

Spl. Civil Suit No.1479/2013

: 1 :

Presented on : 23/10/2013.

Registered on : 23/10/2013.

Decided on : 05/02/2015.

Duration : Ys. Ms. Ds.
01 03 12

**IN THE COURT OF 7th ADDITIONAL JUDGE, SMALL CAUSES
COURT AND JOINT CIVIL JUDGE, SENIOR DIVISION, PUNE.**

(Presided over by V. B. BOHRA)

Spl.Civil Suit No.1479/2013

Exh.

Mr. Parvin Chandmal Ranka.

Age : 37 Yrs., Occupation : Business.

Place of business at Shop No.22, C Wing,
Parmar Plaza, Wanawadi, Pune 411040.

Also resident at :

Flat No.22, C Wing, Parmar Plaza,
Wanawadi, Pune 411040.

.... Plaintiff.

V/s.

Mrs. Bharti Bharat Gandhi.

Age : 43 Yrs., Occupation : Business

R/at: Flat No.5, Yogeshwar Apartment,
Ekbote Colony, Pune 411042

.... Defendant.

APPEARANCES :

Shri M.K. Irani, Adv. for the plaintiff.

Sou Sujata Gunjal, Adv. for the defendant.

: 2 :

: ORAL JUDGMENT :

(Delivered on this 5th day of February, 2015)

1] This is the suit for declaration that registered agreement No. 2199 dt. 28/02/2011 and registered deed of assignment No.5943 dt. 16/06/2011 in respect of the suit property is illegal, void ab initio and required to be cancelled. Relief of injunction restraining the defendants from disturbing the possession of the plaintiff over the suit property and creating third party interest therein is also claimed.

2] In brief, the facts of the plaintiff's suit are as under :

Description of the property

All that piece and parcel of land and property being shop bearing Shop No.36, situated on the ground floor, in the building known as Parmar Park, Co-operative Housing Society, Ltd., Wing No.8, admeasuring 225 sq. feet, built up area, i.e., 20.91 sq. meters, situated at Survey No. 77/48/1A and Survey No.77/71, Revenue Village Wanawadi, within the jurisdiction of Pune Municipal Corporation (hereinafter referred to as the 'suit property')

Initially, suit property was purchased jointly by the plaintiff and one Mr. Nagraj Pakajee Chaudhary. Thereafter, by virtue of registered deed of transfer No.5659 dt. 30/06/2007, plaintiff became absolute owner of the suit property as Mr. Nagraj Chaudhary transferred his share. Plaintiff was and is doing his business as Jewellery and Gems in the suit property.

: 3 :

3] It is further the case of the plaintiff that defendant is doing money lending business without any license. Plaintiff approached her for loan of Rs. 16,50,000/- . However, out of that amount, only Rs. 3,50,000/- was paid to him by the defendant through cheque dt. 26/02/2011. As a colateral security, suit property was required to be mortgaged. Loan amount was to be repaid within two years with interest @18% per annum. Thereafter, the suit property was to be re-conveyed by the defendant to the plaintiff. However, as plaintiff was under depression, taking disadvantage thereof instead of mortgage-deed, defendant got executed and registered agreement to sell regarding the suit property for consideration of Rs. 22,00,000/-. Amount of Rs. 5,50,000/-, as mentioned in the agreement was never paid to the plaintiff.

It is further the case of the plaintiff that defendant forcefully got executed and registered deed of assignment from him and only paid Rs. 13,00,000/- by two separate cheques. Inspite of that, possession of the suit property remain with the plaintiff. Plaintiff never intended to transfer the suit property in favour of defendant. Therefore, no permission was obtained from the society.

4] It is also the case of the plaintiff that on expiry of two years, he tried to repay the amount to the defendant but she insisted for additional Rs. 10,00,000/- and interest. She failed to recovery the suit property to him. Now, on the basis of deed of assignment in question, defendant may create third party interest in the suit property and dispossess him therefrom. Hence, this suit.

: 4 :

5] In pursuance to the service of suit summons, defendant appeared in the matter through advocate on 12/12/2013 vide Vakilpatra Exh.12. However, inspite of availing more than sufficient opportunities, failed to submit her Written Statement. Consequently, by order dt. 23/06/2014, below Exh.1, suit is proceeded without her Written Statement.

6] In support of his claim, plaintiff has examined himself as P.W.1 by submitting his affidavit in lieu of examination in chief at (Exh.19). Plaintiff has closed his evidence by passing pursis at Exh.26.

