



Presented on : 20/10/2011
Registered on : 19/11/2011
Decided on : 03/03 /2020
Duration : 08Y 03M 13D

**IN THE COURT OF THE 6th ADDITIONAL JUDGE,
SMALL CAUSES COURT AND JOINT CIVIL JUDGE,
SENIOR DIVISION, PUNE.**

(PRESIDED OVER BY SOU. H.R. JADHAV)

SPL. CIVIL SUIT No.2230/2011

CNR NO. : MHPU02006078-2011

EXH.No. 119

01] Shri. Dhondiba Onkar Shelar,
Age : 58 Years,
Occupation : Agriculturist & Service,
R/at: Shelarwadi, Tal. Maval, Dist. Pune

02] Shri. Ananda Maruti Shelar
Age : 58 Years,
Occupation : Agriculturist & Service,
R/at: Yamunagar, Nigdi, Pune 411044.

03] Shri. Suresh Maruti Shelar
Age : 54 Years,
Occupation : Agriculturist & Service,
R/at: C-20 Sonigra Classic,
Ekatanagar, Akurdi, Pune 411033.

04] Shri. Ramesh Maruti Shelar
Age : 45 Years,
Occupation : Agriculturist & Service,
R/at: Shelarwadi, Tal. Maval, Dist. Pune

...Plaintiffs

Plaintiffs 1 to 4 represented by
Santosh Dhondiba Shelar as their duly
constituted power of attorney

Versus

01] M/s. Vishwa & Lunkad Associates
A partnership firm through its partner

i) Shri. Ravindra Ramanlal Lunkad

Age : Adult, Occupation: business

R/at: S. No. 168/2 Nisarga City

Pimple Saudagar, Opp. Happy

Thoughts, Pune - 411027

ii) Shri. Ashokbhai Rantansi Patel

Age : Adult, Occupation: business

R/at: S. No. 168/2, Nisarga City,

Pimple Saudagar, Opp. Happy

Thoughts, Pune - 411027

02] M/s. R. K. Lunkad Housing Co.

Through their partners

i) Shri. Ravindra Ramanlal Lunkad

Age : Adult, Occupation: business

R/at: R. K. Lunkad Hsg. Corporation

Kaspate Vasti, Wakad, Pune - 411027

ii) Shri. Ashokbhai Rantansi Patel

Age : Adult, Occupation: business

R/at: R. K. Lunkad Hsg. Corporation

Kaspate Vasti, Wakad, Pune - 411027

03] Shri. Suryakant Dnyanoba Shelar

Age : Adult, Occupation: agriculturist

4] Shri. Vilas Dnyanoba Shelar

Age : Adult, Occupation: agriculturist

Def. no.3 & 4 both residing at Pimple
Saudagar, Shelar Vasti, Post – Aundh
Camp, Pune-27

....Defendants

- 5] **Smt. Draupadabai Nathuram Beldare** }
Age: Adult, Occupation: Agriculturist }
R/at: Dattanagar Ambegaon Budruk }....Defendants
Tal. : Haveli, Dist. Pune. }

**Claim : Suit for declaration,
Perpetual Injunction &
Partition.**

Suit valued at: Rs.1,60,00,000/-.

Appearances :

- 1] Plaintiffs : Ld. Adv. Rajesh Dhapte/S. J. Mulik
2] Defendant no.1 & 2(i)(ii)& 5: Ld. Adv. C. V. Wakankar
3] Defendant no. 3 & 4 : Ld. Adv. Y. G. Pawar

JUDGMENT

(Delivered on the 03th day of March 2020)

This suit is inter-alia filed for declaration, perpetual injunction and partition.

1] **It is the case of the plaintiff in short is as under:-**

The Survey No. 168/2, situated in Village – Pimple Saudagar, Tal. Haveli, Dist. Pune admeasuring 1 Hector 4.7 Aars which are bounded as under:

- On or towards East : Survey No. 165
On or towards West : Survey no. 123 & Village
boundary of Rahatani.
On or towards South: Survey No. 166 & 167
On or towards North: Survey No. 168/1

(The same is hereinafter for the sake of brevity referred as, 'suit property' .)

02] It is the contention of the plaintiff that, Sopana Khandu Shelar is the ancestor of the plaintiffs. Sopana and his brother Shankar Khandu Shelar divided Survey no. 168 by M.E. No. 828. That is how Survey no. 168/2 came to the share of Sopana by virtue of M.E. No. 67. After the death of Sopana, the names of his two sons viz. Onkar and Maruti were brought on record. The property in the hands of Onkar and Maruti was an ancestral property belonging to Joint Hindu property consisting of their children. One Gangubai Dnyanoba Shelar who is predecessor – in – title of the defendant no. 3 to 5 purchased suit property from Onkar and Maruti Shelar by virtue of alleged Registered Conveyance Deed bearing no. 1223/66 dated 28/04/1966. It recites that the property is an ancestral one. At the time of said Sale Deed, Onkar was having son Dhondiba i.e. plaintiff no. 1 and Maruti was having sons Ananda, Suresh and Ramesh i.e. the plaintiff no. 2 to 4. The property in favour of Gangubai was not disposed off in the capacity as Karta and manager of joint Hindu family. The same was not for legal necessity therefore the said sale deed is not binding upon the plaintiffs. The plaintiffs are having rights, title and interest in the suit property.

