

Order Passed below Exhibit 5 in RCS No. 238/2013

This is an application Under Section 151 r/w Order 39 of C.P.C. The present suit is filed by plaintiff for Specific performance, declaration and permanent injunction, restraining to defendants from transferring, alienating, disposing off and creating third party interest over the suit properties of plaintiff. As well as Plaintiff prays for permanent injunction restraining Defendants from disturbing the peaceful possession of the Plaintiff and interfering with the possession thereof and forcefully evicting the Plaintiff from the suit properties. By this application Plaintiff prays for temporary injunction against Defendants till the disposal of suit.

2] By filing present application it is contended that suit properties originally belongs to Jagannath Kashinath Chavan and Defendant no. 1. After the death of Shri. Jagannath Kashinath Chavan his undivided share in suit properties devolved upon his legal heirs i.e. Defendants no. 1 to 4. Late Jagannath Kashinath Chavan and his brother i.e. Defendant no. 1 were not tilling the suit properties and not getting substantial income out of the suit properties. They were in need of funds for the benefit of their other properties and hence they were desirous of selling the suit properties to willing purchasers. The father of Plaintiff Hariba Sonba Chavan came to know that Late Jagannath Kashinath Chavan and his brother i.e. Defendant no. 1 were desirous for selling the suit properties. Therefore, he approached them and shown his willingness to purchase the suit

properties for valuable consideration. Around July 1982 negotiation, discussions took place between the parties and it was orally agreed between them that the Hariba Sonba Chavan shall purchase suit properties for consideration of Rs. 6000/- and Late Jagannath Kashinath Chavan and Defendant no. 1 shall transfer the suit properties in his name. It was also orally agreed that the entire consideration amount of Rs. 6000/- will be paid at the time of execution of sale deed and simultaneously the owner shall transfer actual and physical possession of the suit properties to Hariba. It was also agreed that in case if the owners fail to honour the commitment the owners shall be liable to refund the entire amount of Rs. 6000/- along with interest and also the costs and expenses incurred in the process.

3] The suit properties are Ramoshi watan lands and were held by the said owners on new tenure. It was discussed that the owner will have to apply for and obtain necessary permission. The owners represented that they were given advice that the offer in some form will have to be placed before the Collector for verification and such a sale deed can be executed and registered and can be placed before the authority.

4] It is also contended that in pursuance of the said oral agreement Late Jagannath Kashinath Chavan and Defendant no. 1 purchased stamp papers, got a sale deed drafted and communicated to Shri. Hariba and called him for execution of sale deed and asked him to bring agreed consideration amount

of Rs. 6000/- in cash. Accordingly, Shri. Hariba immediately meet Shri. Jagannath and Defendant no. 1 on dt. 22/07/1982. On relying on their assurance signed the sale deed dt. 22/07/82 and paid entire consideration amount of Rs. 6000/- to Shri. Jagannath and Shri. Jagannath executed the sale deed for and on behalf of himself, his brother and family and received the said amount of Rs. 6000/-. The said sale deed was signed and executed in presence of Shri. Pawar and Shri. Khomne. Shri. Jagannath and Defendant no. 1 delivered the actual and physical possession of the suit properties to Shri. Hariba except Gat no. 402 which is in joint possession and occupation.

5] After the execution of Sale Deed receipt of the said amount of Rs. 6000/- and delivery of the possession of the suit properties parties went to Registrar office for the purpose of getting the said sale deed registered. Before presentation of the said sale deed of registration it was told to the parties that the suit properties were watan lands (Ramoshi watan and new tenure). Without prior permission of Collector, the suit properties cannot be transferred and that sale deed will not be accepted for registration. Therefore, parties decided that the said owner shall first get the necessary permission and thereafter sale deed will be registered or as the case may be a fresh sale deed would be executed and registered in the name of Hariba. Entire consideration amount was duly paid by Shri. Hariba to Shri. Jagannath and Defendant no. 1 and possession was retained by Shri. Hariba. Since then Shri. Hariba continued

to use the suit properties for agriculture. From time to time Hariba requested Shri. Jagannath and Defendant no. 1 to apply and obtain necessary permission for transferring the suit properties, but the said owner informed Hariba that they had no sufficient funds with them and therefore they will require some time to effect requisite Nazarana and thereafter to get permission from Collector. Hariba relied on the promises and assurances given by the said owner and continued his activities on the suit properties without any objections and interference. Physical possession of the suit properties was with Shri. Hariba and he was tilling the suit properties. Hariba did not cancel or terminate the transaction because of there was no expressed refusal or avoidance shown by owners at any point of time. Owners allowed Hariba to remain in possession of suit properties without any objections and interference. Hariba and after his death his son i.e. Plaintiff never felt that the owners would betray them. Plaintiff and his father hope that one day owners would obtain permission and would execute and register sale deed. Therefore, time to time Hariba and thereafter the Plaintiff inquired about the progress about obtaining permission and for transferring the suit properties.

