

Presented on : 28/04/2000
Registered on : 28/04/2000
Decided on : 27/02/2015
Duration : 14Y. 09M. 27D

IN THE COURT OF JT. CIVIL JUDGE SENIOR DIVISION, THANE
(Presided over by D.Y.Gaud)
(5th Jt. Civil Judge S.D.Thane)

Regular Civil Suit No.330/2012
(Old Spl. Civil Suit No. 284/2000)
(Old M.A. No. 273/2000)
Computer Registration
No.0200330/2012.

Exh. 176

1. Smt. Anagha Kiran Pissal,
Age 30 years, Occ:- Household,
2. Miss. Pradnya Kiran Pissal,
Age 3 years,
Plaintiff no. 2 is represented
Through Plaintiff no. 1 as
a mother and natural guardian
Both R/at C/o Shri. Gopal B. Patil,
Chavan Chawl, 1st floor,
Azad nagar, near Vikas Complex,
Castle Mill, Thane (W).

.... Plaintiffs

Vs.

1. Smt. Kamal Shyamrao Pisal,
Age 62 years, Occ:- household,
R/at 18/C, Yashwant Society,
Kisan Nagar No. 1, Wagale
Estate, Thane.

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2. Education Officer,
Thane Municipal Corporation,
Education Board, Mahapalika
Bhavan, Panchpakhdi,
Thane.
3. L.I.C. Of India,
Thane Divisional Officer,
Thane, SSS Cell, Jeevan
Chintamani V.N. Mahamarg,
Thane.
4. The Estate Manager,
MHADA Konkan Division,
Grihanirman Bhavan,
Bandra East, Mumbai.
5. Shri. Chetan Shamrao Pisal,
Age 30 years, Occ. Service,
R/at 12/C/Y/Yashawant CHS Ltd,
Near Panch Parmeshwar Mandir,
Kisan Nagar No. 1, Wagale Estate,
Thane.

.... Defendants

Appearance:-

Adv. Shri. Gholap for the Plaintiffs.

Adv. Smt. Deshpande for the defendant nos. 1, 3 & 5.

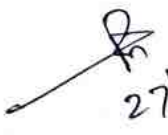
Adv. Smt. Apte for defendant no.4.

Suit proceeded Ex-parte against defendant no. 2.

JUDGMENT

(Delivered on 27th February, 2015)

Initially plaintiffs filed Misc. Application for grant of succession certificate in respect of movable and immovable


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properties of deceased Kiran Pisal. Defendant no. 1 appeared and contested the application. In view of rival claims of parties my predecessor converted M.A. in to suit by passing order on it. In the present case plaintiffs have sought relief for grant of succession certificate in respect of the amounts of deceased Kiran Pisal mentioned in schedule A and B and directing defendant no.5 to hand over possession of flat mentioned in para no. 5 of the plaint and other reliefs.

2] In brief, case of plaintiff is as under.

Plaintiff no. 1 married with Kiran Shamrao Pisal on 04/05/1996 as per Hindu rites and rituals at Thane. They had a female child namely Pradnya i.e. plaintiff no. 2 from the said wedlock. Plaintiff no. 1 is representing to plaintiff no. 2 as her mother and natural guardian. The husband of plaintiff no.1 namely Shri. Kiran Shamrao Pisal died on 01/02/2000. The deceased Shri. Kiran Shamrao Pisal was a son of defendant no 1 and working as a clerk at Thane Municipal Corporation Education Board, Thane i.e. defendant no.2. Plaintiff no. 1 had a fruitful married life of 7-8 months and thereafter, her husband and mother in law started insulting her for dowry from her parents. Plaintiff no. 1 went to her maternal house on 28/04/1997 for delivery and gave birth to a female child on 02/07/1997. But the deceased Shri. Kiran Pisal did not bring her back to matrimonial house. Plaintiff no. 1 came back with her brother in law Shri. Chetan S. Pisal i.e. defendant no. 5 on 18/03/1998. Plaintiff no. 1 driven out of the house on 21/03/1998

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along with her daughter by her husband deceased Kiran and defendant no. 1. Therefore, she went to Wagale Estate Police Station and lodged a complaint against her husband and mother in law i.e. defendant no.1 under sections 498(A), 323, 34 of IPC.

