

MHPU020017822022



Presented on :-17/02/2022

Registered on :-17/02/2022

Decided on :-10/10/2024

Duration :- 02Y 07M 23D

IN THE COURT OF 2nd JT. CIVIL JUDGE, SR. DIVISION, PUNE.
(Smt. Pragati B. Yerlekar)

R.C.S. No. 452/2022
Exhibit No.53.

1. Smt. Lourd Sevia Alvares Sathley
Age – 38 years, Occ – Household,
2. Miss. Genevieve Gladys Sathley
Age – 13 years, Occ – Education
Minor through her natural guardian
Mother Plaintiff No.1
Smt. Lourd Sevia Alvares Sathley
Both R/at. Flat No.6, 2nd floor, Chetna
Residency Apartment, Lane/Road No.3B,
Final Plot No.35, Kalyani Nagar, Yerwada.
Pune.

V/s

... Plaintiffs

1. Vidya Rao w/o R. M. Rao
Age – 78 years, Occ – Housewife,
R/at. No.330/7, 2nd A Main, behind
Telephone Exchange, Domlur Layout,
Bangalore 560071 (Karnataka State)
2. Mrs.Margaret Jyoti Fernandes
Age – 54 years, Occ – Housewife,
R/at. House No.5/2, Besides Goa hotel,
Near Thivim Railway Station, Bardez,
Sircaimi 403502(Goa State)
3. Mrs.Neha Marshal Fernandes
Age – 36 years, Occ – Housewife,
4. Mr.Marshal John Fernandes
Age – 37 years, Occ – Service,
3 & 4 R/at. C/o.Fr.Agnelo Niwas Pilar,
Fathers, Sunshine Layout, T.C.Palya,
K.R. Puram, Bangalore 560036.
(Karnataka State)

... Defendants

Suit for declaration.

Shri. Devkar, for the Plaintiffs.
Defendant Nos. 1 to 3 Ex-party.
Smt.V S. Devre, for the Defendant No.4

:: J U D G M E N T ::
(Delivered on 10/10/2024)

This is a suit for declaration.

2) Brief version of the plaintiffs is as under :

a] Flat No.6 admeasuring 100.33 sq.ft. in Chetna Residency Apartment Condominium alongwith car parking therein situated at S.No.221A, 221B, 221C and 221D, final Plot No.35, Plot No.23, village Yerawada, Haveli, Dist. Pune, is the subject matter of the dispute. It is hereinafter referred as 'the suit property'.

b] The plaintiff No.1 is mother of plaintiff No.2. The husband and mother in law of plaintiff No.1 namely Prince James Sathley and Cecilia Sathley had purchased the suit property from defendant No.1 vide registered deed of apartment dated 8/3/2001. Thereafter, registered confirmation deed/ consent deed was also executed. Defendant No.1 received entire consideration amount. The husband and the mother in law of the plaintiff No.1 became absolute and joint owners of the suit property. They were in possession of the suit property.

c] Cecilia Sathley had two sons namely Prince Sathley, Lovit Sathley and a daughter Neha Fernandes i.e. defendant No.3. Lovit Sathley is presently in Canada. Defendant No.4 is husband of defendant No.3. Cecilia Sathley expired on 2/10/2018 and Prince Sathley expired on 1/10/2020. The plaintiffs are residing in this suit property since long and they are in the use and occupation of the same.

d] Husband of defendant No.2 namely George Fernandes had

signed deed of apartment and confirmation deed of the suit property as an attesting witness. Defendant No.2 and her husband George Fernandes were well aware that defendant No.1 was not owner of the suit property after execution of deed of apartment and confirmation deed. In spite of it defendant No.2 executed illegal power of attorney in favour of defendant No.2 in respect of the suit property on 11/11/2020. On the strength of said power of attorney, defendant No.2 executed gift deed in favour of defendant No.3 on 11/12/2020. Defendant No.3 in turn executed gift deed in favour of defendant No. 4 on 27/7/2021.

e] Defendant No.3 used to visit the plaintiff along with defendant No.4, when Prince Sathley was admitted in hospital before his death. Defendant No.3 had visited the suit property and took away the original deed of apartment and confirmation deed without the knowledge of the plaintiffs. The plaintiffs came to know about it when they noticed change in name on the electric bill. The plaintiffs searched for the original documents. They realized that defendant No.3 has taken the documents in her custody thereby deceiving the plaintiffs.

f] On 11/4/2021 defendant No.4 threatened the plaintiffs through a voice call to vacate the suit property. Plaintiff No.1 lodged report about the incident. The defendants got power of attorney and gift deeds registered though they do not have any legal interest in the suit property. Defendant No.2 is not the daughter of defendant No.1. It is fraudulently misrepresented that defendant No.2 is daughter of defendant No.1 for the purpose of executing power of attorney dated 11/11/2020. In fact defendant No.2 is sister of Late Cecilia Sathley. Further, defendant No.3 is also not the daughter of defendant No.2. It is so falsely represented for the purpose of execution of gift deed. The documents executed by the defendants are fraudulent and void. These documents do not confer any title on the defendants. Hence, it is necessary to declare that these documents are null and void. Therefore, the plaintiffs are constrained to

file the present suit.

3) The defendant Nos.1 to 3 were served. They did not bother to appear. Thus, the suit proceeded ex-parte against them. Defendant No.4 appeared in the suit. However, he did not file written statement. Thus, the suit proceeded without his written statement.