6] Plaintiff is in possession and application of some adjoining lands. Plaintiff tilling the lands and crops grown in the fields are mostly consumed by the family. The Plaintiff also planted 33 trees (11 each of chikoo, mango and coconut). Out of which as on date six chikoo trees and two mango trees are still alive. A

bore has been taken in Gat no. 525. Plaintiff has right for drawing water from the well located in the Gat no. 479, pipeline has been laid through the lands including Gat no. 455 and 496 till the tank which has been constructed in Gat no. 496. A pump has been installed. All the lands in possession and application of Plaintiff are irrigated from the water out of the said bore, well and tank. Plaintiff has taken efforts for leveling the suit properties have incurred expenses and costs for improvement of lands.

7] Recently in June 2013, the Defendant no. 5 came to the suit properties and asked Plaintiff to vacate the suit properties. On the inquiry by Plaintiff towards Defendant no. 5, he informed to Plaintiff that he had purchased gat no. 526, 528, 595 and 531 out of suit properties for valuable consideration from the other Defendants. When the Plaintiff refused to vacate and release the possession of suit properties, the Defendant no. 5 approached to Tanta mukti kendra and police station, Walhe. Police called Plaintiff and his son for interrogation. At that time Plaintiff placed sale deed dt. 22/07/1982 on record of police. After carrying out search Plaintiff shocked and surprised that the Defendant no. 1 to 4 behind back of Plaintiff executed and registered separate two sale deeds in favour of Defendant no. 5 thereby transferring total area admeasuring 01 H. 19 acre out of the suit properties by registered sale deed dated 05/05/2010 and 24/11/2011. The oral agreement between Hariba and Late Jagannath Chavan and Defendant no. 1 is subsisting, valid and

binding upon parties. The Plaintiff's father had paid entire agreed consideration amount of Rs. 6000/- to Late Jagannath and Defendant no. 1. Plaintiff's father had performed his part of contract. Plaintiff has been and is always ready and willing to accept the performance from Defendants.

8] Defendant no. 1 to 4 have active in defiance with and in breach of the agreed terms and conditions of that oral agreement, illegally entered into the transactions with the Defendant no. 5. Defendants no. 1 to 4 in collusion with the Defendant no. 5 played fraud upon Plaintiff. Defendants no. 1 to 4 have entered into hollow and illegal documents with Defendant no. 5 in order to deny the rights of the Plaintiff, in order to earn personal gains and profits. Plaintiff was, has been and continuously in actual and physical possession of suit properties since 1982. Defendant no. 5 had sufficient knowledge as regards the right of the Plaintiff. The Sale deeds entered into between the Defendants no. 1 to 4 and 5 are not binding upon the Plaintiff. Defendant no. 5 has wrongly claimed the possession of the properties. He intends to evict the Plaintiff from the suit properties and trying to disturb the possession of the Plaintiff. Plaintiff apprehends that in order to deny the right of Plaintiff Defendants no. 1 to 4 and 5 may further deal with, transfer, create third party interest or to dispose off or otherwise to do any activity in respect of suit properties. It is also contended that if injunction as prayed for is not granted in favour of Plaintiff, Defendants would not suffer any loss,

hardship, injustice and injury, but if the injunction is not granted then Plaintiff is only the person who would suffer. Therefore, Plaintiff constrained to file present application for temporary injunction.

9] On the other hand, suit summons and notices issued to Defendants. They appeared and filed their say below Exh. 34. They denied all the contentions of the Plaintiff and contended that the suit properties originally belongs to Jagannath Kashinath Chavan and Malhari Kashinath Chavan. After the demise of Jagannath Kashinath Chavan the names of Defendants no. 2 to 4 entered on 7/12 extract records of rights as his legal heirs by mutation entry no. 2489. Since then Defendants no. 1 to 6 are cultivating their share in suit properties and getting income by growing crops. Plaintiff is not concerned with Defendants no. 1 to 4 and suit properties. Therefore, the suit is liable to be rejected.