7] Plaintiff has placed reliance on the certified copy of registered Deed of Assignment No. 5943 dt. 15th June 2011 (Exh.21), True copy of registration certificate of Shop / business (Exh.22), Original Property Tax Receipt dt. 07/10/2013 (Exh.23), original electricity bill dt. 27/12/2013 (Exh.24), office copy of letter dt. 11/10/2013 written by the plaintiff to the police station, Wanwari, along with endorsement of receipt (Exh.25).

8] Heard learned advocate for plaintiff. I had no opportunity to hear the defendant, as she failed to avail the opportunity of advancing arguments either by remaining present herself or through advocate.

9] I have gone through the pleadings in the plaint, oral as well as documentary evidence on record, relevant provisions of law and record of the suit. Following points arise for my determination and I recorded my findings thereon for the reasons stated below :-

: 5 :

POINTS

FINDINGS

- | | |
|---|-----------------------|
| 1] Does plaintiff prove that he has executed and registered agreement dt. 28/02/2011 and deed of assignment dt. 15-16/06/2011 while undergoing depression and on the insistence of defendant? | .. No. |
| 2] Does plaintiff prove his possession over the suit property? | .. No. |
| 3] Is plaintiff entitled for relief claimed? | .. No. |
| 4] What order and decree? | .. As per final order |

: R E A S O N S :

AS TO POINT Nos.1 to 4 :-

10] Oral evidence of plaintiff is no doubt in consonance with the pleadings in the plaint, however, the dispute involved is mostly based on registered documents. Therefore, the said unchallenged oral evidence of the plaintiff is to be appreciated on the basis of documents as well as other circumstances on record. Moreover, the reliefs claimed by the plaintiff are discretionary as well as equitable in nature. Therefore, the evidence on record is to be read cautiously. Further, settled position of law is also required to keep in mind. It is settled that plaintiffs shall stand on his own leg and cannot take advantage of weakness of the defendant. In other words, plaintiff has to prove his own case.

: 6 :

11] The basic document by which, the plaintiff and Mr. Nagraj Chaudhary purchased the suit property is not produced on record. Moreover, copy of the registered deed No.5659 dt. 30/06/2007 executed by joint owner Mr. Nagraj Chaudhary in favour of plaintiff is also not placed on record.

12] According to the plaintiff, he is engaged in the business of jewellery under the name and style “Meera Jewellers and Gems” and the said business is the only source of livelihood for himself and his family members. It is further the case of the plaintiff that because of his sincere and honest hard work, he developed the said business in the suit property.

The suit property is bearing No.36 (as per the Society record bearing No.10). However, from the cause title of the suit as well as cause title in the document in question, it appears that plaintiff is doing business from Shop No.22, 'C' Wing, Parmar Plaza, Wanwari, Pune.

13] So far as the fact of plaintiff's undergoing depression during the relevant period is concerned, there is no independent evidence in support thereof.

14] Agreement to sell is executed and registered by the plaintiff in favour of defendant on dt. 28/02/2011. Admittedly, plaintiff has received Rs.3,50,000/- from the defendant through cheque dt. 26/02/2011. The said agreement came to be executed in presence of two witnesses. As it is registered one, certain presumptions

: 7 :

about its correctness and genuineness are there, unless rebutted by strong evidence.

Assuming for a moment that the plaintiff has executed and registered the said agreement while undergoing depression, it was open for him to raise objection about the same within a reasonable period thereafter. But no such attempt on his part.

15] Though according to the plaintiff, he was in need of Rs. 16,50,000/- , there is no evidence in support of that contention. No explanation as to why he could not approach any Bank instead of obtaining such huge amount on huge rate of interest from a person like defendant, who is said to be doing money lending business without any license. Even no independent evidence on the part of plaintiff in support of the fact that defendant is doing money lending business.

16] After about 3½ months of the agreement to sell, i.e., on 15-16/06/2011, deed of assignment Exh.21 came to be registered and executed. It was also executed in presence of two witnesses. It is also a registered document having presumption of correctness and genuineness unless rebutted by strong evidence. At the time of Exh.21, admittedly, plaintiff has received Rs. 13,00,000/- from the defendant. It is not at all in dispute that in all, Rs. 16,50,000/- was received by the plaintiff from the defendant.

