

Presented on : 17.04.2012
Registered on : 23.04.2012
Decided on : 21.11.2018
Duration : 6Y. 6M. 29D.

**IN THE COURT OF ADDITIONAL SMALL CAUSE JUDGE AND JOINT
CIVIL JUDGE, SENIOR DEVISION PUNE.
(PRESIDED OVER BY V.P. ADONE)**

**Spl. Civil Suit No. 518/2012
Exh. No. 68**

Tirth Developers
A proprietary Firm, having its office
at 102, Sai Empire, First floor,
Baner, Pune through its proprietor
Mr. Vijay Tukaram Raundal.
Age : 46 years,
Occupation : Agriculture and Business,
Office at above said address.Plaintiff

V/s

- 1- Mr. Basavraj Balappa Girisagar
Age : 62 years,
Occupation : Agriculture and Business
R/at Veerabhadranagar, Baner, Pune.
- 2- Mr. Sambhaji Hanumant Thorve
Age : 45 years,
Occupation : Business
R/at 128, Patil Plaza, Pune 411009
- 3- Shri Sai Developers
Through its partner
Shri Rajesh Kantilal Shah
Age : 40 years,
Occupation : Business
R/at B-25, Jijai Nagari, Kothrud,
Pune 38.

- 4- Shri Maruti Sadashiv Kivle,
Age : 38 years,
Occ : Business and agriculture
R/at Ganesh Prasad Building, Wing-A,
Vadgaon Khurd, Sinhagad Road, Pune.Defendants

Suit for declaration and injunction

Appearance:

Ld. Advocate for Plaintiff : Shri. A. P. Vibhute
Ld. Advocate for Defendant Nos. 2 to 4 : Exparte

J U D G M E N T

(Delivered on 21st day of November 2018)

1- This suit is filed for declaration and injunction as per provisions of Specific Relief Act 1963.

2- Facts in brief giving rise to litigation are as follows :

The subject matter of this suit is, property bearing Survey No. 270, Hissa No. 4 assessed at Rs. 00.41 paise admeasuring 00 Hector 29 Aar situated at village Sus, Taluka Mulshi, District Pune, bounded as follows:

Towards East : Land of Wadu Amruti Chandere
Towards West : Land of Khandave
Towards South : Land of Maruti Bhikoba Chandere
Towards North : Land of Laxman Shankar Chandere.

Henceforth above said property is referred to as suit property for the purpose of brevity and convenience.

3- Suit property originally belonged to defendant No.1 who had purchased the same in year 1994 from Shri Nathu Sakharam

Chandere. Plaintiff and defendant No.1 are involved in the business of purchase and development of immovable properties. There have been number of dealings between plaintiff and defendant No.1 in the past. In pursuance to that in year 2002 defendant No.1 offered suit property for sale to plaintiff. At that time Urban Land Ceiling Act was in force and therefore it was not possible to purchase suit property by way of sale deed. Hence by mutual consent plaintiff and defendant No.1 agreed to execute Development Agreement and Irrevocable Power of Attorney of suit property for consideration of Rs. 4,71,250/-. Accordingly defendant No.1 executed in favour of plaintiff registered Development Agreement and Irrevocable Power of Attorney dated 19.12.2002 vide Serial No. 6765 and 6766 registered with the office of Sub Registrar, Mulshi. Out of total consideration amount Rs.1,17,800/- were paid by plaintiff prior to execution of Development Agreement and thereafter from time to time balance consideration Rs. 3,53,450/- or even more than that has been paid to defendant No. 1. Defendant No.1 has also issued receipts of amount received by him. Since then till today plaintiff is in actual possession of suit property.

4- Meanwhile plaintiff came across public notice dated 06.04.2011 in daily news paper Prabhat calling upon objection of public for propose sale of suit property by defendant No.1 in favour of defendant Nos. 2 to 4. This public notice is immediately replied by plaintiff on 07.04.2011. However, by way of letter dated 05.05.2011 defendant No.1 communicated plaintiff that total consideration amount has not been paid and defendant No.1 never

intended to sale suit property to plaintiff. Thereafter on 08.06.2011 plaintiff sent reply to above letter of defendant No.1 for confirmation of payment of entire consideration amount. However, said reply is returned unserved. So plaintiff published public notice in daily newspaper Prabhat dated 14.06.2011 warning public at large not to enter into any type of transaction regarding suit property. Defendant No.1 then sent letter dated 01.07.2011 informing plaintiff that transaction is cancelled. As a matter of fact defendant No.1 has never cancelled or revoked transaction in dispute or any document. Defendant No.1 after having receipt of rejoinder visited plaintiff in his office and he was convinced about the validity of transaction in dispute.

