

CNR No. MHRG080005952024 	<u>R.C.S. NO. 26/2024</u> Ramesh Govind Garude and others Vs. Claridges Sez Developers Vijay Kumar Raichand (formerly Paul Nanda) and others
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ORDER BELOW EXH. 5

1] Plaintiffs filed this suit for declaration that they have share in the suit property and that power of attorney and sale deeds are bogus and not binding on them and for perpetual injunction restraining defendant no.1 & 2 from encroaching and making any changes in suit property. Plaintiffs have no demand against defendant no. 3 to 5.

2] It is the case of plaintiffs that ancestor of plaintiffs and defendant no. 3 to 5 by name Dagadu Ragho Garude was original owner of gat no. 1 admeasuring 0H 30.30R, gat no. 43 admeasuring 0H 2.02R, gat no. 46 admeasuring 0H 2.5R and gat no. 68 admeasuring 0H 50.6R, all situated at mauje Sarang, Tal. Khalapur. For the sake of convenience, hereinafter, it will be called as suit property. After death of Dagadu Ragho Garude all plaintiffs and defendant no. 3 to 5 are his heirs. The suit property is ancestral property of plaintiffs and defendant no. 3 to 5 and it was mutated in the name of deceased Dagadu Garude in the year 1946 vide mutation entry no. 86 and since then plaintiffs and their ancestors are cultivating the suit property. Before some time plaintiff no. 1 went in gat no. 1 at mauje Sarang and saw that some persons are cleaning the land and on inquiry he came to know that defendants purchased said property. Therefore plaintiff went in Talathi office Lodhivali and came to know that name of defendant no. 1 and 2 is entered in the 7/12 extract of said property as owner. Plaintiffs contended that they never executed any power of attorney or sale deed of suit property in favor of any one. Defendant no. 2 prepared bogus power of attorney in his favor and thereafter he himself

sold gat no. 68 in his favor on 21/08/2008 vide sale deed bearing no. 2929/2008 and then sold it to defendant no. 1 on 24/09/2009 vide sale deed bearing no. 2134/2009. Similarly defendant no. 2 sold gat no. 1 and 46 in his own favor on 17/08/2010 vide sale deed no. 2861/2010. They contended that at the time of executing this sale deed, mother of plaintiff no. 6/1 to 6/3 was already died on 22/07/2009. They further contended that they never executed any power of attorney in favor of defendant no. 2 and never executed any document in respect of suit property in favor of defendant no. 2 and never received any consideration from defendant no. 2. The documents executed by defendants are bogus and not binding on plaintiffs. The suit property is ancestral property and plaintiffs and defendant no. 3 to 5 are having share in it. Plaintiff no. 1 to 3 issued notice through their advocate to defendant no. 2 to cancel aforesaid documents but defendant no. 2 issued false reply. Plaintiffs are having apprehension that defendants may develop the suit property or transfer it to others and as such plaintiffs may suffer irreparable loss. Hence plaintiffs are constrained to file this suit and file this application for injunction restraining defendants from making encroachment in suit property or dispossessing plaintiffs from suit property.

3] Defendant no.1 filed his written statement cum reply to this application at Ex.43. He denied all the pleading of plaintiffs. He contended that he is concerned with gat no. 68 only as he purchased it. He admitted that defendant no. 2 transferred land gat no. 68 in his own favour by registered sale deed bearing no. 2929/2008 by using power of attorney executed by plaintiffs and then transferred it in favour of defendant no.1 by registered sale deed bearing no. 2134/2009, but he denied that the power of attorney was bogus. He contended that consideration amount is received by plaintiffs and defendant no. 3 to 5. He contended that since 2009 he is owner and in possession of gat no. 68. He contended that he never intended

to sale aforesaid property. He contended that plaintiffs have no concern with gat no. 68 and they filed this suit only to extract money from him. Hence he prayed for rejection of application.

