



land is having 4 boundaries as under ( hereinafter be referred as Suit Field for the sake of convenience.) :-

Towards East : Gaavthan  
Towards West : Adan River  
Towards North : Field of Uttam Ramteke,  
Towards South : Road

3. It is his further case that the suit field was agreed to be purchased on 05.02.2000 as per written agreed of sale in between plaintiff and defendant. It was decided Rs.52,000/- as consideration of which 25,000/- has been paid as a earnest amount and remaining 27,000/- were agreed to be paid prior to sale. As per said agreement the date of sale-deed was fixed on 31.12.2000 and accordingly on 03.11.2000 stamp of Rs.2080/- for the purpose of registration of sale was purchased and sale-deed was written upon it. Said sale stamp was signed by the defendant and two witnesses. It was produced before Sub Registrar Ghatanji for execution of sale-deed, but it came to the knowledge that as the property of village Virud (Kawtha) came under *Project of Nimna Painganga*, there is requirement of prior permission of concerned department for the purpose of sale. Hence the sale-deed was not registered on that date. But the amount of consideration of Rs.52,000/- was paid to the defendant and there is entry regarding the said fact in written same stamp on 03.11.2000. Further as the full amount of consideration was paid, the defendant has given belief to the plaintiff that the sale be considered to be completed.

4. On 06.11.2000 the defendant executed a General Power of Attorney and registered it in favour of the plaintiff. Further if any contingency arise and for that plaintiff would not suffer and he should remain as owner the defendant has executed a registered will-deed in favour of the plaintiff on 06.01.2000.

Further the defendant has also given belief that he will get permission from concerned authority and will execute the sale-deed in favour of the plaintiff and he will not change the will-deed and General Power of Attorney till his death upon an affidavit. As the defendant is residing at Tawa Nagar he has sold the suit field for proper consideration to the plaintiff. Accordingly since the date of agreement of sale i.e. 05.02.2000, the plaintiff is cultivating the suit land without any obstruction. He has requested time and again to the defendant for execution of registered sale deed by obtaining permission and each time defendant is giving belief that he will do so. The defendant is used to come at village Virud for house hold programmes and at that time the plaintiff has requested him for the purpose of sale-deed. In May 2010 when the defendant was at the house of plaintiff he again asked him regarding sale-deed. At that time, the defendant has promised him that on next day itself he will accompanied Udebhan and will apply for permission and he also told that the possession and ownership is with himself and then why he is making haste for the sale-deed. He also told that he will not fraud him. Hence he should not have any tension.

5. On 09.05.2011 the defendant has sent a notice through his advocate Shri Dhattrak and conveyed that he has cancelled the registered general power of attorney of 06.11.2000. He was surprised after receiving the said notice and replied it through his Advocate Mule of Pusad on 21.05.2011. He has conveyed the defendant that he should take permission of concerned department and execute the sale deed in his favour and till then he should not obstruct his possession. This reply was received to the defendant on 03.06.2011 and on 16.06.2011 the defendant came alongwith his relative on the suit field and has threatened the father and mother of the plaintiff not to cultivate the suit field. After understanding given by the father of the plaintiff, the defendant left the suit field. But as the defendant has cancelled the power of attorney it is fear in the mind of plaintiff that he will obstruct his possession over the suit field. Hence the

suit.

6. The defendant has filed his written statement below Exh.13 and denied all the material averments of the plaint. It is his say that he has purchased the field in Sur.No.2 admeasuring 1.62 HR from Latkan and Sahebrao Ramteke by registered sale-deed. Since the sale-deed he is in possession as owner and is cultivating the same. The four boundaries of suit field as shown in the plaint are false. He has never transferred his right in the suit field by sale. There is no question of execution of sale-deed by obtaining permission as said by the plaintiff. The plaintiff should have asked the declaration regarding ownership but there is no such relief asked by him. Hence he cannot asked his legal right as per his will and wish that he is the owner of the suit field. The plaintiff has asked three reliefs of declaration as well as execution of sale-deed by taking three defences which are contrary to each other. Hence he prayed for dismissal of the suit on this ground. There is no cause of action to the suit, the suit is beyond limitation and on this ground he prayed for dismissal of the suit.

7. As averred by the plaintiff the date of sale-deed was fixed on 31.12.2000 as per so called agreement of sale and he would have filed this suit within three years from 31.12.2000. It is his further say that he is residing at Tawa Nagar, Tal. Itarsi, District Hushannapur of Madhya Pradesh. Due to his service in Public Works Department, he cannot came to take care of the suit field hence he has asked the plaintiff for taking care of the same. He has never executed the power of attorney. At the office of Sub Registrar he came to know about it and as per advise of said Officer he has cancelled the said power of attorney as per cancellation of power of attorney-deed of 07.05.2011. He has registered it in office of Sub Registrar Ghatanji.

