

RCS No 231/2016

CNRNOMHPU18-001634-2016

ORDER BELOW EXH. 5

The present application is filed under Order 39 Rule 1 and 2 of Code of Civil Procedure 1908.

02. Plaintiff submits that, defendant no. 1 is the owner of the suit property. As defendant no. 1 is in need of money for minor's education, returning hand loan and some legal necessity of the family he decided to sell the suit property. After acquainted with these facts plaintiff was ready to purchase the suit property. Then registered agreement to sale having registered no. 191/1993 was took place between plaintiff and defendant for the consideration of Rs 164000/- (rupees one lakh sixty four thousands only). It is submitted by the plaintiff that by virtue of said agreement to sale, he is in the possession of the suit property since then. Plaintiff further submits that, the transaction of the sale took place between plaintiff and the Ramesh Kundanlal Oswal, who is power of attorney holder of the defendant no.1. The Sale deed was given for the registration to the registrar office having registered no 1439/1995. When plaintiff approached to sub registrar office, Daund to take the original sale deed, but same was not returned to the plaintiff because it was not scanned. But when again plaintiff approached to the sub registrar office for the sale deed, due to some technical difficulties same was not handed over to the plaintiff. Therefore plaintiff filed an application under Right to

Information Act for demanding the sale deed. Then concern authority handed over the sale deed to the plaintiff on 5/11/2014 after its registration with no. 512/1997. But meanwhile, name of the plaintiff was not entered in to the 7/12 extract of the property and by taking disadvantage of the same defendant no.1 sold suit property to the defendant no 2 and 3. And by way of said sham and bogus sale deed defendants are obstructing the peaceful possession of the plaintiff and also threatens to sell this suit property. Hence plaintiff construed to file the present application.

03. On the other hand defendants by filing their say at Exh. 21 strongly resisted the present application. Defendants contended that as per the agreement to sale, plaintiff has to measure the suit land. Transaction of the sale has to be carried out within one month after getting the certified copy of the said measurement map. But plaintiff failed to do so. Defendants further contended that by virtue of said agreement to sale deed, possession never transferred to the plaintiff. In fact plaintiff failed to comply with the provisions of the said agreement; therefore defendant no. 1 issued notice through advocate and also issued a public notice on 5/11/1995 through Rashtratej newspaper. But plaintiff failed to reply and comply with both these notices. It is the case of the defendants that, since plaintiff failed to comply with the public notice he has no right in the suit property. Defendant no 1 and 2 are bonafide purchaser. As per the registered sale deed their names were mutated to the 7/12 extract of the property and they are in the possession of the suit property they also denied that defendant no 1 issued

power of attorney in favour of Ramesh Oswal. Hence they prayed for rejection of the application.

04. Heard the Ltd advocates of both parties. Following points arises to my determination, I have recorded my findings thereon as under.

Sr. No	Points	Findings
1	Does the the plaintiff proves that he has prima facie case in his favour?	In Affirmative
2	Does the the plaintiff proves that balance of convenience lies in his favour?	In Affirmative
3	Does plaintiff proves that, if injunction is refused, he will suffer the irreparable loss?	In Affirmative
4	What order?	As per order

REASONS

05. To substantiate his claim, plaintiff at exh 3 filed various documents such as 7/12 extract of the suit property, attested

copy of agreement to sale having register no 191/1993, Xerox copy of plaintiffs sale deed, Xerox copy of defendants sale deed. Plaintiff also produced documents at exh. 31 such as 7/12 extract of the suit property, original registered agreement to sale, plaintiff's original sale deed, application filed by plaintiff under RTI Act, certified copy of D book dated 15/3/1997 and 14/8/1995, Xerox copy of RTS appeal no 23/2017, Xerox copy application made by Ramesh Oswal to registrar office pune and photographs of suit property. He also relied on the documents such as original power of attorney, affidavit of Rasiklal Shrimal Meher and his PAN Card, 7/12 extract of the suit property dated 14/7/1995, which are filed at exh.33.