5- Plaintiff has got suit property demarcated and he also carried out work of leveling and part fencing. On basis of public notice dated 17.02.2012 plaintiff was surprised to know that defendant Nos. 2 to 4 alleged themselves as owners of suit property and they were negotiating with third party to sell suit property. Plaintiff immediately objected said public notice on 10.02.2012 and took search of revenue record of suit property and learnt that defendant Nos. 2 to 4 had illegally purchased suit property from defendant No.1 on the basis of registered sale deed dated 08.07.2011. Plaintiff also came to know that defendant Nos. 2 to 4 have entered their names in 7/12 extract of suit property.

6- On 03.03.2012 defendants Nos 2 to 4 entered in suit property and they tried to break and damage fencing of plaintiff. Hence it has become necessary for plaintiff to file this suit. Cause of

action arose on 21.02.2012 when plaintiff received copy of sale deed of suit property amongst defendant No. 1 and defendant Nos. 2 to 4. Further arose on 03.03.2012 when defendants illegally tried to enter in suit property. Accordingly plaintiff is seeking declaration that he is having development rights in suit property by virtue of Development Agreement and Power of Attorney dated 19.12.2002. Plaintiff is seeking further declaration that sale deed of suit property dated 08.07.2011 by defendant No.1 in favour of defendant Nos. 2 to 4 is illegal and not binding. Finally plaintiff is seeking permanent injunction restraining defendants from disturbing plaintiffs lawful possession over suit property.

7- Summons of suit was duly served upon defendants however they failed to appear in the matter, so matter has proceeded ex parte against defendants.

8- In view of contentions raised by plaintiff in pleading as well as oral evidence and on the basis of documentary evidence following points arise for my determination to which I record my findings on the basis of reasoning and discussion stated in paragraphs below.

Sr. No.	Points	Findings
1	Whether plaintiff proves that defendant No.1 executed registered Development Agreement and Irrevocable Power of Attorney of suit property dated 19.12.2002 ?	In affirmative.
2	Whether plaintiff proves that defendant No.1 executed registered sale deed dated 08.07.2011 of suit property in favour of defendant Nos. 2 to 4 ?	In affirmative.

3	Whether plaintiff proves that registered sale deed dated 08.07.2011 is illegal, null and void and not binding ?	Partly in affirmative.
4	Whether plaintiff is entitled for relief of declaration and injunction as prayed ?	Partly in affirmative.
5	What order and decree ?	As per final order

REASONS

9- In order to substantiate the claim raised in plaint, on behalf of plaintiff Vijay Tukaram Raundal deposed vide his affidavit under Order 18, Rule 4 of Code of Civil Procedure vide Exh. 44 and P.W. 2 Sarvesh Sureshkumar Shah vide Exh. 48.

10- Besides above oral evidence plaintiff is relying upon numerous documents to prove own version and contentions. Plaintiff is relying upon following documents

- Development Agreement dated 19.12.2002 is at **Exh. 50**.
- Certified copy of Irrevocable General Power of Attorney executed by Basavraj Girisagar in favour of plaintiff dated 19.12.2002 is at **Exh. 51**.
- 22 receipts of payment are at **Exh. 52/1 to 52/22**.
- Notice dated 07.04.2011 by Advocate Amarsingh Rajput to Advocate Sandip Mahadev Ghate is at **Exh. 53**.
- The paper publication issued by Advocate Sandip Ghate on 06.04.2011 in daily Prabhat Newspaper is marked is at **Exh.54**.
- The postal acknowledgment receipt of notice Exh. 53 is at **Exh.55**.
- On 05.05.2011 B.B.Girisagar sent a letter by R.P.A.D. to Advocate Amarsingh Rajput is at **Exh.56**.

