

Received on : 22/09/2015
Registered on : 22/09/2015
Decided on : 29/03/2018
Duration : Y. M. D.
02 06 07

IN THE COURT OF 7th Jt.CIVIL JUDGE, SENIOR DIVISION,
PUNE

(Presided over by V. V. Kulkarni)

Civil Suit No. 1212/2015
Exh. No.

1. Shri Dnyanoba Sonba Saikar,
Age-68 yrs. Occ. Agriculture,
 2. Shri Rajendra Dnyanoba Saikar,
Age-43 yrs. Occ. Agriculture,
 3. Shri Vijay Dnyanoba Saikar,
Age-40 yrs. Occ. Agriculture
 4. Shri Mahadu Dnyaoba Saikar,
Age-36 yrs. Occ. Agriculture
All R/o, S.No. 131/1A/4
Baner, Tal.Haveli, Dist.Pune
- ... Plaintiffs

Versus

1. M/s Gautam Pashankar & Associates
Registered partnership firm
at S.No. 45/1 Pune Banglore Road
Baner, Pune
2. Shri Milind Baban Parkhe,
Age-46 yrs. Occ. Agriculture
R/at Baner, Tal.Haveli, Dist.Pune

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3. Shri Gautam Vishwanand Pashankar,
Age-59 yrs. Occ. Agriculture
R/at Modi Baug, Shivajinagar, Pune-5

4. Shri Sunil S.Jadhav,
Age-55 yrs. Occ. Agriculture
R/at Yashokamal, Office No.5
Ayurvedik Ras-shala, Karve Rd.,
Pune.

5. Shri Anil Gulabrao Pawar,
Age-50 yrs. Occ. Agriculture
R/at 32 Plot No. 44,
Gulabnagar, Dhankwadi, Pune

6. Smt. Anandibai Vishnu Jadhav,
Age-59 yrs. Occ. Household

7. Shri Somnath Vishnu Jadhav,
Age-39 yrs. Occ. Agriculture

8. Shri Wagheshwar Vishnu Jadhav,
Age-38 yrs. Occ. Agriculture
S.No. 6 to 8 Jadhavwadi, Chikhli,
Tal.Haveli, Dist.Pune

9. Sou Kavita Bhagwan Mali,
Age-37 yrs. Occ. Household,
R/at Chinchoshi, Tal.Khed,
Dist.Pune

... Defendants

Claim : Suit for cancellation of sale-deed and declaration.

Appearances :-

Shri R.K.Yevale, the learned advocate for plaintiffs.

Shri Prasanna Darade, the learned advocate for defendant No. 1, 3
and 5.

Shri Nadaf, the learned advocate for defendant No. 6 to 9.

Shri Swapnil Abhyankar, the learned advocate for defendant No.2 to 4.

JUDGMENT

(Delivered on 29th March, 2018)

1. The suit is for avoidance of sale-deed dtd. 3/10/2008 registered at Sr.No. 8340 of 2008 in respect of suit property of following description and cancellation of Power of Attorney registered at Sr.No. 8341/2008 and deed of confirmation registered at 8338 of 2008, which are registered at the office of Sub-Registrar, Haveli No. 10. In addition, plaintiffs have also seeking relief of declaration that all these documents executed by defendant No.6 to 9 in favour of defendant No. 1 to 5 are null and void ab-initio.

Description of the suit properties

Sr. No.	Out of Survey No.	Area	Undivided share
1	110/11	01H-47.82R 03.07 paise Aakar	1/6th i.e. 0H 42.42R
2	111/11/1	02H-48.05R 06.95 Paise Aakar	1/6th i.e. 00H-41.42R
3	112/1	00H-43R 1.40 paise Aakar	1/6th i.e. 00H-1.5R
4	121/1+2/1	01.86R + Pot kharaba 00H-8R 8.86 Paise Aakar	1/6th i.e. 00H32.33R
5	131/1A/4	02H-14.4R 11.59 paise Aakar	1/6th i.e. 00H.35.73R
6	132/1	0H-01.5R	1/6th 269 Sq.Mtrs.