06. Defendants also filed document at Exh.29/1 such as public notice from Daily Rashtratej news paper.

07. It is argued on behalf of plaintiff that, suit property is ancestral property of defendant No.1. Defendant No.1 entered into registered agreement to sale with plaintiff on 04/02/1993. Defendant No.1 also gave power of attorney to Ramesh Oswal on 14/03/1995. But defendant No.1 in the year 1996 sold the suit property to defendant No.2 and 3. Though by way of said sale deed the name of defendant No.2 and 3 are entered into 7/12 extract of the suit property, no possession was transferred to them. He further argued that, by way of registered agreement to sale, possession is already transferred to the plaintiff. Plaintiff also got executed registered sale deed of suit property, therefore defendant No.1 has no right to sold the suit property or to transfer the possession of suit property to defendant No.2 and 3.

Ld. Advocate for plaintiff also argued that, no limitation was set out to complete sale transaction in said agreement to sale. He further argued that the document filed by defendants at exh.29/1 which is publish notice, neither the name of plaintiff nor the name of Ramesh Kundanlal Oswal was mentioned in it. The name which was mentioned is R.K.Oswal which is not sufficient to show defendants are bonafide. The address mentioned is public notice is also different. He further argued that, plaintiffs sale deed was present for the registration on 14/08/1995, but due to some technical problems it got registered in the 1997. He further argued that, sale deed was presented for registration on 14/08/1995 and public notice was issued on 05/11/1995. Which is after the execution of sale deed. Due to some technical problems plaintiff name was not entered into 7/12 extract of suit property and by taking disadvantage of the same fact, defendant No.1 got executed sale deed in favour of defendant No.2 and 3. He further argued that, Ramesh Oswal was power of attorney holder of defendant No.1. And he executed the sale deed in favour of plaintiff. Defendants never filed any complaint about the said power of attorney. Defendant No.2 and 3 are not bonafide purchasers and they never gave any public notice before the purchasing the suit property. Ld. Advocate for the plaintiff argued that, prima facie case, balance of convenience lies in favour of plaintiff and if injunction is not granted irreparable loss would cause to the plaintiff. Hence he prayed for allowing the present application.

08. On the other hand Ld. Advocate for defendant argued that it is mentioned in the application at exh.5 that, the

suit land was agreed to sale for benefit of minor, therefore section 11, 12 and 13 of Indian Contract Act, will be applicable here. He further argued that, as per section 8 (2) of Hindu Minority and Guardianship Act, 1956 prior sanction of the court is necessary before dealing with the property of minor. He further argued that, power of attorney has not been annexed to the sale deed of plaintiff, plaintiff with the help of registration authority got executed Sham and Bogus sale deed. Sale deed is in abeyance till 28/10/2014. The name of defendants No.2 and 3 are present in 7/12 extract of suit property, they are in possession of suit property. Hence advocate for the defendants prayed for rejection of the application.

As to Point No 1 to 3

09. As all these points are inter linked, they are discussed together to avoid repetition.

10. It is admitted by both the parties that, suit property is ancestral property of defendant No.1. Defendant No.1 also admitted the execution of agreement to sale dated 04/02/1993 but denied the transfer of the possession to the plaintiff. It is the case of the plaintiff that, by way of registered agreement to sale dated 04/02/1993 he got possession of suit property. On the other hand defendants admitted the registered agreement to sale in para 11 of their written statement and say at exh.21. While arguing, Ld. Advocate for plaintiff drives the attention of the court towards para 9 of registered agreement to sale, which is at exh.31/2. In which it is specifically mentioned that,

possession is transferred to plaintiff. Further on perusal of contents of agreement to sale it transpires that, the limitation was not provided for completion of the sale transaction. Now it is the duty of the defendants to show that, how they recover the possession from the plaintiff.

