



Spl. Civil Suit No. 1373/2011
Judgment
CNR No. MHPU02-003673-2011
Received on : 11/07/2011
Registered on : 11/07/2011
Decided on : 08/02/2023
Duration : Ys. Ms. Ds.
11 06 28

**IN THE COURT OF ADDL. JUDGE SMALL CAUSES COURT & JT. CIVIL
JUDGE, SENIOR DIVISION, PUNE, AT : PUNE.**
(Presided over by A. A. Ghaniwale)

SPL. CIVIL SUIT NO. 1373/2011.

Exh. No. 141.

Shri. Pradip Sakharam Dagade

Age : 50 years, Occu. : Agriculturist,
R/at : Bawdhan Budruk, Tal. Mulashi,
Dist. Pune.

... Plaintiff.

Versus

1] M/s. Green Gold Farmers and Forest Pvt. Ltd.
A company registered under the provisions of
Indian Company Act
Through its Director :-
Shri. Hemanti Nilkanth Phadke
Age : 52 years, Occu. : Business/Service,
Having their office at : 1187/60,
Jangli Maharaj Road, Shivajinagar,
Pune – 411 005.

2] Shri. Laxman Narayan Balkawade
Since deceased
2a) Smt. Usha Laxman Balkawade
Age 56 years, Occu. : Household,
2b) Sou. Ashwini Laxman Blakawade
Age : 38 years, Occu. : Household
2c) Shri. Avinash Laxman Balkawade
Age : 35 years, Occu. : Business
2d) Shri. Ajit Laxman Balkawade
Age : 32 years, Occu. : Business,
R/at : Mantri Park Kothrud,
Tal. Haveli, Dist. Pune.

3] **Smt. Pramila Sakharam Dagade (deleted)**

4] **Shri. Sandip Sakharam Dagade**

Age : 42 years, Occu. : Agriculturist,
R/at : Bawdhan Budruk, Tal. Mulashi,
Dist. Pune.

5] **Smt. Nanda Sakharam Dagade**

@ Sou. Nanda Gajanan Patil
Age : 43 years, Occu. : Household,
R/at : Mantri Park Kothrud,
Tal. Haveli, Dist. Pune.

6] **Smt. Hema Sunil Dagade**

Age : 40 years, Occu. : Household,

7] **Mast. Sidhant Sunil Dagade**

Age : 13 years, Occu. : Education,

8] **Mast. Sanket Sunil Dagade**

Age : 11 years, Occu. : Education,
Nos. 6 to 8 R/at : 515/516, Purva Plaza,
Flat No. 17, Sadashiv Peth,
Pune - 30.

... Defendants.

Shri. R. M. Daundkar, Advocate for plaintiff.

Shri. Gautam D. Karnik, Advocate for defendant No. 1.

Shri. Ganesh Katore, Advocate for defendant No. 2a.

**Suit for declaration and
permanent injunction.**

J U D G M E N T

[Delivered on : 08.02.2023]

The plaintiff has instituted this suit for a relief of declaration that sale deed dated 12/07/1999 is null, void, ab-initio document and defendant No. 1 has no right, title and interest in the suit field and for cancellation of sale deed and for permanent

injunction restraining the defendants from alienation, transferring or creating third party interest in the suit property as well as not to disturb the lawful possession of plaintiff over the suit property. The below described property is subject matter of suit, field survey No. 246 of Village Bavdhan, Tal. Mulashi, Dist. Pune admeasuring 2H 50 R out of which 0H 23.12 R which is bounded as under :-

Towards East :- Land Survey No. 250.

Towards West :- Land Survey No. 245.

Towards North :- Land Survey No. 246.

Towards South :- Land Survey No. 245.

(hereinafter discussed as suit property).