10] Defendant no. 1 and father of Defendants no. 2 to 4 namely Late Jagannath Chavan never negotiated with Plaintiff in respect of sale of suit properties. Defendant no. 1 and father of Defendants no. 2 to 4 were never in need of funds. They never approached and negotiated with Plaintiff for purchase of suit properties. The father of Defendants no. 2 to 4 never executed any deed in favour of Plaintiff if any deed was executed by the father of Defendants no. 2 to 4 in favour of Plaintiff since 1983 till today why the Plaintiff had not issued a single notice for

compelling Defendants for execution and registration of Sale Deed in respect of suit properties. It means that no such deed was executed between Plaintiff or his father and the father of Defendants no. 2 to 4. The present suit is mainly imaginary and false. Defendants never given the possession of suit properties to the father of Plaintiff.

11] No any such agreement took place between them, no any consideration amount of Rs. 6000/- received by father of Defendants no. 2 to 4 never agreed to sell out suit properties for consideration of Rs. 6000/-. In the year 1982, because of suit properties were Ramoshi watan lands require permission of concerned authority why till today the Plaintiff and his father not filed any single application for obtaining permission for purchase the suit properties. Plaintiff is not concerned with the suit properties, therefore, application of Plaintiff for temporary injunction is liable to be rejected.

12] I have framed following points for determination along with my findings there on as under:

<u>POINTS</u>	<u>FINDING</u>
1] Does the plaintiff prove that there exists prima facie case in his favour ?	Negative.
2] Does plaintiff further prove that balance of convenience lies in his favour?	Negative.
3] Does plaintiff further prove that plaintiff will suffer irreparable loss if the order of temporary injunction is not passed ?	Negative.

4] What order?

As per final order.

R E A S O N S

AS TO POINTS NO. 1 TO 3 :

13] Present suit is filed by Plaintiff for Specific performance, declaration and permanent injunction. Plaintiff in his support filed certain documents at Exh.3. He had filed photocopy of sale deed dt. 22/07/1982, photocopies of 7/12 extract of Gat no. 496, 526, 528, 531 and 402 and photocopy of sale deed dt. 05/10/2010 and photocopy of sale deed dt. 24/11/2011, Photocopy of caveat notice, photocopy of cash memo dt. 13/05/2002 issued by Kone-Deshmukh Agro sales Agency in the name of Plaintiff, photocopy of order form issued by Shri. Kirti Nursery seeding suppliers, affidavit of Ishwar Narayan Chavan.

14] The Defendants in support of their contentions relied upon certain documents filed below Exh. 44 in RCS no. 236/2013 and argued same in both matters.

15] It is argued on behalf of Plaintiff that suit property Gat no. 496, area 00H. 33 R., Gat no. 526 area 00H. 62R., Gat no. 528 area 00H. 13 R., Gat no. 531 area 00 H. 11R. And Gat no. 438 area 00H. 38R. originally belong to Shri. Jagannath Kashinath Chavan and Defendant no. 1. They were desirous to sell suit properties, therefore, they approached to Shri. Hariba Chavan, the father of Plaintiff and offered to purchase suit properties from them. In July, 1982 discussions and negotiations took place

between them and oral agreement of sale of suit properties took place between them for consideration of Rs. 6000/-. In pursuance of the said oral agreement Late Jagannath Kashinath Chavan and Defendant no. 1 purchased a stamp paper and got a sale deed drafted and communicated with Hariba for execution and registration of sale deed and also asked him to bring agreed consideration amount of Rs. 6000/- in cash.

16] Accordingly, Hariba immediately met to Jagannath and Defendant no. 1 on dt. 22/07/1982 and paid entire consideration amount of Rs. 6000/- to Jagannath Kashinath Chavan. Jagannath executed a sale deed for himself and for his brother and family and received the said consideration amount. The said sale deed was signed and executed in presence of Shri. Pawar and Shri. Khomane. It is further argued that Shri. Jagannath and Defendant no. 1 delivered the actual and peaceful possession of the suit properties to Shri. Hariba except Gat no. 402 which is in joint possession and occupation. After execution of sale deed a receipt of consideration amount and delivery of possession of suit properties the parties went to Registrar Office for the purpose of getting the sale deed registered. But, because of the suit lands were Ramoshi watan lands and since the suit properties were held on new tenure without prior permission of collector, the suit properties cannot be transferred. Therefore, it was told to the parties first to get necessary permission and then after sale deed will be registered.