3] It is further case of plaintiff that plaintiff filed an application for maintenance which was allowed by order dt. 03/04/1999 and an amount of Rs. 500/- to plaintiff no. 1 and Rs. 400/- to plaintiff no. 2 was granted as maintenance. Plaintiffs have not received said amount. Till today the dues of deceased Kiran such as gratuity Rs. 47,000/-, family pension Rs. 3,000/- per month, provident fund amount Rs. 20,000/- are with defendant no. 2. The two insurance policies in the name of deceased Kiran bearing policy no. 914923357 for Rs. 20,000/- in 1989 and policy no. 921757990 for Rs. 1,00,000/- in 1994 are pending with defendant no. 3. The deceased Kiran Pisal nominated his mother i.e. defendant no. 1 as nominee for those policies. Plaintiff no. 1 applied to defendant no. 3 LIC of India, Thane on 06/03/2000 claiming the amount, but till today, she has not received any reply from defendant no. 3. Plaintiff no. 1 is entitled for 2/3 claim out of above amounts for self and plaintiff no. 2 minor daughter.

4] It is further contention of plaintiff no. 1 that deceased Shri Kiran Pisal had purchased a flat bearing no. 127/D-13 admeasuring 40 sq. metres, situated at Majiwade, Suprabhat Co-Op. Housing Society, Plot no. 127, Swami Vivekanand Nagar, Pokharan Road no. 2, near Vasant Vihar, Thane (W) from Sainath Parkar. The

Estate Manager of MHADA i.e. defendant no. 4 requires a succession certificate for transferring the said flat in the name of plaintiffs. By an application dt. 21/3/2000 plaintiff no. 1 requested defendant no. 4 not to transfer the suit flat but defendant no. 4 illegally and high handedly without following due process of law, transferred the suit flat in the name of defendant no. 5 Shri. Chetan Pisal in the month of 2000. The suit flat is purchased by deceased husband of plaintiff from his own earning from one Mr. Sainath Vishnu Parkar. The defendant no. 5 is in no way concerned with the suit flat. Plaintiffs prays that succession certificate be issued in the name of plaintiffs in respect of amount mentioned in schedule A and B annexed with the plaint, cancel the name of defendant no. 5 from the record of suit flat, declare it in the name of plaintiffs and other reliefs.

5] Defendant no. 1 appeared and filed her written statement at Exhibit 17 and, thereby, contended that plaintiff no. 1 was sent for delivery to her maternal house on 28/04/1997 and gave birth to a female child on 02/07/1997. After the birth of female child naming ceremony of the child took place. After two months the deceased husband of plaintiff no. 1 had gone to bring her from her maternal house, but she was reluctant to come to the matrimonial house. It is further contention of defendant no. 1 that plaintiff no. 1 did not turn up for nine months. After that, with much persuasion and follow up by defendant no. 5, plaintiff no. 1 came for three days at the matrimonial house and lodged a complaint in the police station against her deceased husband and defendant no.1 u/sec. 498(A) of

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IPC. After lodging complaint, plaintiff no. 1 went back to her maternal place at Ghatkopar. Plaintiff no. 1 filed criminal case bearing no. 168/98 u/sec. 498(A), 323, 34 of IPC and Ld. J.M.F.C. Thane acquitted to her. Plaintiff no. 1 is working with Saraswati Vidyalaya, at Vikroli. Defendant no. 1 is nominee of LIC policies, gratuity and other amounts lying with defendant no. 2 and same be disbursed as per law.

6] Defendant no. 1 further contended that prior to marriage, deceased Kiran Shamrao Pisal had taken two LIC policies during his life time from defendant no.3. The policy no. 914923357 for Rs. 20,000/- of 1989 and policy no. 921757990 for Rs. 1,00,000/- of 1994 in which deceased nominated defendant no.1 as nominee. Deceased Kiran Pisal had not desire to nominate the plaintiff who had with vindictive mind has filed criminal case against them. As per section 39 of Insurance Act, the policy holder's money after the death goes to the nominee mentioned in the policy. The suit flat was not purchased by husband of plaintiff no.1 but purchased by defendant no. 5. Hence, suit be dismissed.

7] Defendant no. 3 appeared and filed its written statement at Exh. 16 and, thereby contended that defendant no. 3 is a body corporate under LIC Act. Defendant no. 3 admitted that there are two policies in the name of deceased Kiran Pisal as mentioned in plaint and defendant no. 1 is a nominee for the said policies.