17] As plaintiff is a businessman, it is highly unbelievable that at the insistence of defendant, he executed and registered documents regarding immoveable property, which is said to be only source of

: 8 :

livelihood of plaintiff and his family members. If really it was a mortgage transaction then what prevented the plaintiff to execute mortgage-deed or at least insisted for recitals about re-conveyance after repayment in the documents in question. I have minutely gone through the deed of assignment in question Exh.21 as well as photocopy of certified copy of registered agreement to sell dt. 28/02/2011. From the recitals of both these documents, it cannot be said that it was a mortgage transaction or plaintiff has executed the same while undergoing depression and at the insistence of defendant.

18] Though according to the plaintiff after two years, he tried to repay the amount to the plaintiff, bare words of the plaintiff cannot be considered. The natural response of the plaintiff should be to issue notice along with the payment by cheque or demand draft to the defendant. However, no slightest attempt on the part of plaintiff to that effect. The present suit is filed on 23/10/2013. No doubt, it is well within the period of limitation but in view of the facts put forth by the plaintiff in the present suit, it would be expected from the plaintiff to issue notice to the defendant disclosing the fact about mortgage transaction. However, no such attempt on his part. As such, there appears delay and laches on the part of plaintiff.

19] No explanation on the part of plaintiff as to who prevented him to examine Shri Sandip Waghmare and Shri Makrand Sabnis, who put their signatures on Exh.21, as witnesses.

: 9 :

20] From the letter Exh.25 dt. 11/10/2013, by the plaintiff to the police chowky Wanwari, it would reveal that in fact, defendant has lodged some complaints against plaintiff and in reply, the plaintiff has issued that letter. Prior to that, there was no complaint filed by the plaintiff. Even before institution of the suit, no notice was issued by the plaintiff to the defendant. The said letter Exh.25 is dt. 11/10/2013, as suit was filed on 23/10/2013. This circumstance also raised doubt on the contention put forth by the plaintiff regarding the mortgage transaction.

21] From the recitals of Exh.21 itself, it is clear that plaintiff has already received Rs. 5,50,000/- from the defendant as an earnest amount on 02/02/2011 itself.

22] Further, as per the recitals of Exh.21, possession of the suit property was handed over by the plaintiff to the defendant. From the copy of Shop Establishment Certificate Exh.22, tax receipt Exh.23 and electricity bill Exh.24, it cannot be said that plaintiff is in possession of the suit property. As stated above, from the cause title of the plaint as well as registered documents, it appears that plaintiff is doing his business from Shop No.22, "C" Wing, Parmar Plaza, Wanwari. No independent evidence on the part of plaintiff to prove his possession over the suit property.

23] No doubt, inspite of knowledge of the pendency of the suit, defendant failed to contest the same but that itself is not sufficient as a proof of plaintiff's case. Registered documentary evidence is

: 10 :

against the plaintiff. As such, according to me, there is nothing on record to show that the agreement to sell dt. 28/02/2011 and deed of assignment dt. 15-16/06/2011 are illegal and result of depression of the plaintiff and insistence of defendant. Therefore, it cannot be said that said agreements and deed of assignment are illegal and void ab initio. In fact, agreement to sell dt. 28/02/2011 is merged with the deed of assignment Exh.21. Consequently, I answer Point Nos. 1 and 2 in the negative.

24] As plaintiff failed to establish his case and in view of my findings on Point Nos. 1 and 2, the deed of assignment Exh.21 cannot be cancelled, as prayed by the plaintiff. The plaintiff is not entitled for the relief of declaration and injunction as claimed. The cumulative effect thereof is that suit must fail. As defendant failed to contest the suit, she is not entitled for any costs. Accordingly, I answer Point No.3 in the negative and in answer to Point No.4, proceed to pass the following order :

: ORDER :

1. Suit is dismissed.
2. No order as to costs.

PUNE
Dated : 05/02/2015.

(**V. B. BOHRA**)
7th Addl. Judge,
Small Causes Judge, & Jt.
Civil Judge, Sr.Dn., Pune.

: 11 :

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

Name of the Steno : V.A. Endgallu. (H.G)

Name of the Court : V. B. BOHRA
7th Addl. Judge,
Small Causes Judge, & Jt.
Civil Judge, Sr.Dn., Pune.

Date : 05/02/2015.

Judgment signed by Presiding Officer on : 05/02/2015.

Judgment uploaded on : 05/02/2015.