Received on : 25.11.2010
Registered on : 25.11.2010
Decided on : 23.04.2015
Duration : Y. M. D.
04 04 29

**IN THE COURT OF 3rd ADDL. JUDGE SMALL CAUSES COURT &**

**JT. CIVIL JUDGE S.D., PUNE, AT : PUNE.**

**AT : PUNE.**

**(Presided over by N.G. Shukla)**

**Spl.Civil Suit No.2610/2010** **Exh.No.**

**PLAINTIFF** : **Shri. Dnyanoba Kaluram Ghule,**
Age – 55 Years, Occu. - Agriculturist,
R/at – Post Nandoshi, Sinhgad Road,
Taluka Haveli, District Pune – 411 024.

**Versus**

**DEFENDANTS** : **1] Shri.Balasaheb Arjunrao Hagawne,**
Age – 50 years, Occu. - Agriculturist,
R/at – Post – Kirkatwadi Gauthan,
Sinhgad Road, Taluka Haveli,
District – Pune – 411 024.

**2] Shri. Nitin Abasaheb Kadam,**
Age – 44 years, Occu. - Agri./Business,
R/at – S/3D, Flat No.32, Ajantha
Avenue, Paud Road, Near Krishna
Hospital, Kothrud, Pune.

**3] Shri. Venkatesh Pandurang Patil,**
Age – 45 years, Occu. - Agri./Business,
R/at – Chandraneil, A, Housing Society,
Flat No.A/101, D-Parvati,
Sinhgad Road, District-Pune.

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Shri. U.K.Pokale, Advocate for the Plaintiffs.
Shri. V. S. Atre, Advocate for the Defendants.

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**Suit for declaration and injunction:**

**J U D G M E N T**

**(Delivered on : 23.04.2015)**

1] Plaintiff has filed this suit for declaration that, general power of attorney dated 10.3.2005 and sale deed dated 28.1.2008 are illegal and be cancelled and permanent injunction restraining defendants from alienating the suit property and disturbing possession of plaintiff and further sought mandatory injunction directing defendant no.1 to accept amount of Rs. 2,70,000/- from plaintiff.

2] Plaintiff's case in brief is as below :

Agricultural land bearing gat no.137, area 0-H 56.66-R out of 1-H 70-R, gat no.138 admn.0-H 63-R out of 1-H 89-R and gat no.160 adm. 64.33-R out of 1-H 93-R, situated at village Nandoshi, Taluka Haveli, District Pune are the suit properties. It is contention of plaintiff that, suit properties are ancestral properties jointly owned by plaintiff and his brothers and sisters. No partition of suit properties are yet effected. In the year 2004-05, plaintiff was in need of money to perform marriage of his daughter. Defendant no.1 is founder Chairman of Shri. Rameshwar Nagari Patsanstha Ltd., and he was well acquainted with plaintiff. Hence, plaintiff approached to him and requested to grant loan from the Patsanstha by accepting the suit properties as mortgage for the said loan. Defendant no.1 issued one cheque Rs.1,25,000/- dated 14.5.2004 which is encashed by plaintiff.