8] Defendant no. 4 MHADA appeared and filed its written statement at Exh. 28 and, thereby contended that flat no. 127 was

initially allotted to Shri. Sainath Vishnu Parkar. Defendant no. 5 submitted application dt. 11/05/2000 to defendant no. 4 for transfer of the said flat in his name. Shri. Parker submitted affidavit inter alia stating that he wanted to transfer the said flat to defendant no. 5. Defendant no. 5 stated that he his family members and nominees have no objection for the said transfer. After scrutiny of the documents submitted by defendant no. 5 and Shri. Sainath Parkar excluding indemnity bond of defendant no. 5 the defendant no. 4 has already regularized flat in the name of defendant no.5 on payment of regularization fee of Rs. 15,000/-. The defendant no. 4 is no way concerned with the disputes, rights and claims between the plaintiffs and other defendants.

9] Defendant no. 4 also filed additional written statement at Exh. 46 and thereby contended that plaintiff no. 1 made an application dt. 31/03/2000 and thereby asked defendant no. 4 not to transfer the flat in the name of other party. On the basis of said application, the defendant no. 4 conducted enquiry by issuing notices to all the parties dt. 06/03/2004 and during enquiry found that original allottee Shri. Sainath Parkar had sold the said flat to deceased Kiran Shymrao Pisal and after the death of Shri. Kiran Pisal his brother defendant no. 5 approached to Shri. Parkar made some misrepresentations. The office of the defendant no. 4 was in the process of shifting from Belapur to Bandra from 20/03/2000 and during said process the application given by plaintiff no. 1 remained unseen and the flat was transferred in the name of defendant no. 5

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without considering the claim of plaintiff no. 1.

10] Defendant no. 5 appeared and filed his written statement at Exh. 55 and, thereby contended that plaintiff no. 1 herself left home and lodged false complaint under section 498(A) of IPC wherein Court acquitted the accused persons. The deceased husband of plaintiff no. 1 never during his life time had purchased a flat as stated by the plaintiff. The deceased Kiran was having intention by it but could not do so due to insufficient funds. He further contended that defendant no. 4 by following due process of law transferred the suit flat in his name in the month of May 2000 after payment of transfer charges of Rs. 15,000/-. Plaintiff no. 1 has no right, title or interest in the suit flat.

11] Considering the pleadings and documents on record my learned predecessor framed following issues to which I recorded my findings thereon for the reasons as under.

	ISSUES	FINDINGS
1	Whether plaintiffs prove that they are entitled for the amount of succession certificate as claimed ?	Plaintiff nos. 1, 2 and defendant no. 1 are entitled for 1/3 rd share each in the amounts standing in the name of deceased Kiran Pisal.
2	Whether plaintiffs prove that defendant no. 5 has no right, title or interest to transfer the suit property in his name in the record of defendant no. 4?	Yes.

3	Whether the plaintiffs prove that defendant no. 4 high handedly, illegally and without following due procedure of law transferring the suit property in the name of the defendant no. 5 ?	Yes.
4	Whether the plaintiffs prove that they are entitled for possession of the suit property ?	No.
5	Whether plaintiffs prove that they are entitled for injunction as prayed?	No.
6.	What order and decree?	Suit is partly decreed.

REASONS

12] To prove the case, plaintiff no. 1 Smt. Anagha Kiran Pisal deposed on oath by way of filing her affidavit. Plaintiff has produced on record medical certificate at Exh. 73, agreement between Sainath Parkar and Kiran Pisal at Exh. 74, letter issued by Municipal corporation Thane through Education Board Thane at Exh. 75, copy of application made by plaintiff to Commissioner of TMC at Exh. 76, copy of application issued by plaintiff to Education officer, TMC at Exh. 77, notice issued to Manager LIC at Exh. 78, income certificate of deceased Kiran Pisal issued by Education Board at Exh. 79, letter issued by LIC at Exh. 80, office copy of letter issued by plaintiff to LIC at Exh. 81, office copy of letter issued by plaintiff to Estate Officer, Konkan housing and Area Development Board at Exh. 82, true copies of letters issued by K.B. MHADA at Exh. 83 to Exh. 86, office copy of letter issued by plaintiff to the Chief Officer K.B.

