

Order below exh.5 in
R.C.S. No.394/2006

GOVIND DESHPANDE VS TANAJI SHINDE

1. In a suit for declaration, permanent as well as perpetual injunction, plaintiff filed this application to restrain the defendant from alienating the suit property or from creating any third party interest over the suit property, pending the decision of the suit.

2. It is contended by the plaintiff that, the suit property is final plot no. 418, in T. P. Scheme No.1 admeasuring 9070.52 Sq. Meters, situated at Karad. The suit plot was formed from the land of Revn. Survey numbers, which were ancestral Watan No.5 land of the plaintiff. After the death of father of the plaintiff, plaintiff became LR of his father. The said land was in possession of the plaintiff and in the year 1965, the lands were re-granted to plaintiff. Accordingly in the varied T. P. Scheme in 1986, the said final plot no.418 recorded in the name of the plaintiff. Plaintiff is

alone the owner of the said suit property. However, the entry in respect of the defendant in land Survey no.354/2C/1 in 7/12 extract as per the gift-deed is sham and bogus one. The defendant was not in possession of the said property. Anna Daulat Shinde as well as Tukaram Daulata Shinde were not holder or possessor of the said property. The defendant is not related to them. These persons have not bequeathed the suit property by way of gift-deed in favour of the defendant. Therefore, the entry in the name of the defendant in 7/12 extract is bogus one. On 12.10.2006, defendant threatened the plaintiff to alienate the suit property. Therefore, plaintiff filed this suit for declaration, and permanent as well as perpetual injunction along with this application.

3. Defendant appeared in the suit and filed his reply and Written Statement at Exh.29, thereby denying all the allegations raised by the plaintiff against him. The defendant partially admitted that, in the year 1961, in Town Planning Scheme final plot no.418 admeasuring 9070.52 Sq. Meters

has been formed. The defendant denied that, in the year 1965, suit plot was re-granted in favour of the plaintiff. According to the defendant, the land Survey No. 354/2C having 24 Are area was bequeathed on 30.08.1945 by gift-deed by Anna Mahadu and Tukaram Daulata Shinde in favour of the defendant, which was registered before the Sub-Registrar Karad. Since then defendant is in possession of the suit property. Accordingly, the name of the defendant was mutated in the suit property, however, plaintiff has not objected for the said mutation. Therefore, defendant submitted that, the balance of convenience lies in his favour, if the injunction is granted, he will suffer an irreparable loss. Therefore, defendant submitted for rejection of the application.

4. Following points arise for my determination and I answer my findings thereon with reasons to follow as under:

POINTS

FINDINGS

- | | | |
|---|---|------|
| 1. Whether plaintiff has prima-facie case in his favour ? | : | Yes. |
|---|---|------|

2. Whether balance of convenience : Yes.
lies in his favour ?
3. Whether plaintiff will suffer
an irreparable loss if the : Yes.
injunction is refused ?
4. What order ? : Allowed.

REASONS

5. Both parties placed on record the documents in order to substantiate their claim. Plaintiff has placed on record the documents as per list Exh.3, those are the extract of final plot no.418 at Exh.7, order of Mamaledar Karad dated 23.2.1965, Mutation entry Exh.8, copy of Town Planning Scheme, letter issued by the Asstt. Director, Town Planning, Satara, copy of order in RCS 274/01. As against it, the defendant placed on record the document as per list Exh.45 which are notice issued by Nagar Parishad Karad, tax receipt for the period 2003 to 2007, 7/12 extract, gift-deed.

AS TO POINT NOS. 1 TO 4 :

6. Heard both the sides at length. Perused the record

of the case. Plaintiff placed on record the property card of final plot no.418 at Exh.7. It reveals from the property card Exh.7 that, in the year 1965, said plot was shown as a holder in the name of the plaintiff, the name of the defendant was shown as Pattedar to the extent of ½ share.

7. The order dated 27.2.65 of the Mamaledar Court Karad reveals that, the land S.No.354/2C/1 is recorded in the name of the plaintiff subject to condition that the occupancy of the land so re-granted shall not be transferable or partible by metes and bounds without previous sanction of the Collector of North Satara. Along with this order, plaintiff placed on record the schedule of land survey numbers.