		00.09 Paise Aakar	
7	132/0	0H-04R 00.16 Paise Aakar	1/6th 269 Sq.Mtrs.
8	132/10	0H-00.5R 00.03 Paise Aakar	1/6th 8.33 Sq.Mtrs.
9	133/1	0H-5R 00.03 Paise Aakar	1/6th 8.33 Sq.Mtrs.
10	184	0H-25R 11.87 Paise Aakar	1/6th 0H-4.17 R
11	185/1	0H-29R 6.25 Paise Aakar	1/6th 0H-2.42R
12	185/2	0H-2.17R 6.25 Paise Aakar	1/6th 0H-2.17R
13	191/1+2	0H.29R 1.87 Paise Aakar	1/6th 0H-4.33R
14	192/1	0H-12R 05.00 Paise	1/6th 0H-02R
15	192/2+3	0H-21.5R 10.00 Paise Aakar	1/6th 0H-3.58R
16	193/7	0H-06R 2.52 Paise Aakar	1/6th 0H-01R
17	193/6	200 Sq.Mtrs. 00.88 Paise Aakar	1/6th 33.33 Sq.Mtrs.
18	194/1	0H-03R 00.12 Paise Aakar	1/6th 00.50R
19	194/4	0H-03R	1/6th 00.50R

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		1/25 Paise Aakar	
20	194/5+6	00H-5.5R 2.50 Paise Aakar	1/6th 0H-00.92R
21	195/6	0H-1.50R 00.72 Paise Aakar	1/6th 0H-00.25R
22	195/7	00.06R 02.82 Paise Aakar	1/6th 0H-01R
23	196/1	0H-06R 2.50 Paise Aakar	1/6th 0H-01R
24	196/2	H-17.5R 7.50 Paise Aakar	1/6th 0H-2.92R
25	197/8	0H-00.50R 0.22 Paise Aakar	1/6th 8033 Sq.Mtrs.

2. The facts responsible for the germination of this suit can be stated as under :-

The suit property was originally belonged to deceased Mahadu Khandu Mhetre. Said Mahadu died on 25/10/1939 leaving behind two sons namely Sonu Mahadu Mhetre alias Saikar and son of predeceased son namely Babu Maruti Mhetre. After demise of Mahadu Mhetre name of Sonu Mahadu and Babu Maruti were mutated in record of right of the suit property vide Mutation Entry No. 720. Sonu Mahadu and Babu Maruti was having equal right in suit property. After the passage of time, Sonu Mahadu died on 9/8/1976. Said Sonu died leaving behind son namely Dnyanoba (plaintiff No.1) three daughters Sakhubai Sonba Dedge, Sagunabai Vithoba Kanjine, Narmada Binu Gore and widow namely

Rangubai Sonba Mhetre. After demise of Sonu name of his son, three daughters and widow were mutated in revenue record of the suit property being legal heirs of deceased Sonu. Thereafter, grandson of Baburao Maruti Mhetre alias Saikar had filed Reg.C.S.No. 798/91 for the relief of partition. In the said suit compromise took place in between the family members of Mhetre alias Saikar on 13/12/1993. Accordingly, decree has been passed in terms of compromise. Thereafter, partition took place between legal heirs of deceased Baburao Maruti Mhetre alias Saikar and plaintiff before Tahasildar, Haveli. The learned Executive Magistrate/Tahsildar Haveli partitioned the suit property by exercising the power conferred to him by Section-85 of Maharashtra Land Revenue Code, 1966. Accordingly, suit properties were allotted to plaintiff No.1 to 4 and Sakhubai Sonba Dedge, Sagunabai Vithoba Gandhile and Narmada Binnu Gore vide ME No. 6472.

3. It is pleaded that on 5/5/2005 Smt. Rangubai Sonba Saikar, Sakhubai Sonba Dedge, Sagunabai Vithoba Gandhile and Narmada Binnu Gore have relinquished their right in suit property in favour of plaintiff No.1 by way of execution of registered relinquishment deed registered at Sr.No. 4622/2005 at the office of Sub-Registrar, Haveli No. 15. Accordingly, ME No. 15176 and 19340 has been sanctioned by Revenue Authority and names of Smt. Rangubai Sonba Saikar, Sakhubai Sonba Dedge, Sagunabai Vithoba Gandhile and Narmada Binnu Gore have been deleted from the record of right of the suit property. Since then, the suit property became

absolute property of plaintiff. It is stated that suit property is in possession of plaintiffs being owner and possessor thereof.