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MHADA at Exh. 87, true copies of statements issued by K.B.MHADA at Exh. 88 to Exh. 91, true copy of letter issued by Secretary, Majiwade Suprabhat CHS to the Sub Registrar of Housing Society (w) Mumbai at Exh. 92, original bill issued by Suprabhat CHS in the name of Sainath Parkar at Exh 93, electric bills at Exh. 94, office copy of letter issued by plaintiff to K.B. MHADA Estate Manager at Exh. 95. Plaintiff no. 1 also examined Dashrath Ganpat Pandya as P.W. 2, Sainath Vishnu Parkar as P.W.3.

13] Defendant no. 5 himself deposed on oath by way of filing his affidavit at Exh. 122. Defendant no. 5 produced agreement between him and Sainath Parkar at Exh. 118. Defendant no. 4 MHADA examined its own officer Shri. Ravikant Bavdane at Exh. 158. Defendant no. 1 produced the certified copy of judgment in Reg. Criminal case no. 168/98, letter issued by defendant no. 4 MHADA to defendant no. 5, receipt, share certificate, agreement entered into between Sainath Parkar and defendant no.5, letter by defendant no. 4 to defendant no.5 at Exh. 123 to 127.

Arguments:-

14] Learned advocate for plaintiff submitted that deceased Kiran Pisal was husband of plaintiff no. 1, father of plaintiff no.2 and son of defendant no.1. There were two life insurance policies in the name of deceased Kiran Pisal and he nominated defendant no. 1 as nominee for those policies. There are gratuity, family pension and provident fund amount of deceased Kiran Pisal. As per Hindu Succession Act plaintiffs belongs to class I heirs and, therefore,

entitled for 2/3 share out of above amounts. He submitted that deceased Kiran Pisal had also purchased the suit flat from Sainath Parkar by agreement dt.18/04/1995. After the death of Kiran Pisal plaintiff no. 1 applied to defendant no. 4 MHADA by letter dt. 21/03/2000 at Exh. 95 objecting the transfer the said flat in the name of any other person because her husband has purchased it and it be transferred in her name. PW. 1 Smt. Anagha Pisal deposed on oath to that effect. Learned advocate for defendant no. 5 has not challenged the said testimony of PW. 1 Anagha. On the contrary, by way of putting certain suggestions during cross examination learned advocate for defendant no. 5 admitted that Kiran Pisal purchased the said flat by agreement at Exh. 74. The contents of agreement at Exh. 74 are proved by examining the witness of said agreement namely PW. 4 Shri. Pandey and original allottee PW. 3 Shri. Sainath Parkar. As deceased Kiran Pisal has purchased the said flat by agreement at Exh. 74 the defendant no. 4 MHADA was bound to transfer it in the name of plaintiffs being legal heirs of deceased Kiran Pisal.

15] Learned advocate for plaintiff further submitted that defendant no. 4 MHADA has without following due process of law transferred the said flat in the name of defendant no. 5, even though plaintiff objected by her application at Exh 95 dt. 21/03/2000 and receipt of Court summons. The defendant no. 4 MHADA was having knowledge of deceased Kiran Pisal purchased said flat by agreement at Exh. 74 because Majiwade Suprabhat Housing Society informed the said fact to defendant no. 4 MHADA by letter at Exh. 92. The

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remark of defendant no. 4 on letters at Exh. 92 and 95 proves that defendant no. 4 MHADA was having knowledge of above fact. The transfer of said flat in the name of defendant no. 5 is without following due process of law because in one of the letter at Exh. 124 the date regarding effect of transfer is mentioned as 30/05/2000 and in another letter at Exh. 127 date is mentioned as 31/05/2000.

16] Learned advocate for plaintiffs submitted that defendant no. 5 has admitted the execution of sale deed between deceased Kiran Pisal and Sainath Parkar in his letter at Exh. 133. He submitted that the sale deed at Exh. 74 executed between Kiran Pisal and Sainath Parkar as well as sale deed at Exh. 118 executed between Chetan Pisal and Sainath Parkar are not registered and duly stamped so defendant no. 5 does not get any right title in respect of suit flat.