- Notice objection dated 08.06.2011 was sent by plaintiff to defendant No.1 through Advocate Rajput. This notice objection is at Exh. 57.
- Paper publication in daily news paper Prabhat dated 14.06.2011 is marked as Exh.58.
- Certified copy of sale Deed dated 08.07.2011 of suit property executed by defendant No.1 in favour of defendant Nos. 2 to 4 is at Exh. 59.
- A notice given by defendant No.1 to plaintiff on 01.07.2011 is at Exh. 60.
- The objection taken by Advocate Anand Chavan and Ranjeet Patil on 10.02.2012 against paper publication dated 07.02.2011 is at Exh. 61.
- Paper publication dated 10.02.2012 by Advocate Anand Chavan and Ranjeet Patil in daily newspaper Prabhat is at Exh. 62.
- Reply dated 10.02.2012 given by Advocate Anand Chavan to Advocate S.R. Mundada is at Exh. 63.
- The objection notice dated 16.07.2013 issued by Advocate Anand Chavan to Advocate Shri Chandrakant Nanekar is at Exh.64.
- Six photographs are at Exh.65/1 to 65/6.

As to Point No. 1 :-

11- It is deposed by witness Vijay Raundal on behalf of plaintiff below Exh. 44 that suit property survey No. 270/4 admeasuring 29 Aar situated at village Sus was owned by defendant No.1. Both plaintiff and defendant No.1 were knowing each other due to business of immovable property purchase and development.

It is further testified that defendant No.1 approached plaintiff in year 2002 and offered to sell suit property. At that time Urban Land Ceiling Act was in force therefore it was not possible for plaintiff to purchase suit property by way of sale deed. Therefore defendant No.1 suggested and advised to execute Development Agreement and Irrevocable Power of Attorney of suit property. In pursuance to that registered Development Agreement and Irrevocable Power of Attorney dated 19.12.2002 respectively bearing No. 6765 and 6766 were executed and registered in the office of Registrar Mulshi at Paud, Pune. It is expressly stated on behalf of plaintiff that out of total agreed consideration amount Rs. 4,71,250/- an amount of Rs. 1,17,800/- was paid prior to execution of Development Agreement and Power of Attorney. Similarly, balance consideration amount Rs.3,53,450/- is also paid to defendant No. 1 time to time in the form of cash for which receipts have been issued by defendant No.1. The witness of plaintiff has deposed in detail pertaining to amount paid by him to defendant No.1 and about receipts of the same.

12- It is worthy to mention that in support of above oral evidence plaintiff has placed on record certified copies of registered Development Agreement of suit property and Irrevocable Power of Attorney dated 19.12.2002 respectively bearing No. 6765 and 6766 below Exh. 50 and 51. It is significant to note that defendants have not appeared in the matter and they have not challenged pleadings or oral and documentary evidence of plaintiff. In the absence of contest the oral evidence adduced by plaintiff below Exh 44 and documentary evidence like Development Agreement and Power of

Attorney below Exh. 50 and 51 have gone unchallenged or undisturbed. As such in the absence of contest and rebuttal evidence I do not see any impediment to accept the oral and documentary evidence of the plaintiff as it is and on its face value. If oral evidence and documents below Exh. 50 and 51 are accepted and acknowledged, then an inference has to be drawn that defendant No.1 has executed Development Agreement and Irrevocable Power of Attorney of suit property in favour of plaintiff.

13- It has also specifically come in the evidence of plaintiff that the consideration amount of the transaction of development of suit property was fixed to the tune of Rs. 4,71,250/-. It is the case of plaintiff that out of aforesaid total consideration amount an amount of Rs. 1,17,800/- was already paid by plaintiff and already received by defendant No.1 from time to time before execution and registration of development agreement. There is express reference of payment of Rs. 1,17,800/- by plaintiff to defendant No.1 in Development Agreement itself which is at Exh. 50. So there is no problem whatsoever to infer and conclude that prior to execution of Development Agreement Exh. 50 plaintiff has indeed paid an amount of Rs. 1,17,800/- from time to time to defendant No.1. At the same time the fact cannot be forgotten that defendant No. 1 has come forward in court to deny payment of said amount. Hence plaintiff has sufficed to prove that out of total consideration amount part amount of Rs. 1,17,800/- is already received by defendant No. 1 time to time before execution and registration of Development Agreement.