3] It is further case of plaintiff that, on 10.3.2005 defendant no.1 called plaintiff at the office of Sub-Registrar, Haveli No.16 and obtained plaintiff's signature, thumb impression, photo and one document on one document. On the inquiry by plaintiff about the nature of document, defendant no.1 told that, the said document was mortgage for the loan of the patsanstha granted to the plaintiff. It was also told to plaintiff that, loan of Rs.2,70,000/- was granted and therefore, said document as a mortgage deed was required to be registered. Defendant no.1 had not given the document for reading, nor supplied copy thereof to the plaintiff. Plaintiff was in need of money and having faith on plaintiff, presumed said document as mortgage and signed on the said document. On the same day, defendant no.1 issued one cheque of Rs.1,45,000/- which is encashed by plaintiff. Thus, plaintiff received amount of Rs.2,70,000/- from defendant no.1. Thereafter, for 2 to 3 years no any correspondence for recovery of loan was received from Patsanstha, hence plaintiff inquired with defendant no.1. At that time, defendant no.1 told to plaintiff that, he is the founder of Patsanstha and not to worry about recovery of loan. Thereafter, plaintiff felt suspicion and hence, he brought 7 x 12 extract of suit property on 1.9.2010 and came to know that, defendant no.1 practiced fraud upon plaintiff and obtained general power of attorney and got executed and registered it from defendant no.1 on 10.3.2005 by saying that, the said document was mortgage deed. Thereby, defendant no.1 practiced fraud upon plaintiff. It further revealed to the plaintiff that, defendant no.1 executed sale deed of the suit properties in favour of defendants no.2 and 3 by using the said power of attorney. Consideration of the suit property is shown Rs.6,00,000/- in the sale deed. In fact, plaintiff has not received any single rupee out of the said consideration. The amount of Rs.2,70,000/- received to the plaintiff is an amount of loan. It is further contention of plaintiff that, market price of the suit property at the relevant time was Rs.1,83,00,000/-, but with intention to cheat the plaintiff, defendant no.1 and defendants no.2 land 3 shown the very meager price of consideration in the sale deed which is also not received to the plaintiff. It is further contention of plaintiff that, suit property is in possession of plaintiff and his brother Vitthal Kaluram Ghule and possession thereof was not handed over to defendants. After realising the fraud, plaintiff issued notice through his advocate on 28.9.2010 by registered post and UPC to the defendants. Defendants no.1 and 3 received notice, but not replied. Notice of defendant no.2 returned with endorsement, “not claimed”. Hence, plaintiff filed present suit seeking declaration that, general power of attorney and sale deed be declared illegal and both the documents be cancelled. Plaintiff sought permanent injunction restraining defendants from creating third party interest and disturbing possession of plaintiff on the suit property and further sought relief of mandatory injunction to direct the defendant no.1 to accept amount of Rs.2,70,000/- which plaintiff wants to refund to him.

4] Defendant no.1 filed written statement at Exh.18. Defendant no.3 adopted said written statement vide pursis Exh.20. Defendant no.2 failed to file written statement and hence suit is ordered to be proceeded without W.S. against him.

5] Case of defendants no.1 and 3 in short is that, they admitted that the plaintiff was owner of the suit property. However, they denied that, the suit property is joint family property of his brothers and sisters. Defendants further denied that, plaintiff was in need of money for marriage of his daughter in the year 2004-05. They further denied that, plaintiff approached to defendant no.1 and requested to grant loan from the Patsanstha. Defendants admitted that, defendant no.1 was founder of the said Patsanstha. However, they denied that, cheque of Rs.1,25,000/- dated 14.5.2004 was given as a loan from the patsanstha to plaintiff. Defendants further denied contention of plaintiff that, on 10.3.2005 defendant no.1 obtained plaintiff's signature, thumb impression and photo and one document saying that the said document was mortgage for the loan of Rs.1,70,000/- sanctioned to the plaintiff by patsanstha. Defendants further denied that, cheque of Rs.1,45,000/- dated 10.3.2005 was issued as a part amount of alleged loan. Defendants further denied that, defendant no.1 got executed general power of attorney by practicing fraud upon plaintiff. Defendants further denied that, defendant no.1 illegally executed sale deed dated 28.1.2008 by misusing the the general power of attorney obtained by fraud.

6] It is contention of defendants no.1 and 3 that, plaintiff is residing at Ragini Vihar Co-Op.Hsg.Socity, Vadgaon (Bk.) Pune and serving in one company since lat 10 to 15 years. Plaintiff was not cultivating the land and intended to sale the suit properties which are in his possession independently. Defendant no.1 was his friend and dealing in purchase and sale of the lands. Plaintiff contacted to defendant no.1 and requested to search any customer for purchase of suit properties. Plaintiff shown readiness to execute necessary documents in favour of defendant no.1. Defendant no.1 informed to plaintiff about probable price which could be received considering the zone of the agricultural lands. Accordingly, plaintiff agreed to give commission to the defendant no.1. Therefore, considering friendly relations, defendant no.1 asked plaintiff to execute agreement for sale and general power of attorney in favour of him. Cheque of Rs.1,25,000/- was given as part consideration and on 10.3.2005 plaintiff executed one agreement for sale of the suit property in favour of defendant no.1. Consideration of Rs.6,00,000/- is shown and amount of Rs.2,70,000/- was shown to be paid to the plaintiff in the said agreement. Plaintiff also executed general power of attorney and registered it on 10.3.2005 in favour of defendant no.1 in the office of Sub-Registrar. At the time of execution of both the documents, plaintiff was aware about the nature of both the documents and he had read the both documents. It is further contention of defendant no.1 that, plaintiff is educated and serving in company. Hence, it is improbable that, he would have signed the document without reading contents. Thus, the transaction in between plaintiff and defendant no.1 was not of any loan, but it was the transaction of sale of suit properties.