8. The record of rights Exh.8 reveals that, the land Survey No.354/2C/1 is re-granted on condition in favour of the plaintiff and accordingly the said right in favour of the plaintiff is recorded in said record of rights Exh.8. The Town Planning Scheme Final Form submitted by the plaintiff reveals that, the final plot No.418 i.e. the suit plot is formed from

354/2C/2 as well as 354/2C/1. The name of the defendant is shown as a lessee to the extent of $\frac{1}{2}$ share. Thus it appears that, the entry in the final plot of the name of the defendant, is not as owner but as a lessee one.

9. The gift-deed placed on record by the defendant which is dated 30.07.1945 reveals that, Anna, Mahadu, Tukaram Daulata Shinde bequeathed the land Survey No.354/2C admeasuring 24 Are in favour of the defendant. The said gift-deed does not disclose as to how the ancestral became the owner of the said property. No doubt true that, the defendant placed on record the notice, tax bill issued by the Municipal Council Karad, however, those documents cannot determine the ownership of the defendant over the suit property. The 7/12 extract in respect of the land Survey No.354/2C reveals that, the name of the defendant has been mentioned as "Kabjedar". However, the entry in the name of the plaintiff was also there which was put in bracket. It is pertinent to mention here that, in the said 7/12 extract, the

initial entry in respect of “Kabjedar” is shown as Sarkar (Govt.). There is no entry in the said 7/12 extract that, the defendant is shown as owner of the said property.

10. In the case in hand, the plaintiff has claimed the relief of declaration, permanent and perpetual injunction against the defendant. It is contended by the plaintiff that, the defendant is trying to alienate the suit property as well as he is trying to create third party interest over the suit property. Considering the documents placed on record by the plaintiff, the suit plot i.e. final plot no.418 has been re-granted in favour of the plaintiff. The documents further reveals that, the Survey No.354/2C/4, 354/2C/3, 354/2C/2, 354/2C/1 were amalgamated and final plot no.418 was created. The suit property was Watan land and Watan were abolished by the Government of Maharashtra by the provisions of Bombay Bargana and Kulkarni Watans (Abolition) Act. Thereafter the suit property was re-granted to present plaintiff on new restricted conditions. As per the Mutation entry no.13559 at

Exh.8, it shows that, as per the order of Tahasildar Karad, name of the present plaintiff was mutated in the record of rights of the suit property. By the letter dated 22.5.87 of Asstt. Director Town Planning Satara, the town planning Scheme was approved by the competent authority and thus the City Survey extract of the suit property shows the name of the plaintiff. It is pertinent to mention here that, all these transactions are happened after 1945 i.e. after the bequeath of the alleged gift-deed dated 30.7.1945. So considering the documents placed on record by the plaintiff, prima facie at this stage, the right of plaintiff appears over the suit property. Whether the defendant has right over the suit property by way of gift-deed or not, it will be decided on merit of the case. So also the right of the plaintiff also can be decided on merits of the case. However, while considering the temporary injunction application, one has to consider that, whether plaintiff has prima facie shown his right or interest in order to seek interim relief in his favour. In the case in hand by filing the aforesaid

documents on record by plaintiff, the suit property is recorded in the name of the plaintiff and thus the plaintiff has prima facie shown his right and interest over the suit property. Therefore, the plaintiff has every right to protect the said right over the suit property till the decision of the suit on merits. Therefore, in order to preserve the suit property till the conclusion of the trial, case is made out to grant temporary injunction in favour of the plaintiff. It is also made out under such circumstances that, the plaintiff has prima facie case in his favour, the balance of convenience also lies in his favour and if the defendant is not restrained from alienating the suit property, it will create the multiplicity of the proceeding, resulting into an irreparable loss to the plaintiff. Therefore, by recording my findings to point nos. 1 to 3 in affirmative, I proceed to pass following order.

ORDER

1. The application Exh.5 is hereby allowed.
2. The defendant, his agents, servants or any other

person on his behalf are hereby restrained from alienating or creating any third party interest in the suit property pending the suit, subject to condition that, plaintiff shall not protract the trial in any manner and assist the Court for speedy disposal of the suit as plaintiff being senior citizen.

3. Cost in cause.

Karad

Date: 11th Dec., 2008

(A.D.Jawalkar)
4th Jt.Civil Judge, J.D
KARAD