4] Defendant no. 2 filed his written statement cum say to this application at Exh. 26. He specifically denied all the pleading of plaintiffs and contended that power of attorney dated 20-11-2007, dated 29-12-2007 & dated 24-03-2008 are executed by plaintiffs & defendant no. 3 to 5 and powers were given to defendant no. 2 to sale the suit property. He also contended that those power of attorney are registered in the office of Tahsildar, Karjat as well as in the office of Sub-registrar, Khalapur. He contended that he executed sale deed on the basis of valid power of attorney. He contended that plaintiffs obtained certified copy of sale deed in April 2022 but filed this suit in the April 2024, which shows that plaintiffs have no urgency and the cause of action mentioned in plaint is bogus and concocted. He contended that the numbers of property mentioned in mutation entry no. 86 and numbers of suit property are different. He contended that suit property are self acquired property of deceased Dagadu Ragho Garude and are not joint family property of plaintiffs & defendant no. 3 to 5. He further contended that all three power of attorney are legal & valid and executed by all plaintiffs & defendant no. 3 to 5. He contended that consideration of sale deeds was also received by plaintiffs and plaintiff no.1 & other plaintiff signed on those receipts. He also contended that gat no. 1 & 46 are sold by plaintiffs in his favour on 17-08-2010 by executing registered sale deed bearing no. 2861/2010 and since then he is having possession of same. He contended that gat no. 68 was sold by plaintiffs on 21-08-2008 by executing registered sale deed bearing no.2929/2008 and since then he was having possession of same and thereafter he sold said property to defendant no.1 on 24-08-2009 by registered sale deed bearing no. 2134/2009. He also contended that there is hike in the price of land and

therefore plaintiffs filed this suit only to harass him and grab money from him. He contended that there is no reason to file this application for temporary injunction and hence prayed for rejection of same.

5] After hearing Ld. Advocates for both parties and after going through documents on record, following points arise for determination and I have recorded my findings against each of them along with reasons as under.

No.	Points	Findings.
1	Whether plaintiffs prove that prima facie case exist in their favour ?	..No..
2.	Whether balance of convenience lies in favour of plaintiffs ?	..No..
3.	Whether plaintiffs will suffer irreparable loss if injunction is not granted in their favour ?	..No..
4.	What Order	As per final order.

REASONS

AS TO POINT NO. 1 TO 3 :-

6] In support of their case plaintiffs filed some documents along with list Exh.4 i.e. 7/12 extracts of suit property, copy of mutation entry no.86, copy of registered sale deeds bearing no. 2929/2008, 2134/2009 & 2861/2010, copy of notice sent by plaintiffs to defendant and reply sent by defendant no.2, along with list Ex.51 death certificate of Sunita Gayakwad and along with list Ex.31 photographs of suit property.

7] Defendants also filed documents along with list Ex.53 copy of mutation entry no. 256, along with list Ex.55 copy of mutation entries no. 86, 739, 744, 768 & 806, along with list Ex.47 account statement of defendant no.2 & copy of letter issued by Inspector General of Registration and Controller of Stamps and along with list Ex.49 mutation entry no.793,

account statement of defendant no.2 & cash vouchers.

8] It is admitted fact that plaintiffs & defendant no. 3 to 5 are legal heirs of deceased Dagadu Ragho Garude. Both plaintiffs and defendants have filed copy of mutation entry no. 86. It is contended by defendants that said document does not relate to suit property. Perusal of both these documents shows that the copy of mutation entry no. 86 filed by defendant does not show name of deceased Dagadu Ragho Garude whereas mutation entry no. 86 filed by plaintiffs shows name of deceased Dagadu and it also shows that he became owner by purchasing the property. Moreover it is specifically admitted by defendant no.2 that suit property were self acquired property of deceased Dagadu.