7] It is further contention of defendants that, the general power of attorney is not obtained by practicing fraud upon plaintiff. General power of attorney is valid document and on the basis of said document, defendant no.1 executed sale deed of the suit properties dated 28.1.2008 in favour of defendants no.2 and 3. It is further contention of defendants that, defendant no.1 has only shown Rs.2,00,000/- out of consideration of Rs.6,00,000/- paid to him by defendants no.2 and 3 and remaining consideration of Rs.4,00,000/- is accepted by defendant no.1 by way of two cheques each of Rs.2,00,000/- in the name of plaintiff from defendants no.2 and 3. Defendant no.1 has only obtained Rs.2,00,000/- from defendants no.2 and 3 as he had paid more than it i.e. Rs.2,70,000/- to the plaintiff by way of two cheques. Thereafter, when defendant no.1 approached to plaintiff to hand over two cheques of total Rs.4,00,000/-, plaintiff refused to accept said cheques. Defendant No. 1 requested plaintiff to accept chequs of Rs.4,00,000/- and to refund access amount of Rs.70,000/- paid by him to plaintiff, but because of increase in prices of the lands, defendant no.1 had not accepted the cheques and issued false notice dated 28.9.2010. Thus, the claim in the suit is not true and false suit is filed by plaintiff. Hence, defendants prayed to dismiss the suit.

8] On the basis of above rival contentions, I framed following issues at Exh.31. After appreciation of evidence, my finding with reasons to the said issues are noted as below.

| Issues | Findings |
|---|---|
| 1] Does plaintiff proves that, defendant no.1 got executed General Power of Attorney dated 10.3.2005 by practicing fraud upon him? | .. In the negative. |
| 1A] Whether plaintiff proves that, suit properties are joint family properties? | .. In the negative. |
| 2] Does plaintiff proves that, defendant no.1 illegally executed sale deed of suit land in favour of defendants no.2 and 3 by using bogus power of attorney? | .. In the negative. |
| 3] Is plaintiff entitled for reliefs claimed? | .. In the negative. |

4] What order and decree? .. As per final order.

## Reasons

9] Plaintiff has adduced his evidence on affidavit at Exh.33. Plaintiff relied on documents such as extract of village form no.8A (Exh.36), 7 x 12 extract (Exh.37 to 42), certified copy of G.P.A.(Exh.43), certified copy of sale deed (Exh.44), copy of application to Talathi (Exh.45), office copy of notice (Exh.46), postal receipts and acknowledgment (Exh.47 to 49), envelope of unserved notice (Exh.5). Plaintiff closed evidence vivde pursis Exh.55.

10] Defendant no.1 adduced evidence on behalf of all defendants at Exh.56. Defendants also examined attesting witness D.W.2 Ravi Ramchandra Sonawane at Exh.62. Defendants relied on documents one cheque dated 28.1.2008 (Exh.63), another cheque dated 28.1.2008 (Exh.64), two cheques dated 14.3.2015 (Exh.65 and 66), agreement for sale (Exh.67). Defendants closed evidence vide pursis Exh.68.

**As to Issues No.1A:**

11] It is contention of plaintiff that, suit properties are joint family properties owned by his brothers and sisters. Learned advocate Shri. Pokale for plaintiff referred 7 x 12 extract and argued that, names of brothers and sisters of plaintiff appeared in the 7 x 12 extract of the suit properties. It clearly shows that, suit properties are joint family properties. Without consent of brothers and sisters, plaintiff had no right to sale the suit properties. Therefore, it is improbable that, plaintiff would have executed general power of attorney giving power to defendant no.1 to sale the suit properties to third person.

12] Learned advocate Shri. Atre for defendants referred cross-examination of plaintiff and Exh. 36 and argued that, suit properties that, not joint family properties. Plaintiff admitted in cross-examination that, suit properties are independently in his possession and owned by him. Extract of village form no. 8A clearly indicates that, suit properties are owned by plaintiff. Therefore, mere appearing names of brothers and sisters in the 7 x 12 extract does not mean that, suit properties are joint family properties. Learned advocate further argued that, the story of joint family property is created only to file false suit.