4. It is pleaded that mother of defendant No.6 namely Subhadra Alhat (since deceased) was the married daughter of deceased Sonba and deceased Gangubai. Said Subhadra died before 1963. Thereafter Sonba died on 9/8/1976. After demise of Sonba names of his legal heirs were recorded in record of right of the suit property vide ME No. 1932. As the daughter of deceased Sonba namely Subhadra died before the death of Sonba, therefore, her name was not recorded in record of right of the suit property at the time of sanctioning ME No. 1932. After lapse of 44 years, defendant No. 6 had applied for mutation of her name being legal heirs of deceased Subhadra Alhat. Accordingly, on the basis of application of defendant No.6 village officer (Talathi), Baner recorded the name of defendant No.6. Accordingly, Mutation Entry No. 15367 and 15650 has been sanctioned by Revenue Authority on 3/10/2010 and 5/5/2008 respectively. The plaintiffs have challenged said mutation entries before Additional Collector, Pune by filing RTS Appeal/2/447/2008. Said appeal came to be allowed on 6/12/2012. After the said decision, ME No. 15367 and 15650 stands canceled. Being aggrieved and dissatisfied with the said decision, defendant No.1 had preferred RTS Revision/240/2013 before Additional Divisional Commissioner, Pune. Subsequently, defendant No.1 withdrawn said Revision Application on 27/5/2015. Therefore, decision rendered by Additional Collector,

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Pune in RTS Appeal/2/447/2008 dtd. 6/12/2012 is still in force. It is stated that defendant No.6, taking disadvantage of her name in 7 x 12 extract, defendant No.6 to 9 alienated suit property by showing that they have 1/6th share in the suit property. On the same day, they have also executed Power of Attorney and deed of confirmation in favour of defendant No. 1 to 5. It is stated that defendant No.6 to 9 were not the owner of suit property at any point of time. Therefore, defendant No. 6 to 9 was not having any right to dispose of the suit property. It is stated that before the said alleged transaction plaintiffs and other co-owners have alienated number of landed properties out of 25 landed properties, particularly mentioned in plaint para No.1. At present, landed properties bearing Survey No. 121/1+2/1, 131/1A/4, 132/1, 132/10 and 192/1 are the only properties in possession of plaintiffs being owner. It is stated that defendant No. 6 to 10 have alienated the suit property by way of registered sale-deed dtd. 3/10/2008 registered at Sr.No. 8340/2008 without any right and authority. Therefore, said transaction is void ab-initio. Therefore subsequent act i.e. execution of registered Power of Attorney dtd. 3/10/2008 registered at Sr.No. 8338/2008 and deed of confirmation is also illegal. In the result, both these documents are also void ab-initio. It is stated that after the said transactions the suit property was and is possession of plaintiffs. By virtue of order of Additional Collector, Pune dtd. 6/12/2012 name of defendant No. 6 has been deleted from the record of right of the suit property. However, registered documents executed by defendant No. 6 to 10 on the strength of

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their names appears in 7 x 12 extract of the suit property cannot be automatically canceled without following due procedure of law. Therefore, plaintiff constrained to file present suit in order to avoid technicalities in future.

5. In pursuance of suit summons, defendant No. 1 to 9 appeared before the court through their advocate. Defendant No.1 to 5 have admitted the suit claim by filing their joint pursis at Exh. 25. Defendant No. 6 to 9 have also admitted the suit claim by filing separate pursis at Exh. 26.

6. I have gone through record and proceeding of this case. It appears from the record that parties are not at issues on any question of law or fact. In the circumstances, it is necessary to pronounce the judgment at once as per the mandate of O-XV R-1 of C.P.C.