17] It is further argued that from time to time Shri. Hariba requested Jagannath and Defendant no. 1 to apply for and obtain necessary permission as required for transfer of suit properties. But, the owner informed him that they have no sufficient funds with them and therefore it will take some time to effect requisite Nazrana and thereafter to get the permission from Collector. On the promises and assurance given by owners Hariba continued his activities on suit properties without any objections and interference. It is further argued that the physical possession of suit properties was with Hariba and he was tilling the suit properties. It is further argued that Shri. Hariba did not cancel or terminate the transaction because of there was no expressed refusal or avoidance shown on behalf of the said owners at any point of time. He continued to possess, occupy and till the suit properties without getting registration of sale deed. On dt. 11/03/1989 Shri. Jagannath expired leaving behind the Defendant no. 2 to 4 as his legal heirs and Hariba expired on dt. 23/09/1992 leaving behind the Plaintiff and Defendant no. 6 as his legal heirs. They are under the obligation to transfer the suit properties as per the orally agreed terms and conditions between Plaintiff and Defendant no. 6.

18] It is further argued that behind back of Plaintiff, Defendants no. 1 to 4 committed breach of oral agreement, had executed and registered two sale deeds in favour of Defendant no. 5 in respect of suit properties and played fraud upon Plaintiff.

19] In advance of argument Ld. Advocate for Plaintiff relied upon case law Sushil kumar vs. Rakesh Kumar, AIR 2004 SC 230 and submitted that mere entry in 7/12 extract of suit property is not a conclusive proof of ownership and possession, it is only for fiscal purpose. He also relied upon case law Murlidhar Bapuji Valve vs. Yallappa Lalu Chaugule, AIR 1994 BOM. 358. It is submitted that actual possession of suit claim remaining with Plaintiff for many years it is the constructive notice of suit agreement had to be inputted to Defendant. It is also argued that Plaintiff is in possession of suit properties even if the Plaintiff has failed to prove any agreement, his possession can only be disturbed by the Defendant by following due process of law and not by other means. He relied upon case law Smt. Pramila Lalbhai Dabhoya vs. Dr. Harish Lalbhai Dabhoya, 2005 All MR 288. He also relied upon case law Niamat Singh vs. Darbari Singh and others, AIR 1956 PUNJAB 230 and submitted that suit is within limitation. He also relied upon case law D. N. Raju vs. Smt. Santosh Verma and others, AIR 2006 AP 127 and Manick Lal Seal vs. K. P. Chaudhary, AIR 1976 Calcutta 115(1) submitted that there is no specific refusal or denial by the Defendants for specific performance, therefore suit is within limitation.

20] On the contrary, it is argued on behalf of Defendants that suit properties originally belong to Jagannath Kashinath Chavan and Defendant no. 1. On dt. 11/03/1989 he was expired leaving behind Defendants no. 2 to 4 as his legal heirs. After his demise,

names of Defendants no. 2 to 4 recorded over records of rights by mutation entry no. 2489. Since then they are owners and in possession of suit properties and cultivating the same.

21] It is also argued that Defendant no. 1 and father of Defendants no. 2 to 4 namely deceased Jagannath Chavan never negotiated with Plaintiff for wish to sale of suit properties. Father of Defendants no. 2 to 5 never executed any deed in favour of Plaintiff. The photocopy of sale deed dated 22/07/1982 which is placed along with list (Exh.3) is in its face appears false and bogus document. It is argued that the contents of the said document was written after signatures and thumb impressions. The writing is overlapping with signatures as well as thumb impressions. It is also argued that since last 31 years no any application is moved by Plaintiff to Revenue Authority to insert his name over 7/12 extract of suit properties to show his possession. Mutation entry no. 2489 not challenged by Plaintiff. There is no name of Plaintiff over 7/12 extract of suit properties in cultivation column, unregistered sale deed dt. 22/07/1982 is fabricated and false, writing as well as thumb impressions clearly show it. Defendants are in possession of suit properties since long. Defendants no. 2 to 4 sold out Suit properties Gat no. 496 and 535 on dt. 24/11/2011 by registered sale deed to Defendant no. 5 for Rs. 1,60,000/- for their legal necessity and on the same date Defendants no. 2 to 4 handed over possession to Defendant no. 5 and his name was mutated on record of rights by mutation entry no. 3728. Plaintiff is not concerned

with suit properties.

22] It is also argued that Jagannath Kashinath Chavan and Malhari Kashinath Chavan never entered into oral agreement with Plaintiff. Defendants are the owners and possessors of the suit properties. They are all the cultivators of the suit lands. Plaintiff was not in possession of the suit properties at any point of time. It is submitted that the suit of Plaintiff is imaginary, therefore, submitted that application (Exh.5) for temporary injunction may be dismissed.