13] I have considered submissions and perused the record. Admittedly, names of brothers are appearing in ownership column and names of sisters appearing in other rights column of 7 x 12 extract. However, shares of the brothers in the form of Anewari are shown in front of name of each holder. Secondly, extract of form no.8A at Exh.36 clearly indicates that, suit properties i.e. lands of the share of plaintiff out of the entire land of all the gat numbers are separately shown by creating separate account of the plaintiff. In the cross-examination, plaintiff admitted that, after death of father, account of the lands of every brothers is separated. He further admitted that, suit properties appearing in the said account extract Exh. 36 are his independently owned lands. This evidence clearly indicates that, suit properties are independently owned by plaintiff and not joint family properties. Even if, submission of joint family is accepted, it is well settled position of law that, the co-sharers may alienate his undivided share in the immovable property to third person. Therefore, submission of learned advocate for plaintiff that, plaintiff had no power to sale land of his share without consent of other co-sharers is not acceptable. Plaintiff has clearly stated in cross-examination that, suit properties are his independently owned properties and therefore, contention of joint family properties is not acceptable. Accordingly, I answer issue no.1A in the negative.

**<u>As to Issue No.1:</u>**

14] Plaintiff has alleged fraud in execution of general power of attorney by defendant no.1. Defendants come with a clear defence of transaction of sale while denying fraud in execution of general power of attorney. Firstly, it has to see that, whether plaintiff has proved said fraud by proving all the relevant facts. It is contention of plaintiff that, in the year 2004-05 he was in need of money for marriage of his daughter and therefore, he approached to defendant no.1 for obtaining loan from patsantstha of defendant no.1. It is his further contention that, cheque of Rs.1,25,000/- and another cheque of Rs.1,45,000/- were received and encashed by him as a loan. As per cross-examination of plaintiff, he is having three daughters and marriages of the daughters were performed prior to 15 to 16 years. Even if we count the period of 15 to 16 years from March 2015 when evidence was recorded, it comes to in or about year 2000. Thus, if marriages of the daughters were performed in the year 2000, it is improbable that, plaintiff was in need of money for marriage of daughters in the year 2004-05.

15] In the cross-examination plaintiff further replied that, name of his daughter Rupali was performed in the year 2005, however, he was unable to state exact date of marriage of Rupali. He also admitted that, invitation cards of the marriage of Rupali were printed and Hall for the marriage was taken on rent. If, this was the position, then it was not difficult for plaintiff to produce invitation card of marriage or copy of the receipt of the rent of hall or any other document to show that, marriage of his daughter was performed in the year 2005. In absence of any such documentary evidence, the relevant fact that, marriage of the daughter of plaintiff was performed in the year 2005 is not believable. Therefore, further contention that, plaintiff was in need of money to perform his daughters marriage in the year 2004-05 is not found probable and not acceptable.

16] Plaintiff had received cheque of Rs.1,25,000/- dated 14.5.2004 of and cheque of Rs.1,45,000/- dated 10.3.2005. Plaintiff has also encashed both the cheques. Thus, there is no dispute regarding receipt and encashment of both the cheques. The first cheque was received on 14.5.2004. According to plaintiff, when he approached to defendant no.1 for loan from patsanstha of defendant no.1, the first cheque was received to him by defendant no.1 as loan from path sanstha. Another cheque was issued on 10.3.2005. It appears that, there is gap of approximately 10 months in receiving two cheques. If plaintiff really would have approached for loan to fulfill his need of amount in the year 2004, he had no reason to accept another cheque of loan after gap of 10 months. Need of plaintiff was for performing marriage of his daughter. If plaintiff was really in need of money to perform marriage of his daughter, he had no reason to accept another cheque of Rs.1,45,000/- after gap of 10 months. A person requiring the money for performance of marriage of his daughter had no reason to accept money in two installment after gap of 10 months. This conduct of plaintiff in accepting the amount in two installments is found suspicious. For this reason, contention of approaching the defendant no.1 for loan to fulfill the need of amount for marriage of daughter is not found probable.

