deceased mother Rukmabai w/o Lataru Warkar during her life time.

Deceased Rukmabai w/o Lataru Warkar was absolute owner of the suit property and she has right to alienate or transfer the suit property as per her wish. Deceased Rukmabai w/o Lataru Warkar had executed will deed on 26/02/2009 in favour of defendant no.1 as per her own will. Said will deed registered at Sub Registrar Office, Parseoni, District Nagpur. Even the name of defendant no.1 is also came to be recorded and mutated in the Revenue Record after the death of Rukmabai w/o Lataru Warkar. Rukmabai w/o Lataru Warkar was died on 30/01/2016. The will deed executed by deceased Rukmabai w/o Lataru Warkar is binding upon the plaintiff. She was in sound position and capable to understand the affair of the suit property. All these reasons requested to reject the application.

3. Learned advocate Shri. M.D. Paliwal for the plaintiff argued that the suit property was purchased in the name of mother Rukmabai w/o Lataru Warkar. It is permissible by virtue of Section 4 of Benami Transaction Act. The plaintiff has all the right in the suit property therefore, Rukmabai w/o Lataru Warkar had no any right to execute will deed in favour of defendant no.1. Further he argued that will deed not executed as per last wish of deceased Rukmabai w/o Lataru Warkar.

4. On the contrary the learned advocate Shri. P. S. Sayare for the defendants argued that the plaintiff has nothing brought on record to show that the suit property was purchased by plaintiff from his own independent income. Further he argued that the Benami Transaction is not permissible in the eyes of law. The plaintiff has not raised objection at any time during life time of deceased Rukmabai w/o

Lataru Warkar in this regard. Therefore, conduct of the plaintiff shall take into consideration while considering prima facie case and balance of convenience.

5. Considering averments and contention of both sides following points of determination are arise for my consideration and those points are given alongwith my findings as under:-

Sr. No.	Points	Findings
1.	Whether plaintiff has prima facie case in his favour?	...In negative.
2.	Whether balance of convenience lies in favour of the plaintiff.	...In negative.
3	Whether irarabable loss will cause to the plaintiff if injuncion not granted?	...In negative
3.	What order?	Application is dismissed.

REASONS

6. **As to Point No.1 to 3:-**

All the points are interlinked to each other to avoid repetition they are discussed together.

7. The plaintiff has produced 7/12 extract of the suit property and sale deed dated 22/04/1981, which show that the suit property was purchased by deceased Rukmabai W/o Lataru Warkar from erstwhile owner Shri. Ashok Nimbulkar for consideration of Rs.17,000/-. On perusal of said sale deed it does not show that the plaintiff has paid any consideration amount from his own pocket. If the plaintiff is relying on Benami transaction then such transaction

would have no place in the eyes of law. Even the plaintiff has not brought any fact on record that he had taken any objection during life time of his mother. The prima facie, I am of the view that the plaintiff has no stand to claim he has right in the suit property by virtue of Benami transaction and it could not be sustained. On the other hand prima facie it would show that the deceased Rukmabai W/o Lataru Warkar was owner of the suit property as being acquired property. On the other hand the plaintiff has not brought any suspected circumstances to discard execution of Will deed. Mere averments would not suffice to hold that the Will was not executed as per last wish of testator.

8. On the contrary the Will deed itself registered document which strengthen the case of the defendants. Further significant to note that the Will has presumptive value subject to rebuttal under Indian Succession Act. Therefore, I do not find such circumstance which I should hold prima facie case in favour of plaintiff. On the other hand defendant have shown title and ownership acquired by virtue of Will deed of deceased Rukmabai W/o Lataru Warkar. Therefore it would not proper to say that the plaintiff has balance of convenience in his favour. Even it is pertinent to note that prima facie the defendant no.1 is owner of the suit property. In such circumstances it is not apt to issue relief of injunction against the defendant no.1. Considering all the facts and circumstance, I am come to conclusion that the plaintiff has failed to show prima facie case and balance of convenience in his favour and irreparable loss to him. Hence, I answer Point No.1 to 3 is given in negative.

As to Point No.4:-

9 Considering finding of Point no.1 to 3, present applicaiton is devoids of merit. Hence I proceed to pass following order:-

ORDER

1. Application Exh.5 is dismissed.
2. Parties to bear their own costs.

Parseoni

Date:19/04/2022

(O.J. Kulkarni)

Civil Judge, Jr. Division, Parseoni