4) Following points arise for determination of the suit which are answered accordingly for reasons to follow :-

S.N.	POINTS	FINDINGS
1.	Whether the plaintiffs prove that the power of attorney executed by defendant No.1 in favour of defendant No. 2 is null and void?	Yes
2.	Whether the plaintiffs prove that gift deed executed by defendant No.2 in favour of defendant No.3 is null and void ?	Yes
3.	Whether the plaintiffs prove that gift deed executed by defendant No.3 in favour of defendant No.4 is null and void?	Yes
4.	Whether the plaintiffs are entitled for declaration as prayed?	Yes
5.	What order and decree?	As per final order.

: REASONS :

5) a] The plaintiff No.1 entered the witness box as P.W.1. She also relied on certified copy of deed of apartment Exh.34, certified copy of confirmation deed Exh.35, certified copies of gift deeds Exhs. 36 and 37, N.C. Exh.38, death certificates Exhs.39 and 40, bonafide certificate Exh.41, tax receipt Exh.42, electric bill Exh.43, Adhar cards Exhs. 44 to 47, Ration Card Exh.48, bank pass book Exh.49, Gas cylinder book Exh.50 and marriage certificate Exh.51. The plaintiff closed evidence vide prusis

Exh.52.

b] The defendants did not lead evidence.

AS TO POINT NOS.1 TO 4:-

6) The P.W.1 deposed in terms of the pleadings. On perusal of the document at Exhs.34 and 35 it is apparent that Prince Sathley and Cecila Sathley had purchased the suit property from defendant No.1. In view of Exhs.34 and 35 both of them became the owners of the suit property. Defendant No.1 transferred all her rights in the suit property to Prince Sathley and Cecila Sathley and she was divested of all such rights. Nothing remained with defendant No.1 in respect of the suit property. Exhs.36 and 37 alongwith power of attorney annexed with Exh.36 were executed subsequent to execution of Exhs.34 and 35. Defendant No.1 was not authorized to execute any power of attorney in respect of the suit property in favour of defendant No.2. As defendant No.1 herself did not have any right, title or interest in the suit property at the time of execution of power of attorney, she could not confer any right, title or interest on defendant No.2. On the strength of such power of attorney, defendant No.2 cannot be said to have conferred ownership in the suit property to defendant No.3. Similarly, defendant No.4 cannot be said to have acquired ownership rights in respect of the suit property on the basis of gift executed by defendant No.3 in his favour.

7) On perusal of Exhs.36 and 37 it appears that defendant Nos. 1 to 3 have shown their relationship as grand mother, daughter and grand daughter. However the P.W.1 has disclosed true status and relationship. In view of it, it is apparent that the contents in Exhs.36 and 37 are incorrect to that effect. The defendant Nos. 1 to 3 did not bother to appear and defendant No.4 did not file written statement. P.W.1 has not been cross examined. Her version has remained unchallenged. There is nothing on record that will cast shadow of doubt on testimony P.W.1. The

circumstances appearing from the record clearly show that defendant Nos. 1 to 4 acted in collusion to deprive the plaintiffs of their lawful rights. The genesis of all the transactions undertaken by the defendants is based on fraud. As such all the documents executed amongst the defendants become tainted with fraud.

8) The plaintiff has filed this suit only for declaration that the power of attorney and the gift deeds executed amongst the defendants are null and void. In this context the plaintiff relied on Darbari V/s. Sunwa and another 2003 SCC Online MP 417 and Mahendra Pande V/s. Shanti Devil & ors., AIR 2018 Patna 46 to submit that a suit for mere declaration is maintainable in the facts and circumstances of the case. It is worth to note, in the light of observations in the said authorities that the plaintiffs are in possession of the suit property. The substantive relief claimed by them is the relief of declaration. It is not the case where the plaintiffs have concealed the actual relief neither there is deliberate omission to claim subsidiary reliefs. The relief claimed by them stand on its own footing. It being the main relief, the plaintiff need not seek any further relief in the facts and circumstances of the case. Therefore, the suit in the present form is maintainable.

9) The plaintiffs have established that the power of attorney and gift deeds Exhs.36 and 37 have been executed without any authority and only with the intention to defraud the plaintiffs. The documents do not stand to the scrutiny of law. Hence, these documents are null and void. In the result Point Nos. 1 to 4 are answered accordingly.

AS TO POINT NO. 5:-

10) The plaintiffs succeeded in establishing their claim. Thus the suit is entitled to be allowed. The defendants compelled the plaintiffs to approach the court of justice to establish their lawful claim and in incur

expenses therefor. Hence, the plaintiffs are entitled for the costs of the suit. In the result, following order is passed:-

:: ORDER ::

- 1) The suit is allowed with costs.
- 2) The power of attorney dated 11/11/2020 registered in the office of Sub-registrar, Bangalore at Sr.No.622 of book IV of year 2020-2021, gift deed registered at S.No.15707/2020 dated 11/12/2020 in the office of Sub-registrar Haveli No. 11, Pune and gift deed registered at S.No.2321/2021 dated 27/7/2021 registered in the office of Sub-registrar Haveli No.6, Pune pertaining to the suit property are declared as null and void.
- 3) Decree be drawn accordingly.

Pune
Date :10/10/2024

(Pragati B. Yerlekar)
2nd Jt. Civil Judge Sr. Divn. Pune

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment are same, word to word, as per original Judgment.

Name of the Stenographer : Sou.V. R. Rupnar
Court :Smt. P. B. Yerlekar
2nd Jt. Civil Judge Sr.Div., Pune
Date : 10/10/2024.
Judgment signed by the
presiding officer on : 14/10/2024
Judgment uploaded on : 14/10/2024.