2] According to the plaintiff, the suit land is ancestral joint family property of plaintiff and defendant Nos. 3 to 8 and plaintiff is in actual possession and cultivating land as a Karta, Manager of their Joint Hindu Family. Originally, Rama Soma Dagade owns the suit property. Rama Dagade having three sons namely Damu, Sitaram and Sakharam. Rama Soma Dagade died on 22/06/1955 after his death the name of his three sons mutated in revenue record. Thereafter, oral partition was effected between three sons and suit property was allotted to the share of father of plaintiff. The father of plaintiff died on 05/12/1988. At that time, plaintiff and defendant Nos. 3 to 5 and deceased Sunil Sakharam Dagade were in cultivating possession of suit property. The name of plaintiff mutated in revenue record for suit property as a Karta of Joint family of plaintiff and defendant Nos. 3 to 5 and deceased Sunil Sakharam Dagade. Sunil Sakharam Dagade died on 07/12/2008 and defendant Nos. 6 to 8 are his legal heirs.

3] Plaintiff further pleaded that, in the month of December 2009 plaintiff learned that, the name of defendant No. 1 is recorded in revenue record. Therefore, plaintiff obtained certified copy of relevant document i.e. sale deed dated 12/07/1999, at that time he come to know that defendant No. 2 on the basis of forged and fabricated power of attorney of plaintiff and defendant Nos. 3 to 5 and Sunil Sakharam Dagade had executed sale deed in favour of defendant No. 1. According to him they did not execute the said power of attorney in favour of defendant No. 2. He further pleaded that, there was no any sale transaction entered into between the plaintiff, his mother, sister, brother and defendant No. 2 in respect of suit property. Therefore, the sale deed of defendant Nos. 2 and 1 executed on the basis of forged and bogus power of attorney which is not binding on their right, title or interest. They are in possession of suit property therefore sought the reliefs as mentioned above.

4] Suit summons served on defendant No. 1, he appeared but failed to file written-statement hence suit proceed without written-statement of defendant No. 1. Defendant No. 2 failed to appear despite the suit summons hence suit proceed ex-parte against him. During pendency of suit as defendant No. 2 died, his legal heirs brought on record. Notices/suit summons issued, despite receipt of suit summons/notice, they did not appear hence suit proceeded ex-parte against them. Defendant No. 3 the mother of plaintiff died hence her name was deleted. Suit summons duly published under Order V Rule 20 of CPC in news paper against defendant No. 4, he remained absent, suit summons duly served on defendant Nos. 5, 6 to 8 they failed to appear hence suit proceed ex-parte against them. In short there is no WS filed

by any of the defendant. Hence, suit proceed without WS as well as ex-parte against the defendants.

5] Considering the material placed before me following points arises for my determination to which I have recorded my findings with reasons as stated below :-

Sr. No.	<u>Points</u>	<u>Findings</u>
1.	Do the plaintiff prove that the plaintiff and defendant Nos. 3 to 6 and deceased Sunil Sakham Dagade not executed irrevokable power of attorney in favour of defendant No. 2 ?	No.
2.	Do the plaintiff prove that the plaintiff and defendant Nos. 3 to 6 and deceased Sunil Sakham Dagade not executed any agreement of sale of suit property with defendant No. 2 ?	No.
3.	Do the plaintiff prove that sale deed of suit property executed by defendant No. 2 in favour of defendant No. 1 dated 12/07/1999 is null, void ab-initio document ?	No.
4.	Do the plaintiff prove that the plaintiff and defendant Nos. 3 to 6 was and is in possession of suit property ?	No.
5.	Do the plaintiff prove that the defendant No. 1 unlawfully disturbing the lawful possession of plaintiff and defendant Nos. 3 to 5 over the suit property ?	No.
6.	Do the plaintiff further prove that the defendant No. 1 unlawfully creating or alienating or transferring or creating third party interest in the suit property ?	No.
7.	Is plaintiff entitled for decree of declaration as claimed ?	No.
8.	Is plaintiff entitled for decree of permanent	

	injunction as claimed ?	No.
9.	Whether suit is within limitation ?	No.
10.	What order and decree ?	Suit is dismissed with costs.

