

Presented on : 01.02.2014
Registered on : 01.02.2014
Decided on : 28.04.2017
Duration : Year Month Day.
03 02 27

IN THE COURT OF 11th JT. CIVIL JUDGE, SENIOR DEVISION PUNE.

(Presided over by P. D. Zambre)

SPECIAL CIVIL SUIT No. 189/2014

Exh. No. 104

Shri Bhausahab Narayan Kolekar }
Age : 37 Yrs., Occu.: Agriculturist, }
R/at : Tarde, Taluka Haveli Dist. Pune } **.....Plaintiff**

V/s.

1. **Shri. Shantaram Dinkar Memane** }
Age : 55 Yrs., Occu.: Agriculturist }
2. **Shri. Dyaneashwar Shantaram Memane** }
Age : 30 Yrs., Occu.: Agriculturist }
Both R/at : Tarde, Taluka Haveli Dist. Pune }
3. **Shri. Vijay Bhaguji Undre** }
Age 46 Yrs. Occu.: Agriculturist }
R/at : Manjri Khurd Tal. Haveli Dist. Pune }
4. **Shri. Jitin Aanad Kabale** }
Age : 44 Yrs. Occu. : Agriculturist }
R/at : S.No. 34/35, Keshavnagar }
(Hanumannagar) Mundhva Pune 411036 }
5. **Mandal Adhikari** }
Shri. V. B. Satav }
R/at Theur Pune }
6. **Gaon Kamgar Talathi** }
R/at : Aalandi Mhatobachi, }
Tarde, Tal. Haveli Dist. Pune. } **..Defendants**

Shri. S. H. Wagh : Advocate for the Plaintiff
Shri M.J. Shirke : Advocate for the defendant nos. 1 to 4
Shri. Sunil Hande : AGP for defendant Nos.5 and 6

J U D G M E N T
(Delivered on 28th day of April, 2017)

The plaintiff has filed the suit for declaration, cancellation of sale-deed and perpetual injunction.

2] In short, it is suit of the plaintiff that, 20 R land in block no. 287 out of 87 R having 4 boundaries block no. 256 on the East, remaining property in the same block number on the West, Shindwane to Alandi Road on the South and block no. 257 on the North situated at Village Tarde Taluka Haveli District Pune is property of defendant no. 1 (hereinafter referred as 'the suit property' for the sake of brevity). The plaintiff and defendant no. 1 have purchase 60 R land from block no. 287 on 11.02.1999 by which plaintiff has purchased 40 R land and defendant no. 1 has purchased 20 R land. Accordingly, mutation is certified and they are in possession of respective shares. Defendant no. 1 sold property to defendant nos. 3 and 4 on 23.05.2012 by registered sale-deed but it is without consideration and without possession. Four boundaries written in the sale-deed are false. Some portion in the sale-deed is blank. Hence, it is illegal. Thereafter, on 13.10.2013 the plaintiff has purchased suit property from defendant nos. 1 and 2 vide registered sale-deed no. 12056/2013. It is contended that on the date of sale deed dated 13.10.2013, there is name of defendant no. 1 to the record of right of the suit property. The plaintiff was put in possession of the suit property. Then the plaintiff went to mutate his name to record of right of the suit property. He came to know that defendant no. 1 has sold the suit property to defendant nos. 3 and 4. Thereafter, he raised objection to sale-deed dated 23-05-2012. After knowledge of previous sale-deed, he asked defendant no. 1 and 2, but they avoided to give answer or gave evasive answers. Moreover, defendant nos. 5 and 6 were told that the suit is filed in respect of suit property but they tried to certify mutation. Therefore, they are made as party. The plaintiff has filed the suit for cancellation of sale-deed between defendant nos. 1 and 3, 4 dated 23.05.2012, directing defendant nos. 1 to 4 to register deed of cancellation in favour of the plaintiff. The plaintiff has also

prayed for injunction restraining defendant Nos. 3 and 4 from creating third party interest over the suit property and declaration that sale-deed dated 23.05.2012 is not binding upon the plaintiff and prayed to decree the suit.