17] Learned advocate for defendant nos. 1 and 5 submitted that defendant nos. 1 and 5 having no objection to give amount of gratuity, family pension and provident fund and LIC to plaintiffs along with defendant no.1. But the defendant nos. 1 and 5 having strong objection about transfer of flat in the name of plaintiffs. The testimony of P.W. 1 Anagha is not creditworthy because in her application at Exh. 95 she has mentioned that she is residing at Thane. Whereas during cross examination she deposed that after death of her husband Kiran Pisal she is residing at Ghatkoper. It means the address mentioned at Exh. 95 is false. In application at Exh. 75 the address of plaintiff is mentioned as Ghatkoper. The defendant no. 4 MHADA made enquiry on the basis of application

given by P.W. 1 Anagha at Exh. 95 and recorded statements of Sainath Parkar and others. P.W. 1 Anagha admitted during cross examination that the statement of Shri. Sainath Parkar recorded during said enquiry at Exh. 88 is in her hand writing. She submitted that if P.W. 1 has made complaint then how and why she can record the statement during the enquiry of said complaint ?. P.W. 1 Anagha admitted during cross examination that the transaction in between Sainath Parkar and deceased Kiran Pisal was done prior to her marriage.

18] Learned advocate for defendant nos. 1 and 5 further submitted that the P.W. 1 Anagha has lodged report against defendant no.1 and deceased Kiran Pisal in police station and on that basis chargesheet was filed. The defendant no. 1 was acquitted in the said case by Court. The documents at Exh. 74 agreement, Exh. 110 affidavit and Exh. 111 power of attorney are xerox copies. The suit flat was purchased by defendant no. 5 from Shri. Sainath Parkar by agreement at Exh. 118. Thereafter, Chetan Pisal made application to the defendant no. 4 MHADA for transferring the said flat in his name. The defendant no. 4 MHADA transferred the suit flat in the name of defendant no. 5 Chetan Pisal and defendant no. 5 has also deposited necessary charges. The deceased Kiran Pisal was not owner of said flat at any time.

19] Learned advocate for defendant nos. 1 and 5 during course of giving reply to the argument advanced by learned advocate for plaintiff submitted that even though defendant no. 5 admits the

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execution of agreement at Exh. 74 between Kiran Pisal and Sainath Parkar but it is the xerox copy. The transaction was not completed from the year 1995 to 2000. The leave and license agreement is not produced on record. There is amendment in section 17 of Registration Act as per registration and other related Laws (Amendment) Act 2001 whereby registration of documents executed prior to 24/09/2001 is not compulsory. She submitted that the agreement between defendant no. 5 and Sainath Parkar was executed on 14/02/2000 so it does not require compulsory registration.

Admitted Facts:-

20] It is admitted fact that the plaintiff no. 1 Anagha is widow, P.W. 2 is daughter, defendant no. 1 is mother and defendant no. 5 is brother of deceased Kiran Pisal. There are two LIC policies with defendant no. 3 and gratuity, family pension and provident fund amount in the name of deceased Kiran Pisal with defendant no.3. Defendant no. 1 was nominated as nominee for those amounts.

As to issue no. 1:-

21] Plaintiffs claims that they are class I heirs of deceased Kiran Pisal and therefore, entitled for the gratuity, family pension, provident funds and LIC amounts. Learned advocate for defendant nos. 1 and 5 also at the time of oral argument given no objection for giving share in the these amounts to the plaintiffs along with defendant no. 1. As per the provisions of Hindu Succession Act plaintiff no. 1 being wife, plaintiff no. 2 daughter and defendant no.

1 mother of deceased Kiran Pisal they comes within class I heirs and entitled for 1/3rd share each in the amounts of gratuity, family pension, provident fund and two insurance policies standing in the name of deceased Kiran Pisal. Hence, issue no. 1 answered as plaintiff nos. 1 and 2 and defendant no. 1 entitled for 1/3rd share each in the above amounts.

As to issue no.3:-

22] Plaintiffs claims that the defendant no. 4 MHADA has not followed due process of law. As per evidence of officer of defendant no. 4 Shri. Bavdane the suit flat was transferred by MHADA in the name of defendant no.5 by following due process of law. As per evidence of P.W. 1 Anagha she made an application at Exh. 95 to defendant no. 4 and thereby objected for transferring the suit flat in the name of any other person because it was purchased by her husband Kiran Pisal. The defendant no. 4 admitted the said fact that P.W. 1 Anagha made written application at Exh. 95 raising above objection. It is the contention of defendant no. 4 that in the process of shifting office from Badlapur to Bandra the application of P.W. 1 Anagha at Exh. 95 was remained unseen. However, except bare words of defendant no. 4 Shri. Bavdane there is no other material on record to prove that the office of defendant no. 4 was in the process of shifting from 20/03/2000 and therefore, application of P.W. 1 Anagha at Exh. 95 was remained unseen.