8. He has never executed agreement of sale with signature over the

agreement of sale and sale stamp are not of the defendant. The filed documents are false and bogus. He never executed the sale-deed also. He has filed these documents after filing of the suit and the receipt of the suit plaint alongwith documents to the defendant. All these documents are false. Hence he has reported to the Police Station Parva on 28.06.2011. The inquiry going on. There is much differences in his signatures on all the documents filed by the plaintiff. On 19.06.2011 the plaintiff alongwith his relatives have quarelled with his wife. The said incident was reported to the Police Station Parva. The report of obstruction was also filed on 12.06.2011 to Police Station Parva against the plaintiff and his relatives. Further it is his say that he has never applied for obtaining permission as per so called agreement of sale. As he is residing in another State to grab the suit field, this false suit is filed on the basis of false documents.

9. It is his further say that the plaintiff has filed a proceeding before Tahsildar Ghatanji bearing RM No.11/RTS/62/10-11 on the basis of general power of attorney but in that proceeding he has not given any fact of so called agreement of sale dated 05.02.2000 and so called stamp of sale dated 03.11.2000. This shows that he has prepared all these documents by personating for grabbing the property. There is no entry since 2000 on the basis of so called agreement of sale, stamp of sale over the 7/12 extract in favour of the plaintiff that he is cultivating the suit field. The plaintiff has said in his notice on 21.05.2011 that he is cultivating the suit field on the basis of so called agreement of sale and stamp of sale but this fact also not told before proceeding of Tahsildar. Though the order was passed by the Tahsildar in favour of the plaintiff but same has been challenged before Sub Divisional Officer Kelapur by him. Hence he prayed for dismissal of the suit with compensatory costs of Rs.20,000/-.

10. The Issues framed by me below Exh.21 are reproduced below alongwith my findings thereon :--

I S S U E S

F I N D I N G S

- |    |  |     |                        |
|----|--|-----|------------------------|
| 1. | Does the plaintiff prove that the defendants has executed agreement of sale dated 05.02.2000 in his favour ? | ... | No.                    |
| 2. | Does the plaintiff prove that he was and is ready to to purchase the suit field as per agreement of sale ?   | ... | No.                    |
| 3  | Is the plaintiff entitled for execution of sale-deed on the basis of agreement of sale ?                     | ... | No.                    |
| 4. | Does the plaintiff prove his possession since 05.02.2000 ?   | ... | No.                    |
| 5. | What order and decree ?  | ... | The suit is dismissed. |

R E A S O N S

11. To prove the case the plaintiff has examined himself upon his affidavit of examination-in-chief Exh.24. He has also examined one Gautam upon his affidavit Exh.54 to prove the agreement of sale, stamp of sale, power of attorney and will-deed. He also examined Vijay Madavi, Yuvaraj Rathod, Jijabai Gharde upon their affidavit below Exh.55, 58 and 59 to prove the fact of possession and fact of stamp of sale and execution of sale-deed. He has also filed on record the agreement of sale Exh.25, stamp of sale Exh.26, general power of attorney Exh.27, certified copy of proceeding before Tahsildar Exh.28, notice of defendant Exh.29, reply notice Exh.30, postal receipt Exh.31, 7/12 extract Exh.32, application of defendant to Collector Exh.36, postal receipt Exh.37, roznama of proceeding before Tahsildar Exh.38 alongwith full proceeding sheet total 17 documents, 7/12 extracts Exh.43, 44, 45, 46, 47, 48, 49, 50, Tonch copy of suit filed Exh.51, certificate of Sub Divisional Engineer Exh.52, will-deed Exh.57 and he has closed his evidence by pursis Exh.64.

12. The defendant has examined himself of his affidavit of

examination-in-chief Exh. 69, he also filed documents 7/12 extracts Exh.70 to 73, order of Sub Divisional Officer Exh.74, his sale-deed Exh.75. He has closed his evidence by pursis Exh.76.

13. Heard the learned Advocate Sau. Datey and Shri Dhattrak for respective parties at length.

14. At the opening itself, I should mention here that as per plaint clause and prayer clause of the plaint the plaintiff asked his relief of execution of sale-deed of stamp of sale dated 03.11.2000 alongwith declaration of ownership and perpetual injunction. But as per averments in the plaint, he has averred that as per agreement of sale dated 05.02.2000 the stamp of sale was prepared on 03.11.2000 same be ordered in his favour to be executed and registered. Hence issue below Exh.21 were framed by me and accordingly. The plaintiff and the defendant have adduced their evidence after going through the Issue Exh.21.