3] Defendant nos. 1 to 4 filed say and written statement vide Exh. 37 and contended that false suit is filed against them. It is contended that possession is not given to the plaintiff by defendant nos. 1 and 2. The plaintiff has knowledge of sale-deed between defendant no. 1 and 3, 4. They denied the suit. It is their contention that, the plaintiff and defendant no. 1 has purchased 30 R land each in the year 1999. At the time of typing sale-deed, the plaintiff cheated defendant no. 1 and mentioned 40 R land to the share of plaintiff and 20 R land to the share of defendant no. 1. It is contended that possession of 30 R area is given to plaintiff and defendant no.1 each. Later on, mutation is certified. Then defendant no. 1 come to know about fraud committed by the plaintiff. Hence, there is dispute between the plaintiff and defendant no. 1. He lodged complaint to the police and Chairman of Tantamukti Committee before whom, the plaintiff admitted to transfer 10 R land to defendant no. 1. It is contended that there is no transaction between plaintiff and defendant no. 1 in respect of suit property. The plaintiff told defendant no. 1 that he will transfer 10 R land to his share by registered sale-deed and by taking defendant no. 1 to office of Sub-registrar got executed sale-deed dated 13.10.2013. It is contended that defendant no. 1 has already sold the suit property to defendant no 3 and 4 by accepting amount of Rs. 5 lacs. On the same day, possession is handed over to defendant no. 3 and 4. The plaintiff has no cause of action to file the suit and object mutation of defendant no. 3 and 4. It is contended that sale-deed dated 13.10.2013 is without possession and consideration and prayed to dismiss the suit.

4] Defendant no. 1 has file counter claim vide Exh. 42 and contended that the plaintiff has cheated him at the time of sale-deed dated 11-02-1999 and

mention 40 R land instead of 30 R land to the share of defendant no. 1. Therefore, there is dispute between plaintiff and defendant no. 1. He came to police as well as Chairman of Tantamukti Committee where plaintiff accepted his claim and admitted to transfer 10 R land. It is contended that, actual possession 30 R land i.e 10 R excluding the suit property is in the possession of defendant no. 1 and prayed for declaration that he become owner of the suit property and injunction restraining the plaintiff from obstructing possession of defendant no. 1 from the suit property. Defendant nos. 5 and 6 also filed say and written statement at Exh. 39 and contended that suit is false there is sale-deed between defendant no. 3 and 4 in respect of suit property. It is contended that possession is with defendant nos. 3 and 4. Therefore, mutation in respect of sale-deed dated 23-05-2012 is certified. Therefore, plaintiff is not entitled for remedy as prayed and prayed to dismiss the suit.

5] The plaintiff filed say and written statement to the counter claim and contended that there is no commission of fraud at the time of sale-deed dated 11-02-1999. It is true that 60 R land is purchased by the plaintiff and defendant no. 1. But out of 60 R land, 40 R land is purchased by the plaintiff and 20 R land is purchased of defendant no. 1. It is specifically mentioned in sale-deed. It is contended that 10 R land was never in possession of defendant no. 1. Defendant no. 1 was never owner of the said 10 R land. Moreover, plaintiff has purchased remaining 20 R land by paying amount of Rs. 5 lacs. It is contended that, on the same day possession is handed over to the plaintiff by defendant no. 1 and 2. Therefore, counter claim is liable to be dismissed and prayed to dismiss the counter claim and decree the suit.

6] Issues frame by the Court vide Exh .60 which are re-casted by Order below Exh. 63 and Exh.1 are reproduced below along-with my findings there on are as under:-

Sr. No.	Points	Findings
1.	Does the plaintiff prove that sale deed dated 23.05.2012 between defendant no. 1 and 3,4 is bogus without consideration and without possession ?	No
2.	Does the plaintiff prove that he is in exclusive possession of suit property ?	No.
3.	Is the plaintiff entitled for declaration as prayed ?	No.
4	Is the plaintiff entitled for cancellation of sale-deed dated 23.05.2012 between defendant no. 1 and 3, 4 ?	No.
5	Is the plaintiff entitled for perpetual injunction as prayed ?	No.
5a	Does defendant no. 1 prove that he is owner of 10 R land mentioned in paragraph one of counter claim ?	No.
5b	Whether defendant no. 1 in possession of property mentioned in paragraph one of counter claim ?	No.
5c	Is the defendant no. 1 entitled for injunction as prayed ?	No.
5d	Is the defendant no. 1 entitled for declaration as prayed ?	No.
6	What order and decree ?	As per final order.