23] Defendant no. 4 MHADA admittedly received application of P.W. 1 Anagha at Exh. 95 dt. 21/03/2000. The summons of this

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suit served to defendant no. 4 on 15/05/2000. As per evidence of defendant no. 4 Shri. Bavdane the defendant no. 5 Chetan Pisal made an application for transferring the suit flat in his name to defendant no. 4 MHADA on 11/05/2000. However, except bare words of Shri. Bavdane there is no evidence on record to prove that defendant no. 5 made an application to defendant no. 4 MHADA on 11/05/2000. Even though for a while it is assumed that defendant no. 5 made an application on 11/05/2000 but at the same time defendant no. 4 MHADA was having knowledge that P.W. 1 Anagha had raised objection by an application at Exh.95 dt. 21/03/2000. As per evidence of Shri. Bavdane defendant no. 4 MHADA is not empowered to adjudicate the dispute between parties in respect of immovable property. However, at another hand P.W.4 Bavdane stated that on the basis of objection of P.W. 1 Anagha at Exh. 95 dt. 21/03/2000 they made enquiry and recorded statements of witnesses at Exh. 160 to 164. If defendant no. 4 MHADA is not having power to adjudicate dispute then why the defendant no. 4 MHADA made enquiry on the basis of objection of plaintiff at Exh. 95 and recorded statements of witnesses at Exh. 160 to 164 ? Defendant no. 4 MHADA has not given any explanation to that effect.

24] Exh 92 is a letter given by Majiwade Suprabhat Sahakari Grahnirman Sanstha to Asstt. Registrar of Co-operative Society dt. 29/07/1999 wherein the society has raised grievance that the flats of society have been transferred by members without permission of society. There is endorsement in respect said letter was received by

defendant no. 4 MHADA on 05/08/1999 by I.W. No. 3210. There is also an endorsement of the officer of defendant no. 4 MHADA directing for taking immediate action. In the said letter at Exh. 92 the society has mentioned that Shri. Sainath Parkar has transferred the suit flat in favour of Kiran Pisal. Thus on the basis of letter at Exh. 92 dt. 29/07/1999 it proves that the defendant no. 4 MHADA came to know that fact of Sainath Parkar transferring suit flat in favour of Kiran Pisal on 05/08/1999.

25] As per letter at Exh. 124 dt. 31/05/2000 the defendant no. 4 MHADA directed to defendant no. 5 to deposit the transfer fees. While perusing the said letter at Exh. 124, it is mentioned therein that the transfer is with effect from 30/05/2000. Whereas in another letter of defendant no. 4 MHADA given to defendant no. 5 at Exh. 127 dt. 02/06/2000 it is mentioned that the transfer shall with effect from 31/05/2000. As per letter at Exh. 124 defendant no. 5 was directed to deposit the amount. The receipt in respect of depositing the amount at Exh. 125 is of 31/05/2000. There is no evidence on record to show that letter at Exh. 124 was served to defendant no. 5 on same day i.e. on 31/05/2000 and on same day he deposited the amount by receipt at Exh. 125. Thus, inspite of letter given by P.W. 1 Anagha to defendant no. 4 MHADA at Exh. 95 dt. 21/03/2000, the letter given by society at Exh. 92 dt. 29/07/1999 and during pendency of present suit the defendant no. 4 MHADA has regularized suit flat in the name of defendant no.5. On the basis of above evidence it proves that the defendant no. 4 has not

ownership over suit flat on the basis of agreements at Exh. 74 and Exh. 118 respectively. The recitals of Exh. 74 and Exh.118 also shows that Sainath Parkar having intention to sale the flat by Exh. 74 and Exh. 118 to two persons. Even though Exh. 74 and Exh. 118 is titled as Agreement the recitals thereof proves that those are sale deeds.