As to Issue Nos.1 to 4 :-

15. The plaintiff has averred in the plaint and has adduced his evidence of affidavit Exh.24, he has reiterated all the facts of the plaint in his affidavit of his evidence. Accordingly he has filed all the documents as mentioned supra. On the reading of all the plaint, the evidence and the documents of the plaint I have to scan the evidence. Now as per first document in favour of the plaintiff i.e. agreement of sale Exh.25, it appears that there was agreement of sale of suit field for consideration of Rs.52,000/- and prior to this date Rs.25,000/- were paid as an earnest amount and remaining 27,000/- were paid on the date of agreement of sale dated 05.02.2000. It means that on the date of agreement of sale itself full amount of Rs. 52,000/- was paid by the plaintiff to the defendant. But as per further contents of this agreement of sale it was agreed that as the plaintiff was not having the amount for execution of registered sale-deed it was agreed that the

sale-deed will be registered up to 31.12.2000 as and when the plaintiff was having amount for the registration. So it is very much clear that on the date of agreement of sale full amount of sale-deed was paid and date of execution of sale of sale-deed was fixed on 31.12.2000. But on 03.11.2000 the stamp for registration of sale-deed was purchased. The contents were written upon it. The same is below Exh.26. On perusal of contents, it appears that the amount of consideration of Rs.52,000/-was paid at home and on that day i.e. 03.11.2000 the possession of suit field was given but both these facts are contrary to the agreement of sale Exh.25 and plaint also.

16. Further though it has been averred by the plaintiff that due to non permission of Competent Officer the sale-deed was not registered by Sub Registrar but there is nothing either in the stamp of sale Exh.26 or by any other documents that due to non permission the sale-deed cannot be registered. Further the plaintiff has admitted in his cross-examination that he was not knowing this fact on the date of agreement of sale Exh.25 and accordingly it was not mentioned in his agreement of sale Exh.25. It has been admitted by the plaintiff in the cross-examination that he came to know about the fact of prior permission from Sub Registrar but no such evidence either oral or documentary is put forth by the plaintiff. It has been averred and admitted in the cross-examination that sale of stamp Exh.26 was produced before the Sub Registrar Ghatanji for registration but there is no such evidence on record or even there is no endorsement on sale of stamp Exh.26 or any other written intimation if any given by the Sub Registrar Ghatanji. He has also admitted that in the year 2000 he has filed the income tax return, but payment of Rs.52,000/- of sale were not mentioned in it.

17. Further, coming to the evidence after 3 days only on 06.11.2000 there was execution of power of attorney by the defendant and as per contents of

this power of attorney there is no mention of the agreement of sale or stamp of sale Exh. 25 and 26. Further contents shows that the defendant has only empowered to take care of the suit field. If at all there is agreement of sale Exh. 25 and stamp of sale Exh. 26 then they might have shown in this general power of attorney because as averred by the plaintiff in his plaint this power of attorney was executed as stamp of sale was not registered for his belief. Further on that day itself a Will Deed was also executed by the defendant in favour of the plaintiff. This Will Deed is below Exh.57 and after going through the contents of this will-deed also there is no mention regarding the agreement of sale Exh.25 or stamp of sale Exh.26 to show that he wants to sale the suit field to the plaintiff. Due to belief given to the plaintiff that as stamp of sale Exh.26 could not be registered he should consider him as owner as he is in possession only.

18. Further on perusal of proceeding sheet before Tahsildar Exh. 38 and order of Tahsildar Exh.28, there is nothing to show that there was execution of agreement of sale Exh.25, stamp of sale Exh.26 etc., only mentioned is that the plaintiff was in possession on the basis of power of attorney Exh.27. If at all, he was in possession on the basis of agreement of sale Exh.25 or stamp of sale Exh.26, then all these things might have been pleaded in the proceeding before the Tahsildar. Further the application before Tahsildar is not filed by the plaintiff on record so that this Court may know whether he had pleaded all these things in that application.

19. Further as per reply notice Exh. 30 it appears that as per contents of para-5 to 10 that the plaintiff was in possession of the suit field on the basis of agreement of sale-deed dated 05.02.2000 and till 2011 he has waited for execution of sale-deed. This again contrary to the pleading and other documents filed by the plaintiff on record. Further in view of contents para-10 it appears since 2000 till 2011 the plaintiff has not taken any efforts for the purpose of

execution of sale-deed. So also till the filing of the suit also there is no notice issue to the defendant regarding execution of sale-deed.