REASONS

6] The plaintiff examined himself at Exh. 19, his evidence is unchallenged. He relied various documents i.e. copy of 7/12 extract Exh. 93, mutation entry No. 765, 1698 and 2867 Exh. 94, 95 and 96 respectively, copy of sale deed dated 12/07/1999 Exh. 105 etc.

AS TO POINT NOS. 1 TO 9 :-

7] All points are inter-linked and discussed at once. Heard counsel for plaintiff, he argued that, the evidence of plaintiff is unchallenged, defendants did not enter into witness box, plaintiff and defendant Nos. 3 to 5 are owner of the property, they are in possession of the suit property, plaintiff and defendant No. 3 not executed the sale deed nor executed power of attorney, therefore, he prayed for decree. As the evidence of plaintiff is unchallenged and defendant did not enter into witness box, therefore duty cast upon the Court to appreciate the material on record consciously.

8] I have carefully gone through the material placed before me. Perusal of mutation entry No. 1698 and unchallenged testimony of plaintiff it appears that, the suit property is ancestral property of plaintiff as pleaded and deposed by plaintiff and the name of plaintiff and defendant Nos. 3 to 5 and deceased Sunil Sakharam Dagade mutated by mutation Entry No. 1698 that means the evidence of

plaintiff that suit property was ancestral property of Rama Dagade and it was partition amongst three sons of Rama Dagade and suit property was allotted to the share of Sakharam Dagade duly proved by plaintiff. In other words the plaintiff and defendant Nos. 3 to 5 and deceased Sunil Sakharam Dagade were owners of the suit property duly proved by the plaintiff.

9] According to plaintiff, Exh. 105 sale deed not executed by them nor plaintiff and defendant Nos. 3 to 5 and deceased Sunil were executed irrevocable power of attorney in favour of defendant No. 2 nor they entered into any agreement of sale of suit property with defendant No. 2. Therefore, it is necessary to discuss here those documents. Perusal of the sale deed Exh. 105 which shows that on 12/07/1999 defendant No. 1 purchased the suit property from power of attorney holder of plaintiff that is defendant No. 2 and defendant No. 2 on behalf of plaintiff and other owner executed this document and M/s. D. S. Kulkarni Associates being a consenting party for a consideration of Rs. 5,18,000/-. It is also mentioned in this document that, out of sale consideration of Rs. 5,18,000/-, the defendant No. 2 will receive Rs. 2,49,200/- being consenting party and plaintiff and defendant Nos. 3 to 5 and legal heirs of Sunil Dagade being executant received Rs. 2,68,500/-. It is also mentioned in it that, the executant i.e. owner already received Rs. 1,82,000/- from defendant No. 2 and executed registered irrevocable power of attorney in favour of defendant No. 2. On the basis of said irrevocable power of attorney defendant No. 2 executed sale deed Exh. 105.

10] Surprise to say that, though plaintiff challenging the alleged power of attorney, its certified copy is not submitted. The defendant No. 1 submitted document alongwith list Exh. 18 i.e. photocopy of agreement dated 04/04/1995. Perusal of this document, it shows that, the plaintiff and other owners of suit property entered into an agreement of sale of suit property for a consideration of Rs. 3,96,000/- and defendant No. 2 paid Rs. 77,000/- through the cheque of Bank of Maharashtra in favour of Sandip Sakharam Dagade and it was agreed that Rs. 1,00,000/- will be paid within 18 months and Rs. 31,000/- at the time of execution of sale deed. It was also agreed that Rs. 25,000/- will pay to Sunil Sakharam Dagade at the time of agreement, Rs.25,200/- paid through the cheque of Bank of Maharashtra, Branch Kothrud and Rs. 42,666/-, Rs. 42,666/- and Rs. 42,668/- will be pay within 7 months of the execution of agreement and Rs. 19,800/- at the time of sale deed.