31] As per section 17 (1)(b) of Registration Act 1908 any non testamentary instrument which create or assign any right, title or interest of value of Rupees one hundred and upwards in immovable property shall be registered. Section 17 mandates registration of document compulsory if it create or assign right, title, interest in immovable property. Plaintiff no.1 claims ownership over flat on the basis of Exh. 74 and defendant no. 5 also claims ownership on the basis of Exh.118. As per section 54 of Transfer of Property Act sale is a transfer of ownership in immovable property. As per agreements at Exh. 74 and 118 Shri. Sainath Parkar has sold immovable property i.e. flat to Kiran Pisal and Chetan Pisal.

32] Learned advocate for defendant no. 5 claims that as per amendment made in section 17 by The Registration and Other Related Laws Amendment Act 2001 the registration of Exh. 118 is not compulsory. The said amendment is as under.

"Amendment of section 17- In section 17 of the Registration Act- (a) after sub-section 1, the following sub-section shall be inserted, namely:- "(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if



they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A."

33] As per the above amendment in section 17 the registration of documents containing contracts to transfer any immovable property for the purpose of section 53(a) of Transfer of Property Act shall be registered if they have been executed on or after commencement of above amendment with effect from 24/09/2001. The above amendment is not in respect of sale deed but in respect of part performance of contract under section 53(a) of Transfer of Property Act. Plaintiff no. 1 and defendant no. 5 are not claiming that Exh. 74 and Exh.118 are agreements/contract but both claims ownership or acquiring right in the flat on the basis of Exh. 74 and Exh. 118. The recitals of Exh. 74 and Exh. 118 shows that those are sale deeds. Therefore, the above amendment made in section 17 is not applicable to agreements at Exh. 74 and Exh. 118 because by those agreements right, title or interest of value of Rs. 100/- and upwards in immovable property intended to have created. As per section 17(1)(b) of Registration Act agreements at Exh. 74 and 118 were compulsorily required to be registered. Admittedly, agreements at Exh. 74 and 118 are not registered. As per section 49 of Registration Act no documents which requires to be registered under section 17 of Registration Act if not registered shall affect any immovable property. It means if a document requires compulsory

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registration under section 17 is not registered then by said documents right, title or interest in the immovable property can not be transferred/passed to another person. Hence, due to non registration of Exh. 74 and Exh. 118 the right or title of suit flat has not passed from Sainath Parkar to either deceased Kiran Pisal or defendant no. 5 Shri. Chetan Pisal.

34] So far as case laws relied on by learned advocate for plaintiff is concerned, in the case of *Kundlik Patil Vs Gunda Hari Khot reported in 2009(7) L.J. Soft 130*. The application was filed for addition of party under Order 1 Rule 10 of C.P.C. Therefore, the ratio laid down in the said case is not applicable to the case in hand. In the case of *Sarita Chand Vs. Madgu Ramtake reported in 2010(12) L.J.soft 137*, the Hon'ble High Court held that the effect of lis pendense is not to annul the conveyance but only to make it subservient to rights of parties of litigation. Rights of transferee would depend upon result of pending legal proceedings in respect of suit property.

35] The question is whether a person who has once transferred his right title interest in immovable property in favour of another person can again transfer the said immovable property to another person ? As per the provisions of Transfer of Property Act a person can not transfer a better title than he himself has in the immovable property. In the present case Sainath Parkar had already executed first agreement at Exh. 74 in favour of deceased Kiran Pisal therefore, Sainath Parkar could not have executed another



agreement at Exh. 118 in favour of defendant no. 5. However, due to non registration of agreements at Exh. 74 and Exh. 118 the right, title and interest in the suit flat has not been transferred either in favour to deceased Kiran Pisal and defendant no.5.

36] For the above reasons issue No. 2 answered in the affirmative, issue Nos. 4 and 5 answered in the negative as plaintiffs failed to prove that they are entitled for possession of suit flat therefore, considering above discussion following final order is passed.

ORDER

1. Suit is partly allowed.
2. Plaintiff nos. 1, 2 and defendant no. 1 are entitled for 1/3rd share each in the amounts of gratuity, family pension, provident fund, two insurance policies standing in the name of deceased Kiran Pisal.
3. Both parties to bear their own costs.
4. Decree be drawn up accordingly.

Thane

Date : 27/02/2015


(D.Y.Gaud)
5th Jt. Civil Judge S.D.
(TMC)Thane.