7. Herein this case, the plaintiffs have filed original registered deed of confirmation dtd. 3/10/2008 registered at Sr.No. 8338/2008 (Exh.49), deed of registered Power of Attorney dtd. 3/10/2008 registered at Sr.No. 8339/2008 (Exh.50), registered sale-deed dtd. 3/10/2008 registered at Sr.No. 8340/2008 (Exh.51), deed of registered Power of Attorney dtd. 3/10/2008 registered at 8341/2008 (Exh.52). Besides this documentary evidence, plaintiff has also filed documents along with list of documents below Exh.3. On the basis of admission given by the defendants and after

considering the matter before the Court I have no hesitation to hold that, all these four documents as referred above are void ab-initio. Thus, having regard to facts and circumstances of the case and after giving anxious consideration to the proposition of law I do not find any legal impediment to decree the suit as prayed for. Before parting with the judgment, it is worthwhile to note here that, four documents i.e. deed of confirmation dtd. 3/10/2008 registered at Sr.No. 8338/2008 (Exh.49), deed of registered Power of Attorney dtd. 3/10/2008 registered at Sr.No. 8339/2008 (Exh.50), registered sale-deed dtd. 3/10/2008 registered at Sr.No. 8340/2008 (Exh.51), deed of registered Power of Attorney dtd. 3/10/2008 registered at 8341/2008 (Exh.52) have been adjudged as void documents. As per Section-65 of Indian Contract Act, it is mandatory on the part of defendant No. 6 to 9 to return the benefit received by them under void contract. However, defendant No.1 to 5 have not claiming about return of said benefit in present suit. By way of abundant caution, it is clarified that defendant No.1 to 5 have liberty to claim said benefits from defendant No. 6 to 9. Defendant No.1 to 5 have not claiming said reliefs in present suit for the best reason known to them. As they have not claiming any relief, therefore, it is not just and proper to pass effective order in present suit to that effect. Hence, I pass the following order.

ORDER

1. Suit is decreed without cost.
2. It is hereby declared that deed of confirmation dtd.

3/10/2008 registered at Sr.No. 8338/2008 (Exh.49), deed of registered Power of Attorney dtd. 3/10/2008 registered at Sr.No. 8339/2008 (Exh.50), registered sale-deed dtd. 3/10/2008 registered at Sr.No. 8340/2008 (Exh.51), deed of registered Power of Attorney dtd. 3/10/2008 registered at 8341/2008 (Exh.52) executed by defendant No. 6 to 9 in favour of defendant No.1 to 5 are null, void and illegal.

3. Decree be drawn up accordingly.

4. The instruments i.e. deed of confirmation dtd. 3/10/2008 registered at Sr.No. 8338/2008 (Exh.49), deed of registered Power of Attorney dtd. 3/10/2008 registered at Sr.No. 8339/2008 (Exh.50), registered sale-deed dtd. 3/10/2008 registered at Sr.No. 8340/2008 (Exh.51), deed of registered Power of Attorney dtd. 3/10/2008 registered at 8341/2008 (Exh.52) executed in between defendant no. 6 to 9 and defendant no. 1 to 5 are adjudged as null, void and illegal. Therefore, the copy of the decree shall be sent to Sub-Registrar Haveli No. 20 in whose office the said instruments are registered for taking note of on the copy of instruments contained in his book the facts of its cancellation after appeal period as per the mandate of section 31(2) of the Specific Relief Act, 1963.

(V. V. Kulkarni)

7th Addl. Judge, Small Causes Court
& Jt. Civil Judge, Senior Divn., Pune

Date : 29/03/2018

C E R T I F I C A T E

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

Name of steno : Mrs. A.A.Markale

Court Name : V. V. Kulkarni,
7th Add. Judge Small Causes
Court, Pune

Date of Judgment : 29/03/2018.

Judgment signed by

Presiding Officer on : 29/03/2018.

Judgment uploaded on : 26 /03/2018.

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Spl.C.S.No. 1212/2015
Judgment

C E R T I F I C A T E

“I affirm that the contents of this P.D.F. file Order are same word for word as per original Order.

Name of steno	:	Smt. A.A.Markale
Court Name	:	V. V. Kulkarni, 7 th Add. Judge Small Causes Court & Jt. Civil Judge Senior Division, Pune (On deputation).
Date of Order	:	29/031/2018.
Order signed by	:	16/04/2018
Presiding Officer on	:	
Order uploaded on	:	16/04/2018.