20. Further I am not getting as to what was the purpose of the defendant that he has executed more than one document regarding the suit field in favour of the plaintiff i.e. agreement of sale Exh.25, stamp of sale Exh.26, power of attorney Exh.27, will-deed Exh.57 because the pleading of the plaintiff is contrary to each other to all these facts.

21. As per documents below Exh.35 the extract of register, it appears that on 04.11.2000 the defendant has applied for permission and application was made to Collector which is filed on Exh.36 but there is nothing in the said application regarding execution of power of attorney. So each and every time the plaintiff has taken different defences before different authorities for the purpose of execution of sale-deed. Before Tahsildar he has not pleaded regarding execution of agreement of sale and stamp and before Collector he has not pleaded regarding power of attorney and will-deed. This conduct of the plaintiff is under clouds of suspicion.

22. Now very important fact that as per pleading and documents before Exh.26, which was executed on 03.11.2000 that on that day he came to know that sale stamp cannot be registered as suit field is under Project of Nimm Pain Ganga but the said certificate was issued on 26.06.2001 which was filed by the plaintiff only below Exh.52. So I cannot understand if on the day of said stamp he was knowing said fact then why there is delay of about 6 months regarding taking of this certificate Exh.52.

23. On perusal of evidence of Gautam Gharde it appears that he is the only person who has signed all these 4 documents agreement of sale Exh.25,

stamp of sale Exh.26, power of attorney Exh.27, will-deed Exh. 57 as a witness. He has admitted in his cross-examination that the plaintiff is his brother. He has also admitted that the application below Exh.36 made to Collector was in the writing of the plaintiff and is not knowing as to who has put thumb impression over it. So this witness being brother and due to his admissions in the cross-examination he cannot be trusted upon.

24. Further witness Vijay below Exh.55 has admitted that he has not knowing survey number of suit field. He do not know whether the defendant is cultivating the suit field. He has not accompanied plaintiff to file the report regarding the dispute of the obstruction over the suit field. He do not know what was the dispute between the plaintiff and defendant. So this witness is also not trusted one. Witness Yuvraj Exh.58 has admitted in his cross-examination that he do not know the survey number or Gut Number of the suit field. He is not knowing in which direction of his field the suit field is ? hence this witness is also not trust worthy. Witness Jijbai has been examined with purpose to show that there was talks between the plaintiff and defendant regarding the sale of the suit field before her husband at her house. But I can not understand if there were talks before her husband then why her husband was not examined, why this hearsay evidence examined by the plaintiff. On the contrary she has admitted that the plaintiff is his nephew. She has not seen the transaction in between the plaintiff and the defendant. She cannot tell on which date there were talks. So she is not also trust worthy one.

25. Now coming to the evidence of the defendant he has reiterated fact of written statement in his affidavit Exh.69. On perusal of sale-deed Exh.75, it appears that this defendant has purchased the suit field from one Latkan and Sahebrao. This falsify the very first part of the plaint that the defendant has purchased the property from Panchfulabai. The source of ownership of the

defendant is also falsified with the said facts. Though there are some admissions given by the defendant in his cross-examination regarding his signature etc. But as the plaintiff has failed to prove his pleading by trustworthy evidence, all these admissions are of no use to the plaintiff. On the contrary there is totally contradictory suggestions given to the defendant that the plaintiff is in possession on the basis of agreement of sale Exh.25 but as I have narrated supra there is no such pleading of the plaintiff that he was in possession on the basis of agreement of sale Exh.25. So upon all these I came to the conclusion that the plaintiff has failed to prove the fact that there was agreement of sale, stamp of sale, general power of attorney and will-deed. Accordingly he has failed to prove the fact of his readiness and willingness from the date of agreement of sale till filing of the suit. Accordingly I answer Issue Nos. 1 to 4 in the negative.

As to Issue No 5 :

26. In view of my negative findings to Issue Nos.1 to 4, the suit of the plaintiff fails. Accordingly it will have to be dismissed. Considering the fact of all the available defences taken by the plaintiff, I deem it proper to order him to pay the costs of the suit to the defendant and to bear his own. Hence in answer to Issue No.5. I pass the following order :-

O R D E R

1. The suit is dismissed with costs.
2. The Plaintiff is directed to pay the costs of the suit to the defendant and to bear his own.

Dated: 08.08.2014

(Tejwant Singh A.Sandhu)  
Civil Judge (Jr. Dn.) Ghatanji.