17] As per case of plaintiff, he received first cheque of Rs.1,25,000/- without any compliance for the loan. Second cheque was received after 10 months of 10.3.2005 when plaintiff was called to execute the document in the office of Sub-Registrar. Plaintiff is educated upto 11th standard and serving in one company. Thus, plaintiff is not illiterate person not having any knowledge of procedure to obtain loan. Learned advocate for defendants cross-examined plaintiff in detail about procedure for obtaining the loan. As per para no.17 of cross-examination of plaintiff, he was well aware about procedure to obtain the loan. He had obtained loan for digging well in the agricultural land in the year 1994 by mortgaging the land. Said loan was repaid by him in the year 2005. Thus, plaintiff was well aware how to apply for loan and how the financial institution disbursed loan after compliance of procedure. As per cross-examination of plaintiff, the first cheque of Rs.1,25,000/- was received without signing any document. At the time of receiving another cheque, he had not applied for loan as per his cross-examination. Even though he stated that, defendant no.1 told him that, process of loan would be completed afterward, but considering the gap of 10 months in accepting two cheques and signing the document presuming as it is mortgage deed without filing application for loan by the plaintiff, his case of accepting both the cheques as a loan of patsanstha is not acceptable. A prudent man would not sign any instrument for loan without filing application for loan or without sanction of loan. Therefore, contention of plaintiff that, amount of Rs.2,70,000/- received by way of two cheques was the amount of loan is not acceptable. Contention of plaintiff that, he was approached to defendant no.1 for loan is without any specific demand of loan. There is no pleading that, how much amount he was required for marriage of his daughter and how much amount he demanded from defendant no.1 as a loan from patsanstha of defendant no.1. In absence of such details in pleading and evidence, contention of accepting both the cheques as amount of loan is not acceptable.

18] It is contention of plaintiff that, he was told by defendant no.1 that, the document on which his signature, thumb impression and photo was obtained was deed of mortgage for the loan of Rs.2,70,000/- sanctioned by patsanstha to the plaintiff. In the cross-examination, plaintiff has admitted that, when he signed the said document on 10.3.2005 he had not made application for the loan. In view of the fact that, plaintiff was having good knowledge about the process of loan, it is improbable that, plaintiff believed on say of defendant no.1 that the document was mortgage deed and signed document. Secondly, both the cheques were issued by defendant no.1 from his personal account and not from the account of patsanstha. If plaintiff would have approached for loan from patsanstha to defendant no.1, he had no reason to accept the cheques from the personal account of defendant no.1. Accepting the two cheques from the personal account of defendant no.1 by the plaintiff is also suspicious circumstance to disbelieve contention of plaintiff that, the cheques were accepted as amount of loan.

19] It is contention of plaintiff that, while obtaining his signatures on the documents presented for registration on 10.3.2005, defendant no.1 had not given the document for reading to him. In the cross-examination, plaintiff admitted his signatures on page no. 2, 3, 7 and 9 of the G.P.A. (certified copy at Exh.49). Signatures of plaintiff and defendant no.1 on page no.2 and 3 are appears to be made because of boundaries mentioned in hand writing. On page no.2 there is clear word Power of Attorny, ("कुलमुखत्यापत्र'') is appeared. On page no.3 in the last three lines there is contention about appointment of defendant no.1 as power of attorney to defendant no.1 by the plaintiff. On page no.7 the word Power of Attorney, ("कुलमुखत्यापत्र'' ) is appeared in first and third line. Thus, the word ("कुलमुखत्यापत्र'' ) is appearing on all the three pages mentioned above, whereever plaintiff has signed. He has also admitted in cross-examination that, entire document was given in his hand for making said signatures. Considering all these circumstances, it is improbable that, plaintiff's signatures were obtained without giving the document for reading to him and it is also improbable that, he would have made said signatures without reading the said document. Therefore, contention in that regard is not found probable and not believable.

20] Plaintiff had not applied for loan when he signed the document on 10.3.2005 and accepting cheque of Rs.1,45,000/- on that day. He did not make inquiry with the defendant no.1 as to how mortgage deed was got executed without following procedure for loan. He did not raise any suspicion as to how both the cheques were issued from the personal account of defendant no.1 despite he was required loan from patsanstha. These are the suspicious circumstances creating doubt on the contention of plaintiff about accepting the cheques as loan and contention of fraud in got executing general power of attorney saying it as a mortgage deed by defendant no.1. Plaintiff is a educated person having good knowledge of process of loan. Therefore, his contention that, his signatures were obtained on the document saying it as a mortgage deed is not acceptable. For these reasons, in my view, the suspicious circumstances pointed out as above, disbelieves the case of plaintiff about practicing fraud upon him in got executing general power of attorney dated 101.3.2005.