11] On very same day, a registered irrevocable power of attorney was also executed by the plaintiff and defendant Nos. 3 to 5 and Sunil Sakharam Dagade in favour of defendant No. 2. The copy of verified photocopy submitted by defendant No. 1 alongwith list Exh. 32. Perusal of the photocopy of said power of attorney, it transpired that, these owner executed this power of attorney and gave the various powers to the defendant No. 2 including the power of sale, the power of development and sale of plots, execution of agreement of sale, registration of agreement etc. too. The contents of this power of attorney shows that, the owner gave the power to defendant No. 2 to do every act of owner. The defendant No. 1 also submitted verified copy of agreement of sale vide list Exh. 32 whereby, this defendant

No.2 entered into an agreement on 25/04/1995 with M/s. D. S. Kulkarni Developers Ltd. for a consideration of Rs. 5,18,000/- and also executed possession receipt on 25/04/1995 and defendant No. 2 deliver the possession of suit property to M/s. D. S. Kulkarni Associates.

12] Considering the above discussion and perusal of the record, when the plaintiff challenging the non execution of documents, it is expected from the plaintiff to submit certified copies of those documents on record. Surprise to say that, the plaintiff submitted certified copy of 7/12 extract and mutation entry at Exh. 93 to 96 and certified copy of sale deed dated 12/07/1999 at Exh. 105 but not filed the copy of agreement of defendant No. 2 and copy of registered irrevocable power of attorney in favour of defendant No. 2, that means, the plaintiff intentionally suppressed these material evidence.

13] As discussed above there is an agreement of sale executed in between plaintiff and defendant No. 2, the copy of said document submitted by defendant No. 1 with list Exh. 32, agreement dated 04/04/1995 whereby the respective sharer received the part of sale consideration. Considering the contents of the said agreement, it is expected from plaintiff to bring the account statement of defendant No.2 to show that as per the contents of this agreement of sale, defendant No. 2 not paid nor issued such cheques of Bank of Maharashtra, Branch Kothrud. Furthermore, the copy of sale deed Exh. 105 shows that the defendant No. 1 purchased the suit property from defendant No. 2 and the contents of this sale deed shows that, the purchaser paid the remaining part of sale consideration of suit property to the respective sharers i.e. plaintiff and defendant Nos. 3 to 5. It is

not a case of plaintiff that, he did not receive said amount, nor brought on record the evidence of bank statement to disprove the said fact nor examined the other share holders of his own family to prove that such agreement was not executed and they did not receive part of consideration as mentioned in those document. As the plaintiff himself suppressed such material fact, I found that evidence is not reliable and acceptable.

14] Apart from this, the plaintiff did not issue any notice to defendant to bring the alleged document on record nor take any pain to examine those documents through hand writing expert to prove that agreement of sale and irrevocable power of attorney dated 04/04/1995 are not executed by plaintiff and defendant Nos. 3 to 5 and deceased Sunil. Therefore, mere oral evidence of the plaintiff that those documents were not executed, particularly, registered power of attorney, such evidence of plaintiff is not admissible nor acceptable. Absolutely, there is no evidence on record that, these documents are forged one.

15] Furthermore, the agreement of sale executed in between plaintiff and defendant No. 2 on 04/04/1995, on very same day plaintiff and defendant Nos. 3 to 5 and deceased Sunil i.e. the owner of the suit property, also executed registered irrevocable power of attorney in favour of defendant No. 2, then defendant No. 2 relying on said power of attorney, executed registered sale deed Exh. 105 on 12/07/1999. Prior to it, defendant No. 2 executed an agreement of sale with D. S. Kulkarni Associates and also issued possession receipt. However, suit has been instituted on 11/07/2011. The plaintiff and

other co-sharer/co-owner of suit property have been very well knowledge about the execution of these documents, they suppressed the material evidence and instituted the suit after a gap of approximately 12 years. As per Article 59 of Indian Limitation Act, for cancellation of instrument i.e. sale deed and irrevocable power of attorney, the limitation is provided three years from the date of execution of said documents or within three years from the date of knowledge. The plaintiff having very well knowledge of the execution of these documents on very same day of execution. He remained silent upto 12 years, therefore, as per Article 59 of Limitation Act, 1963, the suit is hopelessly barred by limitation.