14- It has further come in evidence of plaintiff that remaining consideration amount Rs. 3,53,450/- has been paid from time to time in cash and for which defendant No.1 has issued receipts. Plaintiff has placed on record total 22 receipts at Exh. 52/1 to 52/22. It is clearly mentioned in all these receipts that certain amounts have been paid by plaintiff to defendant No.1. It is clearly mentioned in every receipt that amount mentioned therein is paid towards land transaction in respect of survey No. 270/4 situated at village Sus, Taluka Mulshi, District Pune. It is manifest from all these receipts that time to time from 25.12.2002 to 20.08.2003 plaintiff has paid entire consideration amount or more consideration amount to defendant No.1. The receipts below Exh. 52/1 to 52/22 have also fortified contention of plaintiff that defendant No.1 had executed Development Agreement Exh. 50 and Irrevocable Power of Attorney Exh. 51 in favour of plaintiff by accepting consideration money Rs. 4,71,250/- The oral evidence of the plaintiff regarding payment of consideration as mentioned in Development Agreement Exh. 50, as well as development agreement, Power of Attorney and receipts of payment is not challenged or falsified by defendants by way of their own pleadings or evidence. Hence in the absence of challenge to oral and documentary evidence of plaintiff it ought to have accepted and appreciated.

15- It is the case of plaintiff that he was surprised to know from paper publication dated 06.04.2011 in daily newspaper Prabhat wherein Advocate Shri Sandip M. Ghate on behalf of defendant No.1 called objections of public at large purporting to sale deed proposed

to be executed by defendant No.1 in favour of defendant Nos. 2 to 4. This publication notice is filed at Exh. 54. It is submitted by plaintiff that this notice was immediately replied by him through Advocate Amarsingh Rajput vide Exh. 55. It is clearly mentioned in this reply that defendant No.1 has no legal right to sell, transfer or alienate suit property as he had conferred its development rights in favour of plaintiff by virtue of registered Development Agreement and Irrevocable Power of Attorney. This reply is received by defendant No.1 because he had sent reply letter dated 05.05.2011 to Advocate Shri Amarsingh Rajput vide Exh. 56 stating that the cheques which were issued by plaintiff to defendant have returned unpaid. It is clear from contents of Exh. 56 that defendant No.1 acknowledges the execution of registered Development Agreement. Otherwise there was no reason or occasion for defendant No. 1 to deny payment of consideration amount. Most importantly, by way of letter dated 01.07.2011 below Exh. 60 defendant No.1 has informed to plaintiff in writing that the transaction of Development Agreement of property Survey No. 270/4 admeasuring 29 Aar land has been cancelled as payment was not received. It is crystal clear from letter Exh.60 that defendant No.1 comprehensively admits the execution of Development Agreement and Power of Attorney dated 19.12.2002.

16- Considering oral and documentary evidence adduced by plaintiff and on the backing of discussion in paragraphs above and for want of contest by defendants it can very well be said that plaintiff has succeeded to prove that defendant No.1 executed registered Development Agreement and Irrevocable Power of

Attorney of suit property dated 19.12.2002. Hence point No.1 is answered in affirmative.

As to Point No.2 :-

17- Suit is not only filed for enforcement of development rights, but it is also filed for declaration that registered sale deed of suit property dated 08.07.2011 executed by defendant No. 1 in favour of defendant Nos. 2 to 4 is illegal and not binding upon plaintiff.

18- In this context plaintiff in his affidavit Exh. 44 deposed that on 06.04.2011 he came across public notice vide Exh. 54 calling objection of public pertaining to propose sale of suit property by defendant No.1 to defendant Nos. 2 to 4. Plaintiff had immediately replied this public notice as per Exh. 53 .

19- It is crystal clear from public notice Exh. 54 that defendant No.1 intended to sell suit property to defendant Nos. 2 to 4. Thereafter plaintiff and defendant gave notices and public notices to each other, but regardless to that defendant No.1 executed registered sale deed of suit property dated 08.07.2011 in favour of defendant Nos. 2 to 4. Certified copy of this registered sale deed is placed on record below Exh. 59. It is comprehensively clear from recitals of sale deed Exh. 59 that defendant No.1 had executed registered sale deed No. 5109 dated 08.07.2011 in favour of defendant Nos. 2 to 4.