21] As against the contention of plaintiff, defendant has come with a specific case of transaction of sale of suit property with plaintiff. It is contention of defendant that, plaintiff is residing at the address of Ragini Vihar, Sinhgad Road, Vadgaon, and this fact is admitted by plaintiff in cross-examination. It is pertinent to note that, plaintiff has not given said address in the title clause of plaint. According to defendant's case, plaintiff is not cultivating the land at village Nandoshi, as he is residing at Pune since last 15 years and therefore, plaintiff decided to sale suit land. In the cross-examination, plaintiff admitted that, he was cultivating the land prior to joining the service. He is serving in the company since last 32 years. His place of service at a distance of 20 km. from his residence at Rigini Vihar. Considering the distance and time of his service, it is improbable that, plaintiff would have gone to village for cultivating the land personally. In the cross-examination, plaintiff has stated that, possession of the suit land was with him and in pleading he has stated that, possession is with him and his brother. This inconsistency regarding pleading of the suit property also improbablises contention regarding cultivation of the suit property by him personally. Therefore, I found defence of the defendant probable that, plaintiff was intended to sale the land, because he was unable to cultivate the same for the reason of his service.

22] Defendant has filed agreement for sale Exh.67. Said agreement and general power of attorney are of the same date. Learned advocate Shri. Pokale for plaintiff argued that, agreement is inadmissible in evidence, as it is unregistered. Admittedly, the agreement Exh.67 is unregistered. Unregistered agreement is inadmissible only when the intended purchaser claims protection to the possession of the property U/sec.53A of Transfer of Property Act. In the present case, agreement for sale Exh.67 is not placed in evidence for seeking protection to the possession. Agreement is placed on record to bring the real transaction on record i. e. transaction of sale. Therefore, submission regarding inadmissibility of the agreement is not acceptable.

23] Plaintiff has denied signature on the agreement which is his signature as executent. Learned advocate Shri. Atre for defendant requested to compare the signature on page no. 5 of the agreement alleged to be signature of plaintiff with his admitted signature on the photo copy of general power of attorney. I am aware that, normally court should not compare the signature of the parties even though court can compare the same U/sec.73 of Evidence Act. But, in view of denial of signature by the plaintiff, if the signature claim to be signature of plaintiff on page no.5 of the agreement is seen, it is similar to the signature of plaintiff appearing on certified copy of G.P.A.,at Exh.43 and also his signature on plaint and evidence affidavit. Therefore, it can be inferred that, signature on page no.5 of the agreement is signature of plaintiff. Even though, learned advocate Shri. Pokale argued that, there is difference in signature on page no.5 of the agreement and signature on copy of G.P.A., but he was unable to point out what is difference in both the signatures.

24] Defendants have examined D.W.2 Ravi Sonawane who is attesting witness of agreement Exh.67. In his evidence affidavit, he deposed that, he have friendly relations with plaintiff and defendant no.1. He further deposed that, plaintiff, defendant no.1 and son of defendant no.1 signed the agreement for sale in his present and he also signed as attesting witness on the said agreement. Learned advocate Shri. Pokale for plaintiff cross-examined this witness. In the said cross-examination, his evidence in respect of signing the agreement by plaintiff is remained unchallenged as there is no cross-examination, nor suggestion to deny the said evidence was put up. His cross-examination is regarding details of the transaction. It is well settled position of law that, evidence of attesting witness is important to prove the execution of document only. Thus, the evidence of D.W.2 Ravi Sonawane is sufficient to prove signature of plaintiff on agreement Exh.67. Thereby defendant no.1 has proved that, plaintiff had executed agreement for sale Exh. 67 and agreed to sale suit properties to defendant no.1. Hence, agreement Exh. 67 is proved by defendant no.1. Said agreement is came in existence on the same day of execution of general power of attorney. If this circumstances is taken into consideration, it becomes clear that, plaintiff was intending to sale the suit properties and therefore, he executed agreement Exh. 67 and general power of attorney dated 10.3.2005. Plaintiff failed to prove his contention of accepting the both cheques of Rs.1,25,000/- and Rs.1,45,000/- as a amount of loan is not at all proved. Allegation of fraud in execution of GPA is also not proved. Hence, I answer issue no.1 in the negative.

**<u>As to Issue No.2:</u>**

25] Sale deed executed by defendant no.1 in favour of defendant no.2 dated 28.1.2008 is challenged on the ground that, it is executed by defendant no.1 by using forged GPA and the another ground is not receiving consideration. The first ground regarding execution of sale deed by using forged GPA is not acceptable, as plaintiff failed to prove that, defendant no.1 obtained general power of attorney by practicing fraud upon plaintiff. Hence, this ground is not proved to held the sale deeds illegal.