: REASONS :

7] Before going to discussion of issues, it will be legal and proper to mention evidence of the parties and admitted fact between the parties to precise

the discussion. To establish the suit claim, the plaintiff has examined himself as Bhausaheb Kolekar PW1 at Exh. 65 and relied upon sale-deed dated 13.10.2013 between plaintiff and defendant no 1 and 2 at Exh. 70, sale deed between Pandurang, Vasant and Maruti Ragu kale as vendor and the plaintiff and defendant no. 1 as purchaser dated 11.02.1999 at Exh. 71, receipt of sell of crops vide Exh. 72 to 77. Moreover, he has examined witnesses Laxman Keskar PW2 at Exh. 79, Prakash Kale PW3 at Exh. 80 and Bhausaheb Shembale PW4 Exh. 81 and closed his evidence by filing pursis at Exh. 84. Defendant no. 1 and 2 do not enter into witness box. They have executed General Power of Attorney Deed in favour of Subhash Memane at Exh. 92 who deposed as Subhash DW1 at Exh. 85 and relied upon sell receipts of Gulchhadi Flower at Exh. 88 to 91. Moreover, Vijay DW2 is examined by defendant no.1 to 4 at Exh. 95 and relied upon sale deed dated 23.05.2012 at Exh. 98, mutation entry no. 32 dated 02.02.2014 at Exh. 99. Later on one more witness i.e Balasaheb Jagtap is tried to be examined by filing his affidavit of examination in chief at Exh. 100, but later on he was given up by defendant nos. 1 to 4 and closed evidence by filing pursis at Exh. 103. Defendant nos. 5 and 6 do not enter into witness box. Moreover, no application is filed for either adjournment or exemption. Therefore, the suit is proceeded without their evidence by passing order below Exh. 1. All the documents and depositions of witnesses will be referred as and when its reference is necessary for determination of actual controversy between the parties.

8] After perusal of pleading of suit and Counter-claim, written statement filed by the parties and considering evidence led by the parties, it appears that some facts are admitted by the parties. Hence, it will be legal and proper to mention those facts prior to discussion of main issues for precision of discussion. Hence, I am mentioning admitted facts between the parties. The plaintiff and defendant no. 1 have purchased 60 R land from block no. 287 on 11.02.1999. It is mentioned in sale-deed that 40 R land is purchased by the

plaintiff and 20 R land is purchased by defendant no. 1. They are in possession of respective shares. There is sale-deed of suit property dated 23.05.2012 between defendant no. 1 and 3, 4 for consideration of Rs. 5 lacs. There is another sale-deed of the suit property between plaintiff and defendant 1 and 2 dated 13.10.2013 are the admitted facts or which are not in dispute. It is contention of the plaintiff that he has no knowledge of sale-deed between defendant no. 1 and 3, 4. Moreover, the said sale-deed is without consideration and without possession and void. Therefore, he has prayed for cancellation of sale-deed and declaration that the said sale-deed is not binding upon him along-with injunction restraining defendant Nos. 4 and 5 from creating third party interest over the suit property. On the contrary, defendant no. 1 to 4 came with case that defendant no. 1 and the plaintiff has purchased $\frac{1}{2}$ share of 60 R land of block no. 287. The sale-deed dated 23.05.2012 is with consideration and on the same day possession is handed over to the defendant nos. 3 and 4. Moreover, sale-deed between the plaintiff and defendant no. 1 and 2 is without consideration and possession. In the circumstances, the main issue before the court is whether sale deed between defendant no. 1 and defendant no. 3, 4 is bogus without consideration and possession or not ?

AS TO ISSUE NOS. 1 TO 4

9] As issue nos. 1 to 4 are intermingled and interconnected with each other. Evidence in respect of said issue is same. Therefore, to precise the discussion, it will be legal and proper to discuss issue nos. 1 to 4 simultaneously. Hence, I opt to discuss issue nos. 1 to 4 simultaneously. To show that sale-deed between defendant no 1 and 3, 4 is bogus without possession and consideration, the plaintiff examined himself as Bhausahab Kolekar PW1 at Exh. 65 in which he has deposed that possession of the suit property is not handed over to defendant no 3 and 4. It is also deposed that it is without consideration but after perusal of sale deed between defendant no. 1 and 3, 4, it appears that

defendant no. 1 has accepted payment of Rs. 1 lacs through cheque and amount of Rs. 2 lacs by demand draft and 2 lacs in cash. There is no contrary evidence on record to rebut that evidence. Defendant no.1 is supporting fact of payment by defendant nos. 3 and 4. Vijay DW2 has supported the said fact. There is no evidence to show that consideration is not given to defendant no.1. Hence, I found no substance in the contention of the plaintiff that sale-deed is without consideration.