20- On the basis of unchallenged oral evidence of plaintiff as

well as on the strength of public notice Exh. 54 and certified copy of sale deed at Exh. 59 it is manifest that defendant No.1 had executed registered sale deed of suit property in favour of defendant No.1. Therefore Point No.2 is answered in affirmative.

As to Point No. 3

21- It has come in the evidence of plaintiff and learned Advocate for plaintiff that sale deed of suit property vide Exh. 59 is illegal and not binding upon plaintiff since it is executed during subsistence of development rights of suit property in favour of plaintiff by virtue of Development Agreement Exh. 50 and Irrevocable Power of Attorney Exh. 51.

22- It is testified by plaintiff that he was shocked and surprised to know from public notice dated 07.02.2012 published in daily newspaper Prabhat by defendant Nos. 2 to 4 through Advocate Shri S. R. Mundada calling objections in right, title and interest of suit property as they are negotiating with third party to sell suit property. He also obtained copies of sale deed dated 08.07.2011 which are under challenge in this suit. While dealing with issue No.1 it has been held that plaintiff has sufficed to show that defendant No.1 had executed registered Development Agreement of suit property in favour of plaintiff. Similarly while answering point No.2 it is held that plaintiff has succeeded to show that defendant No.1 executed sale deed of suit property in favour of defendant Nos. 2 to 4. Therefore, now question arises whether this sale deed is illegal, null and void and not binding.

23- At first instance it has to be stated that Development Agreement is not a clear document of transfer of right, title and interest. In this context Hon'ble Bombay High Court in the judgment of **Gurudev Developers V/s Kurla Konkan Niwas Co-operative Housing Society 2000(3) Mh. L.J. Page 131** observed that – a Development Agreement was executed by plaintiff with defendant co-operative Housing society and after termination of said agreement by society suit for specific performance is not maintainable as Development Agreement could not be specifically enforced.

24- Hon'ble Bombay High court in the above judgment observed that– Development Agreement is not specifically enforceable, however on the basis of intention of the parties, recitals of documents and other surrounding circumstances the nature of transaction can be ascertained. Taking into consideration intention and conduct of the parties and other surrounding circumstances it can be determined whether parties intended to execute a document of Development Agreement which is as good as licence or there was intention of sale. In this behalf Hon'ble Bombay High court in the judgment of **Volition Investment Private Limited V/s Madhuri Mashroo 2003(5) Bom.C.R. 262** held that – No developer gets right in property unless specifically given. In this case intention of transfer of interest in property can be seen from MOU. If we pierce the veil of transaction, it was not a simple agreement for development for sale of whole interest in property.

25- Similarly the reference of the judgment of Hon'ble High Court in the case of **Chheda Housing Development Corporation**

V/s Bibijan Farid 2007(3) Mh. L.J. page 402 is relevant. In said judgment it is observed by Hon'ble High Court that –

The agreement could be (a) an agreement only entrusting construction work to a party for consideration.(b) an agreement for entrusting the work of development to a party with added rights to sell the constructed portion to flat purchasers, who would be forming co-operative Housing society to which society, the owner of the land is obliged to convey the constructed portion as also the land beneath construction on account of statutory requirement. (c) a normal agreement for sale of an immovable property. An agreement of the first type normally is not enforceable as compensation in money is an adequate remedy. An agreement of the third type would normally be specifically enforceable unless the contrary is proved. A mere agreement for development, which creates no interest in the land would not be specifically enforced. Courts for constructing a contract of the second type in this State will have to take into consideration, the Maharashtra ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer)Act, 1963 apart from the Specific Relief Act. Under that Act, a local Act, there is an obligation cast on the owners of the land to convey not only the constructed portion but also his interest in the land beneath the construction. Under the Act an owner of the land who causes the construction to be put up becomes the promoter. Such construction can be put up by a developer or builder, who in turn sells the constructed portions to various persons by entering into agreements. These provisions would be relevant in determining the true character of the document. The dispute in the present case is whether the agreement in question is an agreement to sell or a security agreement or alternatively development agreement. The Single Judge concluded that the agreement can be specifically performed. Nothing has been brought on record to hold that the findings are perverse. The document on the face of it, cannot be an agreement for security. It can only be construed as an agreement to sell or a