26] Another ground in respect of consideration is also not believable. Learned advocate Shri. Pokale for plaintiff argued that, consideration shown in the sale deed is not at all received to plaintiff. A single rupee out of the consideration is not received to the plaintiff. Learned advocate argued that, even if it is presumed that, GPA was executed in good faith, then why further transaction was not taken place in good faith. Defendant no.1 had not handed over cheques issued by defendants no. 2 and 3 which are shown in the sale deed and not taken any steps for handing over said cheques to the plaintiff. Defendant no.1 did not issue any notice to the plaintiff for compelling to accept the cheques. Learned advocate further argued that, sale deed is without consideration and hence, void U/sec.25 of Contract Act.

27] Learned advocate Shri. Atre for defendants argued that, defendant no.1 has already paid Rs.2,70,000/- out of the consideration amount to plaintiff. This is the reason for which Rs.2,00,000/- shown as pay to defendant no.1 in the sale deed. In fact, defendant no.1 is entitled to receive amount of Rs.70,000/- paid in excess to the plaintiff. Defendant no.1 was approached and requested to plaintiff to accept both the cheques of Rs.2,00,000/-each issued by defendants no.2 and 3, but he had not accepted the same. Learned advocate further argued that, if defendant no.1 would have any malafide intention, he would have accepted all the cheques in his name. But, showing two cheques of Rs.2,00,00/- each in the sale deeds shows bonafides of defendant no1. Amount of Rs.2,70,000/- received to plaintiff is a part consideration and hence, sale deed cannot be declared void for want of consideration.

28] Even though, it is case of plaintiff that, the amount of Rs.2,70,000/- was received to him from personal account of defendant no.1 and it was not consideration, but it was the amount of loan. But, this contention is not proved by the plaintiff. On the contrary, I have hold that, amount of Rs.2,70,000/- is paid by defendant no.1 as a consideration for sale of the suit properties as per agreement Exh.67. As per contents of GPA

Exh. 43, plaintiff had authorised defendant no.1 to sale the suit lands to third person. After going through contents of sale deeds, it appears that, amount of Rs.2,00,000/- is paid to defendant no.1. Two cheques of Rs.2,00,000/- each are shown to be drawn in the name of plaintiff which were handed over to defendant no.1 for giving to plaintiff. Both the said cheques dated 28.1.2008 are filed on record by defendant no.1. Drawing the said two cheques in the name of plaintiff by defendant no.2 and 3 clearly indicates their bonafide to pay the amount of consideration to the plaintiff. Amount of Rs.2,70,000/- is already paid as price of sale of the suit properties by defendant no.1 to plaintiff. Amount of Rs.2,00,000/- out of the said amount is recovered by defendant no.1 by showing it to be paid to him in the sale deed. Therefore, submission of learned advocate Shri. Pokale for plaintiff that, sale deed is without consideration is not acceptable.

29] So far as legal submission in respect of sale deed is concerned, as I have pointed out, amount of Rs.2,70,000/- is already received as a part of price of the suit land to the plaintiff from defendant no.1. In view of provision of Section 54 of Transfer of Property Act, price can be paid partly and promised to be paid partly in future. Defendants no.2 and 3 had drawn two cheques of Rs.2,00,000/- each and shown their bonafides to pay the remaining consideration of Rs.4,00,000/- which is a remaining price promised to be paid. Therefore, sale deed cannot be said as without consideration.

30] Learned advocate for plaintiff relied on **Pralhad and others Vs. Laddevi and others, A.I.R. 2007 Raj.166**. In this ruling, it is held that, contract without consideration is void and therefore, cancellation of sale deed is proper. This ruling is based on Section 25 of Contract Act. However, after going through para 12 of the ruling, it appears that, the sale deed is cancelled on the basis of admission given by power of attorney holder in his cross-examination that, even though sale deed claims that, he has received a monitory consideration of Rs.1.5 lacs, but he has not received any such consideration. Thus, he admitted that, consideration was not received to him from his wife in whose favour he had executed sale deed in question in that case. Thus, the ruling is an observation on the basis of this admission. Similar are not the facts in this case. In the present case, payment amount of Rs.2,70,000/- is an admitted fact. It is proved in the evidence that, said amount was received as a part of the price of sale of suit lands from defendant no.1 and not the amount of loan as contended by plaintiff. Therefore, in my view, this ruling is not applicable in present case. Therefore, sale deed cannot be hold as a sale deed without consideration.