10] After perusal of evidence of both the parties much emphasis is given on to prove the possession over the suit property, but there is registered document between defendant 1 and 3, 4 which shows that consideration is received by defendant no. 1 and possession is handed over to defendant nos. 3 and 4. The said fact is supported by defendant no. 1 in his written statement. Moreover, it is supported by evidence of defendant 1 to 4 and sale-deed which is at Exh. 98 dated 23.05.2012. After perusal of evidence on record, it appears that when there is sale-deed between defendant nos. 1 and 3, 4 nobody has claimed possession over the suit property. Defendant no.1 is saying that on the day of sale-deed, possession is handed over to defendant nos. 3 and 4. Moreover, he denied sale-deed between him and the plaintiff. He denied possession of plaintiff over the suit property. Defendant nos. 5 and 6 have also admitted that defendant nos. 3 and 4 are in possession of the suit property. Hence, it will be safely said that the defendant nos. 3 and 4 are in possession of the suit property. Hence, contention of the plaintiff that the sale-deed between defendant no, 1 and 3, 4 in respect suit property is without possession appears to be without legal foundation. The plaintiff has relied upon sale receipt of crops to show the possession over the suit property, but there is no evidence on record to show that the said crop is from the suit property as in the said block already 40 R is with the plaintiff. The possibility of selling crop from the said 40 R land can't be ruled out. Hence, it will not be proper to infer that the said receipts are of the crop from the suit property. Defendant no. 3, 4 have also filed sell receipt

of Gulchhadi crops vide Exh. 88 to 91 but there are so many mistakes in the said receipts. In the circumstances, it will not be proper to rely upon those receipts, Hence, these are not relied. But possession of defendant nos. 3 and 4 is supported by 7/12 extract, defendant No.1, sale-deed Exh.98 which is not rebutted and defendant nos. 5 and 6 who are independent government authorities. Hence, possession appears to be with defendant no. 3 and 4.

11] The plaintiff tried to show that there is blank space in the sale-deed to prove that the sale-deed is bogus and void. It is true that there are blank space. But i.e in respect of previous sale-deed of the suit property. Moreover, it is admitted fact that previous sale-deed is in the possession of the plaintiff. In the circumstances, though there are some irregularities in the sale-deed, but it will not be proper to infer that said sale-deed is bogus or without consideration and without possession. There is dispute regarding possession of the suit property but in view of discussion in paragraph no.10, the possession appears with defendant nos. 3 and 4. Moreover, as per provision of the Transfer of Property Act, on 23.05.2012 initially ownership is transferred to defendant no. 3 and 4 by registered sale-deed which is followed by possession. The sale-deed between plaintiff and defendant no. 1 to 2 is dated 13.10.2013 but that time ownership is not with defendant nos. 1 and 2 due to previous sale-deed dated 23.05.2012. Hence, he is not in position to transfer the property. After perusal of that sale-deed dated 13.10.2013, it appears that name of seller i.e vendor is mentioned as Shantaram Memane but as per previous sale-deed he is not owner of the suit property. Moreover, entries in 7/12 extracts does not confer title on any person. In the circumstances, he can not transfer better title to the plaintiff of the suit property which is not with him. In the circumstances, it appears that sale deed between defendant nos. 1 and 3, 4 is legal and valid. In the circumstances, it can not be said sale deed dated 23.05.2012 is bogus without consideration and possession. Therefore, the plaintiff is not entitled for declaration as prayed for as well as cancellation of sale deed dated 23.05.2012

as prayed for. Hence, I answer issue no. 1 to 4 in the negative.

AS TO ISSUE NO. 5 :-

12] The plaintiff has prayed for injunction restraining the defendant no. 3 , 4 from creating third party interest over the suit property. But after perusal of evidence on record, it appears that there is legal and valid sale deed between defendant nos. 1 and 3, 4 on 23.05.2012. It appears to be legal with consideration and possession. Mutation in respect of such sale deed is also certified by defendant nos. 5 and 6 by giving opportunity to the plaintiff. Moreover, the plaintiff failed to establish that sale deed between defendant nos. 1 and 3, 4 is bogus, without consideration and possession. It is proved that defendant nos. 3 and 4 are real owner and possessor of the suit property. It is settled principle of law that injunction against true owner can not be granted. In the circumstances, plaintiff is not entitled for perpetual injunction as prayed for. Hence, I answer issue no. 5 in the negative.