9] It is contended by plaintiffs that they never executed any power of attorney in favour of defendant no. 2 or anyone. However, the sale deeds are executed by defendant no.2 on the basis of power of attorney executed by plaintiffs and defendant no. 3 to 5. The copy of sale deeds are filed on record. Perusal of it shows that those sale deeds are registered documents. The registered sale deeds are presumed to be genuine and valid unless the contrary is proved. Perusal of sale deeds shows that the power of attorney, on the basis of which sale deeds are executed, are attached with it. The sale deed bearing no. 2929/2008 shows that three separate power of attorney are attached with it. Those power of attorney are executed by all plaintiffs and defendant no. 3 to 5 in respect of suit property. Those power of attorney are registered at Tahsil office Khalapur, Tahsil office, Karjat & Sub-registrar office, Khalapur. Most important fact is that plaintiff no.1 is party to one of the power of attorney and witness in other two power of attorney. It is contended by plaintiffs that power of attorney are not registered documents as they are no registered in sub-registrar office and therefore on their basis sale deed can not be executed. However, defendants contended that before 2010 registration of power of attorney was not compulsory.

They also filed copy of letter issued by Inspector General of Registration and Controller of Stamps dated 25-03-2013 which shows that direction were given to all sub-registrar that registration of irrevocable power of attorney relating to transfer of immovable property executed after commencement of Registration (Maharashtra Amendment) Act, 2010 is compulsory. Thus, considering this fact, prima facie no doubt can be taken on the genuineness of sale deed bearing no. 2929/2008. Moreover, it is also mentioned in sale deed that amount of consideration is paid to plaintiffs in cash & through cheque no. 6529 dated 14-08-2008. Defendants also filed account statement showing payment of amount through cheque. Thus, through this sale deed ownership of gat no. 68 was transferred to defendant no.2 and thereafter he sold it to defendant no.1 by registered sale deed bearing no. 2134/2009 on 24-09-2009.

10] Copy of registered sale deed bearing no. 2861/2010 is also filed on record, which shows that defendant no. 2 executed this sale deed on the basis of same power of attorney mentioned in previous paragraph executed by plaintiffs in his favour. It is contended by plaintiffs that this sale deed is registered on 17-08-2010 whereas one of the principal who executed power of attorney by name Sunita Mohan Gayakwad was already dead on 22-07-2009. They contended that sale deed can not be executed on behalf of dead executor of power of attorney. It is true that upon death of principal, the authority of power of attorney holder ceases. However, if power of attorney is executed by multiple executors, the death of one executor may not invalidate the power of attorney for the surviving executors. It is not brought on record by plaintiffs that they informed defendant no.2 about the death of deceased Sunita or they canceled the power of attorney. In such circumstances, prima facie the sale deed appears to be genuine.

11] The plaintiffs prima facie failed to prove that they executed

power of attorney in favour of defendant no.2. Prima facie the sale deeds of suit property are executed on the basis of power of attorney executed by plaintiffs in favour of defendant no.2 and as per sale deeds the possession of suit property is also lying with defendant no. 1 & 2. Prima facie there is no case exist in favour of plaintiffs. Moreover, the certified copies of sale deeds are filed on record by plaintiffs which shows that those copies are obtained by them in April 2022. Thus prima facie plaintiffs are having knowledge of transactions since April 2022. This case is filed in April 2024. Plaintiffs have not brought on record anything to show that during this period defendant no. 1 or 2 are trying to sale suit property or trying to create third party interest in it. Hence, no balance of convenience lies in favour of plaintiffs and no irreparable loss will cause to plaintiffs if injunction is not granted in their favour.

12] Hence, having regard to aforesaid discussion I answer point Nos.1 to 3 in negative and pass following order:

ORDER

1. Application for temporary injunction Exh. 5 is hereby rejected.
2. Costs in cause.

Place: Khalapur.
Date: 29-03-2025

(R. Y. Khandare)
Civil Judge Jr. Division, Khalapur.

Certificate

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

Court Name	:	Shri. R. Y. Khandare CJJD & JMFC, Khalapur
Name of Steno	:	Shri. R. S. Patil Stenographer, Grade – III
Date of Order	:	29/03/2025
Order signed by P. O. On	:	01/04/2025
Date of PDF & Order uploaded on	:	01/04/2025