23] Gone through documents filed along with list (Exh.3) by Plaintiff. On the perusal of 7/12 extract of Gat no. 496, it appears that in owner's column there is a name of Babu Babanrao Chavan (Defendant no. 5) as a owner. On the perusal of said extract in cultivation column name of cultivator shown as 'Khudda'. On the perusal of 7/12 extract of suit property i.e. Gat no. 526, it appears that in owners column there is names of Babu Babanrao Chavan (Defendant no. 5) as owner and in cultivation column cultivators' name is shown as 'khudda'. On the perusal of 7/12 extract of suit property i.e. Gat no. 528, it appears that in owners column there is name of Babu Babanrao Chavan (Defendant no. 5) as owner and in cultivation column cultivators' name is shown as 'khudda'. On the perusal of photocopy of sale deed dt. 22/07/1982, it prima facie appears that the contents therein are written afterwards and it is overlapping with thumb impressions and signatures. On the

persual of 7/12 extract of Gat no. 496, 526, 528, 531, 402 names of Defendants appears as owners and cultivators on suit lands. It also appears that they are in possession of suit properties. On the perusal of photocopy of sale deed dt. 05/05/2010 it appears that Defendants no. 1 to 4 by registered sale deed sold out suit properties Gat no. 526 and 528 to Defendant no. 5.

24] Furthermore, on the perusal of sale deed dt. 24/011/2011 it appears that Defendants no. 1 to 4 sold out the suit property Gat no. 496 to Defendant no. 5. On the perusal of 7/12 extract of suit properties, it appears that after the death of Jagannath Chavan, names of Defendants no. 1 to 4 are mutated on record of rights by mutation entry no. 2489. It prima facie appears that Jagannath Chavan was expired on dt. 11/03/1989 and after his death, names of Defendants no. 2 to 4 recorded over records of rights of suit properties by said mutation entry. It prima facie appears that since then the said mutation entry is not challenged by Plaintiff. On the perusal of 7/12 extract of suit properties, it appears that Defendants are in possession of suit properties since long. It prima facie appears that Plaintiff had not taken any efforts for to record his name over records of rights of suit properties. It further appears that the name of Plaintiff is not appear in cultivation column. There is no any prima facie proof to show that Plaintiff is in possession of suit properties. The sale deed dt. 22/07/1982 filed on record is a photocopy which itself discloses that there is overlapping of writing with thumb impressions. At this stage, it cannot be decided whether the said

document sale deed dt. 22/07/1982 is genuine or false. It can be decided after the evidence lead by both the parties.

25] Now, it prima facie appears that since long Defendants are in possession of suit properties. It prima facie appears that the alleged document sale deed took place between parties in the year 1982, after the lapse of 31 years Plaintiff came to court with a suit for specific performance. It prima facie appears that there is no any sufficient and justified reason and cause why he had filed present suit at belated stage. It also prima facie appears from documents that Defendants are in possession of suit properties since long, it also prima facie appears that Plaintiff had not taken any efforts to record his name over record of rights of suit properties. It prima facie appears that Plaintiff is not in possession of suit properties. Therefore, I answer to point no. 1 in negative.

AS TO POINT NO. 2 AND 3

26] It prima facie appears that alleged oral agreement is in the year 1982, after lapse of 31 years present suit is filed by Plaintiff for specific performance, declaration and perpetual injunction. It prima facie shows that Plaintiff has no prima facie case. It prima facie appears that during the above mentioned 31 years period Plaintiff has not taken any efforts for recording his name over record of rights of suit properties. Original unregistered sale deed dt. 22/07/1982 is not produced on record by the Plaintiff. On the face of photocopy prima facie appears that its contents

are written afterwards and there is overlapping of thumb impressions and signatures. The 7/12 extract of Gat no. 496, 526, 528, 531, 402 prima facie show that since long there is a name entry of Defendants, also prima facie shows the cultivation of Defendants over suit properties. It prima facie shows that the Plaintiff is not in a possession of suit properties. There is no prima facie case in favour of Plaintiff. In such situation, if the injunction as prayed for is granted then Defendants would suffer loss and hardship. On the other hand Plaintiff is not in possession of suit properties. If injunction is not granted then it would not cause prejudice to the Plaintiff and Plaintiff would not suffer any irreparable loss. There is no balance of convenience in favour of Plaintiff. Hence I answer points no. 2 and 3 in the negative and in answer to point No. 4, I proceed to pass the following order.

ORDER

1] The application (Exh.5) is dismissed.

Saswad

Date:- 04/12/2014

(A. S. Pandagale)

Jt. Civil Judge J.D., Saswad.

CERTIFICATE

I affirm that the contents of this PDF file Judgment are same word for word as per original Judgment.

Name of Steno : Smt. S. S. Phadke, Steno L.G.

Name of Court : A. S. Pandagale.
Jt. CJJD & JMFC, Saswad.

Date : 04/12/2014

Order signed by
Presiding Officer on : 10/12/2014

Order uploaded on : 15/12/2014