11. It is the case of the defendants that, defendant No.1 issued notice through advocate Shri.L.F.Sayyed to plaintiff. But after perusal of record, it transpires that the said notice was not produced on record by defendants. It is also the case of defendants that, defendant No.1 by way of public notice in “Dainik Rashtratej” gave time to the plaintiff and one Ramesh Kundanlal Oswal to complete the transaction within 8 days. After perusal of public notice which at exh.29/1, it did not transpires the name of plaintiff and Ramesh Kundanlal Oswal. The name mentioned in the said public notice is of defendant No.1 and one R.K.Oswal. Further more it is seen from the agreement to sale and public notice that, the address mention in agreement to sale is different from which is mentioned in public notice.

12. While arguing both parties are emphasized on whose sale deed is first in point of time. Plaintiff also relied on observation made by Hon'ble Supreme Court in Gurubax Singh VS Kartar Singh & ors. AIR-2002 SC-959. The present application is filed for temporary injunction. Therefore who sale deed is first in point of time can be deciding at the final hearing of the suit. Therefore at this juncture with due respect to the observations made by Hon'ble Supreme Court in in Gurubax

Singh VS Kartar Singh & ors. AIR-2002 SC-959 will not be helpful to the plaintiff.

13. While arguing defendants also relied on observation made by *Hon'ble Supreme Court in Ritesh Agarwal & othrs VS Securities an exchange board of India & others (2008) 8 SCC 2005*. As this case is cited by defendants relates to company Act, and minor as share holder. It is argued by Ld. Advocate for defendant that, minor has interest in the suit property therefore the observation made by the Hon'ble Supreme Court, in Supra case is applicable to this case. Again on the cost of repetition it is necessary to mention here that, the present application is only for temporary injunction. Therefore whether the minor has interest in the suit property or not will be decided at final hearing of the suit. Therefore with due respect to the observation made by *Hon'ble Supreme Court in Ritesh Agarwal & othrs VS Securities an exchange board of India & others (2008) 8 SCC 2005* is not helpful for defendants at this juncture. Defendants also relied upon the the observation made by *Hon'ble Supreme Court in Padma Vithoba Chakkayya VS Mohd. Multani in Civil Appeal No.620 of 1960 decided on 04/05/1962*. The present case law was also referred on the point of interest of minor. Therefore with due respect to the observation made by *Hon'ble Supreme Court in Supra* case it is not helpful to the defendants at this juncture.

14. Ld. advocate for the plaintiff relied on observation made in para 12 and para 15 by *Hon'ble Bombay High Court*

in Shamrao Ganpat Chintamani VS Kakasaheb Laxman Gorde 2008 (2) ALL MR-118. Para 12 is as under,

“The first appellate court seems to have been swayed with the certification of mutation entry after about one year. The first appellate court blame the plaintiff for not moving the authority concerned for certification of mutation entry. In this context look to section 154 of land revenue court is necessary. It provides that, intimation of transfer by registering officer, in relation to document purporting to create, assign or extinguish any title to or in charge of land used for agricultural purposes or in respect of which record of rights has been prepared as registered under Indian Registration Act, be given to the Talathi of village in which the land is situated and to the Tahsildar in such format and at such time as may be prescribed by the rules under the Act. The document in the case on hand is a registered sale deed. This fact cannot be disputed. In view of section 154 of Land Revenue Court, It is in fact the duty of Sub-registrar/Registering Officer, to inform the transaction in question to the Talathi as well as to the Tahsildar. Thus, it is not an obligation on the part of plaintiff, on the case on the hand, to report the transaction to the village officer or to the revenue officer. Section 149 has to be read with section 154 and conjoint reading shows that, in case of acquisition otherwise than registered instrument, party has to make written application to the village officer. Suffice to see that, in case of registered instrument, it is a legal obligation on the registering authority. If registering authority commits an error or fails in its duties, citizen like the plaintiff cannot be blamed or made to suffer. The finding of the first appellate court is thus, suffers jurisdictional error. Any of the courts below did not refer to the

provisions of Maharashtra Land Revenue Court, despite the fact the they were dealing with the transaction of agricultural land, mutations and record of rights.”