development agreement, the agreement prima facie is an agreement which can be specifically enforced and consequently the appellants have made out a prima facie case. Specific performance can be granted of the land or interest in the land, belonging to a person who has agreed to sell the land with interest therein. If the person is not the owner or has no interest in the land agreed to be sold or transferred there is no question of granting specific performance. Slum TDR is not interest on the owners property. It is F.S.I. of some other land which is transferable in terms of D.C. Regulations. TDR may be owned by the holder but not the land from which TDR was generated. It can only be used on the owners property in terms of D.C. Regulations. Therefore, it is the F.S.I. of the entire property, including of R.G. and D. P. Roads which alone in terms of the agreement, prima facie which can be specifically enforced. In such circumstances irreparable loss and injury would be occasioned to the appellants, if the injunction is not granted. The balance of convenience is in their favour as compensation in money in such cases, would not be adequate. To that extent, the clarification given in the impugned order is liable to be set aside.

It is clear from above ratio and analogy that – a document of Development Agreement is specifically enforceable and it can only be constructed as an agreement to sell or a development agreement.

26- Plaintiff has taken an exception that Sale Deed Exh. 59 has been executed during subsistence of Development Agreement and Power of Attorney Exh. 50 and 51. Barring this exception no legal objections have been taken by plaintiff against sale deed Exh. 59. It has not been pointed out as to on what legal and technical grounds the sale deed is false, illegal and improper. Therefore

plaintiff does not deserve the relief of declaration that sale deed is illegal and null and void.

27- However, it is discussed in detail in above paragraphs that in spite of accepting entire consideration amount mentioned in Development Agreement Exh. 50 defendant No.1 had executed Sale Deed of suit property in favour of defendant Nos. 2 to 4. The judgments of Hon'ble Bombay High Court in the case of Volition Investment Private Limited and Chheda Housing Development Corporation speak in clear terms that Development Agreement creates right in favour of developer. In spite of such situation defendant No.1 had executed sale deed of suit property in favour of defendant Nos. 2 to 4 by perishing rights of plaintiff. It can be seen from the recitals of Development Agreement as well as receipts of payment below Exh.52/1 to 52/22 that plaintiff had paid substantial amount rather entire consideration amount of Development Agreement. Thus if the interests of plaintiff in suit property are not safeguarded, then he shall sustain heavy monetary loss. Therefore it has to be concluded that the sale deed of suit property executed by defendant No. 1 in favour of defendant Nos. 2 to 4 bearing No. 5109 dated 08.07.2011 is not binding upon plaintiff. Hence point No. 3 is answered in partly affirmative.

As to Point Nos. 4 and 5 :-

28- The suit is primarily filed by plaintiff seeking declaration that he is having development rights in suit property. At the time of discussing Point No.1 it is concluded that defendant No.1 has

executed Development Agreement and Irrevocable Power of Attorney of suit property in favour of plaintiff. It is pertinent to mention that except writing a letter Exh. 60 no effective steps have been taken by defendant No.1 for proper and legal cancellation/revocation of registered Development Agreement and registered Power of Attorney. Defendant No.1 has not got executed any registered instrument for cancellation of Development Agreement and Power of Attorney. Defendant has not filed any suit challenging the legality, validity and acceptability of Development Agreement and Power of Attorney. As much as no just, proper, legal and valid method is adopted by defendant No.1 for cancellation of Development Agreement and power of attorney. Defendant No.1 cannot cancelled Development Agreement on the basis of a plain letter below Exh. 60. On the contrary Development Agreement Exh. 50 confers the rights of development of suit property in favour of plaintiff unless it is extinguished lawfully.

29- Plaintiff is also challenging the subsequent sale deed of suit property executed by defendant No.1 in favour defendant Nos. 2 to 4 on 08.07.2011. It is a matter of fact that defendant No.1 was very well aware of existence of Development Agreement and Power of Attorney Exh. 50 and 51. In such backdrop unless executing the instruments for cancellation or revocation of Development Agreement and Power of Attorney it was not expected on the part of defendant No.1 to execute registered sale deed of suit property in favour of defendant Nos. 2 to 4 especially when valuable rights of plaintiff are going to be affected. Hence a declaration has to be

given in favour of plaintiff that sale deed of suit property executed by defendant No. 1 in favour of defendant Nos. 2 to 4 bearing No. 5109 dated 08.07.2011 vide Exh. 59 is not binding upon plaintiff, so far as his development rights in suit property are concerned.