31] Admittedly, plaintiff has not received remaining consideration of Rs.4,00,000/-. It is evidence of defendant no.1 that, he had approached to plaintiff and requested to accept the two cheques of Rs.2,00,000/- each drawn by defendant no.2 and 3. But plaintiff had not accepted said two cheques. It has come in the cross-examination of defendant no.1 that, he had gone to the house of plaintiff and requested to accept the cheques. Thereby, it becomes clear that, defendant no.1 had approached to plaintiff for handing over the cheques. Defendants no.2 and 3 also shown their bonafides by placing on record cheques dated 14.3.2015 and shown their readiness to pay the remaining amount of consideration. Defendant no.1 had paid amount of Rs.2,70,000/- as a part consideration. Therefore, sale deed cannot be declared illegal for want of consideration. Plaintiff has every right to recovery remaining consideration U/sec.55 of Transfer of Property Act.

32] Plaintiff has contended that, possession of the suit property was not handed over to defendant no.1 or defendants no.2 and 3. Admittedly, evidence of plaintiff in respect of possession is slightly inconsistent with his pleading. In the pleading, he has contended that, possession with him and his brother Vitthal Ghule. As against this, in cross-examination it was suggested to defendant no.1 that, possession is with his brother. Though, defendant no.1 denied that, possession was not delivered by plaintiff to him, but both the parties has not adduced cogent evidence to prove their contention regarding possession. As per contents of agreement Exh. 67, possession was to be delivered at the time of sale deed. Admittedly, sale deed is executed on the basis of power of attorney, and plaintiff is not executent of the sale deed. No any evidence is adduced by defendants that, when defendant no.1 received possession of the suit property and when he handed over the same to defendants no.2 and 3. Plaintiff has also not adduced any evidence to prove that, he and his brother or his brother alone is still in possession of suit properties. Names of defendants no.1 to 3 are mutated in the 7 x 12 extract. Therefore, on the basis of 7 x 12 extract possession of plaintiff cannot be hold. However, it is well settled that, possession is not material factor to decide the legality of the sale deed. Therefore, plaintiff's contention that, possession is with him and his brother is not proved.

33] Plaintiff failed to prove that, sale deed is illegal on the two grounds i.e. it is executed by using forged power of attorney and it is without consideration. Therefore, I answer issue no.2 in the negative.

**As to Issues no.3 and 4:**

34] For the reasons noted above, plaintiff failed to prove that, general power of attorney dated 10.3.2005 is obtained by practicing fraud upon him by defendant no.1. He also failed to prove that, sale deed dated 28.1.2008 is illegal for the reason that, it is executed by using forged power of attorney and it is without consideration. Therefore plaintiff is not entitled for declaration regarding illegality and cancellation of both the documents. Plaintiff failed to prove that, amount of Rs.2,70,000/- was accepted as a loan amount and not as a part of consideration for sale of the suit properties. As against this, defendants prove that, transaction in between plaintiff and defendant no.1 was transaction of sale of the suit properties and amount of Rs.2,70,000/-was paid as a part of consideration. Therefore, plaintiff is not entitled for mandatory injunction directing defendant no.1 to accept the amount of Rs.2,70,000/-.

35] Defendants no.2 and 3 acquired title of the suit properties by way of valid and legal sale deed dated 28.1.2008. Hence, they cannot be restrained from creating third party interest or alienating the suit properties to third person. Hence, plaintiff is not entitled for relief of permanent injunction. Plaintiff failed to prove that, suit properties are still in possession of his brother and him. Though, defendants has also not adduced evidence to prove their possession over suit properties, but plaintiff failed to prove assertion regarding their possession. Secondly, sale deed of the suit properties is held legal and therefore, plaintiff has no right to claim permanent injunction against the true owner i.e. defendants no.2 and 3 restraining them from disturbing possession of plaintiff. Hence, plaintiff is not entitled for permanent preventive injunction against defendants no.2 and 3. Plaintiff is not entitled for any relief claimed in the suit. Accordingly, I answer issue no.3 in the negative. Suit deserves to be dismissed. In the result, following order is passed.

## **O r d e r**

1] Suit is dismissed with costs.

2] Decree be drawn up accordingly.

(N.G.Shukla)
3rd Add. Judge, S. C. Court
& Jt. Civil Judge S. D. Pune.

Dated: 23.04.2015.

I affirm that the contents of this PDF file Judgment are same word for word as per original Judgment.

Name of Steno : Mrs. S.K.Sayyad, Steno H.G.
Court Name : Shri. N.G.Shukla,
3rd Addl. Judge, Small Causes Court, Pune.
Date of Judgment : 23.04.2015
Judgment signed by presiding officer on : 24.04.2015
Judgment uploaded on : 24.04.2015