15. Observations made by Hon'ble Bombay High Court in Supra Case at para No.15 is as under

“At this stage, it is apposite to refer to the judgment of learned single Bench of this court in the case of Venkat Darmaji Vs. Vishwanath 1983 Mh.L.J.284. In that case the suit property was allegedly purchased by plaintiff by agreement of sale. Said document was executed by defendant for consideration of Rs.31590/- The allegation was that, amount of Rs.20000/- was paid before the agreement to respondent No.1. The agreement recites that, on the date of execution of the agreement, the plaintiff has obtained possession. Said agreement was on the stamp paper and written in vernacular. Said agreement had been sign by the parties. Defendant in that, suit refuses to executed the sale deed and therefore, suit for specific performance. Defendant in that suit, admitted the execution of the agreement. However, it was the case alleged by defendant that, the agreement does not refer the true nature of the transaction, but it was an agreement executed only to secure the amount taken by him. It was also pleaded that, no agreement of sale as alleged by plaintiff therein was executed. On the premises of these facts, “learned Single Bench of this court the para no.13 has observed has under”,

.....However, I am at present inclined to take the view that, the agreement sale is on stamp paper and this agreement is specifically admitted by the defendant to the extent of execution. In

view of the admission of the respondent No.1 at this stage it would be improper to infer that, prima facie the recitals in the agreement are not true.....

I am in respectful agreement with the view taken by learned single Bench of this court in the said case.

16. In present case, plaintiff come with theory that, he is in the possession of the suit property by way of agreement of sale. And it is the duty of registering authority to inform revenue authority for entering the name of plaintiff in 7/12 extract, as per registered sale deed. Defendant No.1 admitted execution of registered agreement of sale. But it is the case of defendants that, as per their registered sale deed they are possession of the suit property and their names are entered on 7/12 extract of the suit property. It is settled principle of law that, entries in revenue records are only for fiscal purposes, it does not create any title. After perusal of agreement to sale it is seen that, possession was transferred to the plaintiff. Now defendant has to show how they recovered the possession of suit property from plaintiff, and they are in possession. But defendants failed to do so. Defendants also didn't challenge the power of attorney executed by defendant No.1 in favour of Ramesh Kundanlal Oswal before appropriate authority.

17. After perusal of record, it shows that, Plaintiff prima facie succeeds to show he is in possession of suit property, on the other hand defendants fails to do so. Balance of convenience also goes in favour of plaintiff. Prima facie plaintiff is in

possession of suit property, if temporary injunction is not granted the irreparable loss would cause to the plaintiff. Further more plaintiff may be deprived from his possession. Hence from above all discussion answer to point No.1 to 3 are in affirmative.

AS TO POINT NO.4

18. Since plaintiff is prima facie in possession of suit property, balance of convenience lies in his favour and if temporary injunction is not granted, irreparable loss would cause to the plaintiff. Therefore application needs to be allowed. Hence following orders.

ORDER

1. Application at exh.5 is allowed.
2. Defendants No.1 to 3 are restrained from alienating the suit property by way of sale, exchange, gift, mortgage or by any other modes of alienation or creating third party interest over the suit property till final disposal of suit.
3. Defendant No.1 to 3 are restrained from obstructing to the peaceful possession of plaintiff over the suit property by themselves or through any other person till the final disposal of suit.
4. Cost in main cause.

Date:-18/02/2019

(A.A.Kalamkar)

Daund

3rd Jt. Civil Judge Junior Division
Daund Tq.Daund Dist-Pune

CERTIFICATE

I affirm that the contents of this P. D. F. file Judgment are same, word to word, as per the original Judgment.

Name of the Stenographer : T.R.Bagwan.

Court : A.A.Kalamkar,CJJD,
(Court No.3), Daund.

Date : 18.02.2019.

Judgment signed by the

presiding officer on : 18.02.2019

Judgment uploaded on : 18.02.2019