30- The suit is not only filed for declaration but also for perpetual injunction prohibiting defendants from disturbing or interfering into plaintiff's possession over suit property. It is the case of the plaintiff that immediately after execution of Development Agreement he was inducted into possession of suit property. It is expressly stated that suit property is in actual possession of plaintiff since then till today. However, on 03.03.2012 defendants tried to break and damage fencing of suit property.

31- The entire claim of plaintiff regarding possession of suit property is based upon the recitals of Development Agreement Exh. 50. It is clearly mentioned in paragraph No. 6 in Development Agreement that defendant No.1 has given suit property to plaintiff for the purpose of development. So it can be gathered from Development Agreement and Irrevocable Power of Attorney that plaintiff is in possession of suit property.

32- Apart from above evidence plaintiff in order to prove his possession is relying upon evidence of Sarvesh Shah, PW 2 below Exh. 48. It has come in his evidence that he is working with plaintiff and suit property is taken by plaintiff for development. On 25.01.2017 he went to suit property along with plaintiff and took photographs. In photographs taken by him plaintiff Vijay Raundal

is seen with board to show possession. In all six photographs taken by witness Sarvesh Shah are filed on record below Exh. 65/1 to 65/6. It is explicit from these photographs that plaintiff is standing along with the board. Neither evidence of plaintiff, evidence of witness Sarvesh and documents such as Development Agreement Exh. 50 and photographs below Exh. 65/1 to 65/6 have been falsified, challenged or distorted by defendant by way of pleading or evidence of rebuttal. Thus on the basis of aforesaid evidence of plaintiff and in the absence of contest by defendant a conclusion has to be drawn that plaintiff is in possession of suit property. At the same time there is no material to disbelieve or discard version of the plaintiff that on 03.03.2012 defendant Nos. 2 to 4 tried to damage fencing of plaintiff in suit property. Therefore plaintiff has sufficed to establish on record that he is in possession of suit property and without any justifiable reason his possession is disturbed by defendants. So in order to preserve and protect valuable rights of plaintiff involved in suit property an order of perpetual injunction restraining the defendants from disturbing plaintiff's possession over suit property ought to have passed.

33- On the basis of discussion in foregoing paragraphs it is sufficiently proved by plaintiff on record that defendant No.1 has executed Development Agreement and Power of Attorney of suit property in his favour. It is also proved by plaintiff that during existence of such Development Agreement, defendant No.1 executed sale deed of suit property in the name of defendant Nos. 2 to 4 which is obviously not binding upon plaintiff's right in suit property as regards to its development. In the last plaintiff proved that he is

in possession of suit property and his possession is being unnecessarily disturbed by defendants. So plaintiff also deserve the remedy of perpetual injunction disturbing possession of the plaintiff in any manner and without following due process of law. Hence Point No. 4 is answered in partly affirmative and as an answer to Point No. 5 following order is passed.

ORDER

- 1- Suit is decreed with costs.
- 2- It is hereby declared that plaintiff is having development rights in suit property by virtue of registered Development Agreement and Power of Attorney dated 19.12.2002 respectively bearing Nos. 6755 and 6766.
- 3- It is hereby declared that sale deed of suit property executed by defendant No.1 in favour of defendant Nos. 2 to 4 dated 08.07.2011 bearing No. 5109 is not binding upon plaintiff so far as his development right in suit property.
- 4- Defendants are permanently restrained from disturbing plaintiff's possession over suit property without following due process of law.
- 5- Decree be drawn accordingly.

I affirm that the contents of this P.D.F. file Judgment is same word for word as per original Judgment.

Name of Steno	: Smt. S.V. Hirve
Court Name	: V. P. Adone : Additional Judge Small Cause Court & Joint Civil Judge Senior Division, Pune
Date of Judgment	: 21.11.2018
Signed by P. O.	: 21.11.2018
Uploaded on	: 22.11.2018