AS TO ISSUE NO. 5 a to 5 d:-

13] As issue nos. 5a to 5d are intermingled and interconnected with each other. Evidence in respect of said issue is same. Therefore, to precise the discussion, it will be legal and proper to discussed issue nos. 5a to 5d simultaneously. Hence, I opt to discuss issue nos. 5a to 5d simultaneously. Defendant no. 1 come with counter-claim that, though in the sale-deed dated 11.2.1999, it is mentioned that plaintiff has purchased 40 R land and defendant no. 1 has purchased 20 R share but he has not challenged it. It is his counter-claim that he has purchased ½ share i.e. 30 R land but the plaintiff played mischief at the time of writing sale-deed. Hence, he raised dispute with police and Chairman of Tantamukti Committee and the plaintiff assured that he will transfer that 10 R on his name. It is his contention that he told him that he is

going to transfer but playing fraud executed sale-deed of the suit property instead of transferring that 10 R land. The said fact is denied by the plaintiff. It is his contention that he become of 10 R land and hence prayed for declaration in that respect and injunction restraining the plaintiff from obstructing his possession over 10 R land.

14] To establish his claim the plaintiff has to prove that he is owner of 10 R land, but there is no document in support of his claim. Sale-deed dated 11.02.1999 Exh.71 supports contention of the plaintiff. As per sale-deed Exh.71 the plaintiff appears to be owner of 10 R Land. Moreover, defendant no.1 has not examined any witness of Tanta-mukti Committee or police or not filed any document to show ownership and possession of the plaintiff over the said 10 R land. There is no evidence on record to show that 10 R land is in the possession of defendant no. 1 and he is owner of said property. To show the possession of defendant no. 1 over 10 R land, evidence of Subhash DW1 is lead. But in the cross examination, he has admitted that the plaintiff is having possession over 40 R land. It is case of the plaintiff that he is in possession of 40 R land since the date of sale-deed which is supported by sale-deed Exh.71, evidence of defendant nos. 1 to 4 i.e Subhash DW1. It simply means that there is no of possession of defendant no. 1 over 10 R land mentioned in the paragraph no. 1 of counter claim. In the circumstances, defendant no. 1 is not entitled for injunction and declaration as prayed for. Hence, I answer issue no. 5 a to 5 d in the negative.

AS TO ISSUE NO. 6 :-

15] The plaintiff failed to establish his claim. Therefore, he is not entitled for remedy as prayed. Moreover, defendant no. 1 also failed to establish his claim. Therefore, he is also not entitled for remedy as prayed. After perusal of record it appears that, defendant no. 1 has executed two sale-deeds of the same property due to which there is suit. In the circumstances, defendant no. 1

is liable to pay the costs of the suit. In fact, defendant no.1 and 2 have executed sale-deed in favour of the plaintiff though they have knowledge that there is previous sale-deed. As per sale-deed dated 13.10.2013, it appears that amount of Rs. 5 lacs are paid to defendant nos. 1 and 2. But, being subsequent sale-deed between the plaintiff and defendant nos. 1 and 2 the plaintiff failed to establish his claim and he has not claimed compensation or damages from defendant nos. 1 and 2. Moreover, as per section 21 of the Specific Relief Act, there is specific bar to allowed damages unless claimed. Moreover, there is no enabling provision in the chapter of cancellation of document of the Specific Relief Act to grant compensation or damages. In the circumstances, the plaintiff is entitled for compensation or damages. Hence, it is not granted. But due to mistake of defendant No.1 the suit came to be filed. Hence, he is liable to pay costs of the suit. Hence, I answer point nos. 1 to 4, 5 and 5 a to 5 d accordingly and in answer to point No. 6 I pass following order

ORDER

- 1] The suit of the plaintiff is dismissed.
- 2] Counter claim of defendant no. 1 is dismissed.
- 3] Defendant no. 1 do pay costs of the suit to the plaintiff and bear his own.
- 4] The decree be drawn up accordingly.

Sd/-

Date : 28.04.2017
Pune

(P. D. Zambre)
11th Jt. Civil Judge Senior Division, Pune.

CERTIFICATE

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

Name of Steno	: V.A.Chaudhari
Court Name	: Shri. P.D.Zambre, 11 th Jt.C. J. S.D, Pune.
Date	: 28/04/2017
Judgment signed by presiding officer on	: 11/05/2017
Judgment uploaded on	: 12.05.2017