16] The Plaintiff relied on following authorities :-

- i. *Mrs. Ranjana Jayant Saudagar and Ors. Vs. Mr. Anil Manohar Bordekar and ors. Decided by Hon'ble Supreme Court of India in second Appeal No. 115/2004 on 31/01/2022.*
- ii. *Naresh K. Rajwani Vs. Rufina M. Pinto, 2005 3 ALLMR 1.*
- iii. *Bank of India Vs. M/s. Allibhoy Mohammed & Ors., 2008(4) ALL MR 808.*
- iv. *Markande Vs. Sudama Chaubey and Ors., AIR 2007 Allahabad 70*
- v. *Kewal Krishan Vs. Rajesh Kumar and others, 2022(2) Mh.L.J. 25.*
- vi. *S. P. Chengalvaraya Naidu (dead) by L.Rs., Vs. Jagannath (dead) by L.Rs. And others AIR 1994 SC 853.*

17] The cited authority of *Markande (supra)* the facts of said cited authority are that in that suit plaintiff sought a relief of cancellation of sale deed on a ground that under undue influence and

mis-representation the impugned sale deed was got executed after practicing fraud upon the plaintiff. In case in hand, it is not a allegation of plaintiff that the agreement of sale dated 04/04/1995, irrevocable power of attorney of 04/04/1995 were executed by defendant No. 2 under undue influence and mis-representation or it was got executed after practicing fraud on the plaintiff. It is a specific allegation of plaintiff that plaintiff and defendant Nos. 3 to 8 did not execute any such document. Therefore, with due respect I am submitting that this cited authority is not useful for plaintiff in case in hand.

18] The plaintiff also relied on a case reported in *Kewal Krishnan (Supra)*. The facts of said suit are that, the plaintiff executed a power of attorney, on the basis of said power of attorney two sale deeds were executed in that case Hon'ble Apex Court held that the purchaser failed to prove that sale consideration was passed and held that said sale transaction were void ab-initio and cancelled it. In case in hand, as discussed above the plaintiff failed to bring the account statement of Maharashtra Bank, Branch Kothrud to prove that alleged part sale consideration did not receive. Therefore, I am of the view that this cited authority is not helpful for plaintiff.

19] So far as, other cited authorities by plaintiff are concerned, the facts of cited authorities and facts of case in hand are not identical, hence not discussed. In view of above discussion, as plaintiff not examined other witnesses i.e. co-owner to prove that they did not execute agreement of sale and irrevocable power of attorney in favour of defendant No. 2, plaintiff suppressed said material fact and not produced the account statement as discussed above, the suit is not

instituted within limitation, it is barred by limitation by Article 59 of Limitation Act, 1963, therefore, I am not accepting the sole unchallenged testimony of plaintiff and come to conclusion that, plaintiff failed to discharge the burden, that means failed to prove the points as mentioned above. Hence, I have recorded my findings accordingly and proceed to pass following order :-

ORDER

- 1] Suit is dismissed with costs.
- 2] Decree be drawn up accordingly.

[Dictated and pronounced in open Court.]

Date : 08.02.2023.

(A. A. Ghaniwale)
Addl. Judge, Small Causes Court
& Jt. Civil Judge, S. D., Pune.

: CERTIFICATE :

“I affirm that the contents of this P.D.F. File are same word for word as per original judgment.”

Name of the Stenographer : P. B. Aher (Stenographer Grade - II)

Name of the Court : A. A. Ghaniwale
Addl. Small Causes Court &
Jt. C.J.S.D., Pune.

Dictated on : 08-02-2023

Transcribed on : 08-02-2023

Judgment checked & signed
by Presiding Officer on : 08-02-2023

Judgment uploaded on : 08-02-2023