3] It is further contention of the plaintiffs that, after death of Gangubai the names of the defendant no. 3 to 5 were brought on record as her legal heirs vide M.E. No. 2117. The plaintiffs are not residents of Pimple Saudagar. The plaintiffs

recently visited the site of suit property and after making necessary inquiry it transpired that the defendant no.1 entered into Registered Development Agreement bearing no. 1009 and Registered Power of Attorney bearing no. 1008 dated 03/02/2004 with the defendant no. 3 to 5 along with their children in respect of suit property. It further transpired that out of the suit property to the extent of 2065.83 Sq.Mtrs. a registered sale deed bearing no. 3529/2010 was executed in favour of the defendant no.2 on 23/03/2010. The name of the defendant no. 2 is entered as per Mutation Entry no. 3699.

4] It is further contention of the plaintiffs that, the plaintiffs were not party to any of the transactions therefore aforesaid sale deeds are not binding upon them. The plaintiffs accordingly sent legal notice to the defendants but they falsely replied. The defendants are trying to create a third party interest in the suit property which will cause multiplicity of litigation. Therefore the plaintiffs filed the present suit for partition, declaration and perpetual injunction, the plaintiff prayed for decreed the suit.

5] The defendant no. 1, 1(ii), 2(i), 2(ii) and 5 filed their written statement below Exh. 22 and adoption pursis filed below Exh. 35. The defendant no. 3 and 4 filed their written statement below Exh. 29. The defendants admitted relationship between the plaintiff no. 1 to 4, the sale deeds

and the conveyance deeds. They denied all the other contentions of the plaint in toto. It is their contention that the properties between Shri Sopana and his brother were partitioned. On account of said partition, the property in the hands of Shri. Sopana became his separate property. Therefore the said property is not having status of ancestral property. Smt. Gangubai Dnyanoba Shelar became the absolute owner of the suit property by virtue of sale deed dated 28/04/1966. According to the provisions of Section 14 of Hindu Succession Act, the said property was the absolute property belonging to Smt. Gangubai. After the lifetime of Smt. Gangubai the defendant no. 3 to 5 acquired ownership of suit property as her legal heirs. As per Section 15 of Hindu Succession Act the names of the defendant no. 3 to 5 were mutated in 7/12 extract in the year 1996-97 in the capacity of Class-I legal heirs of Smt. Gangubai. Even at that point of time, none of the plaintiffs objected the same.

6] The defendants further contended that, they wanted to purchase the suit property therefore a search was taken by them in the office of Sub-Registrar through their advocate. Public notice was also published in daily Sakal dated 21/07/2003 and in daily Prabhat dated 16/10/2009. Upon getting clearance from their advocate about the title and possession of suit property, the defendants entered into development agreement so also irrevocable power of attorney

with the defendant no. 3 to 5. It is their further contention that, the plaintiffs are fully aware that as on the date of institution of the suit, various multi storied buildings, consisting of independent tenements have already been constructed and they are in physical possession of the respective transferees. The said buildings along with proportionate land component have been subjected to the jurisdiction of Maharashtra Apartment Ownership of Flats Act, 1970. The said flat purchasers have not been joined as parties. On the remaining portion of land, the defendant no.2 has got building plan for commercial building sanctioned from the Planning Authority and R.C.C. work of commercial building upto 5th slab has already been completed. The Planning Authority has issued plinth checking certificate.

7] The defendants further contended that, the defendants have delivered the actual physical possession of the respective tenements to the purchasers. Various purchasers have availed loans from the financial institutions, and have mortgaged the said tenements in order to secure repayment of loans availed by them. Planning Authority granted completion certificate for Wing – B, C, C-2, D-1 and D-2. The Planning Authority has sanctioned the building plan of a mall. The construction of said mall upto the R.C.C. of 5th slab has been completed. Construction of the said mall is in

progress. Under such circumstances, when the nature of property has been changed substantially, now, it is not open for the plaintiffs to seek any relief of injunction. The plaintiffs have not properly valued suit property. The plaintiffs with an ill-intention of procuring the money from the defendants filed present suit. They prayed for dismissal of suit.

8] In the light of the rival pleadings, the learned Predecessor was pleased to frame issues at Exh.37. Based on the evidence adduced and arguments advanced, the findings to the respective issues are as under.

Sr. No.	Issues	Findings
1	Does the plaintiff prove that suit property is joint Hindu property ?	No.
2	Does the plaintiff prove that sale deed dated 28/04/1966 executed by his predecessor in favour of Gangubai Shelar is without legal necessity and not binding on their share ?	No.
3	Does the plaintiff prove that sale deed dated 23/03/2010 and power of attorney dated 03/02/2004 are illegal and not binding on their share ?	No.
4	What is the share of the plaintiff in suit property ?	No.

5	Whether suit is within limitation ?	No.
6	Whether suit is bad for non-joinder of necessary parties ?	Yes.
7	Whether suit is properly valued and proper court fee is paid ?	Yes.
8	Is the plaintiff entitle for declaration as sought ?	No.
9	Is the plaintiff entitle for relief of partition of suit property and possession ?	No.
10	Is the plaintiff entitle for relief of injunction as prayed ?	No.
11	What order and decree ?	As per final order.

REASONS

9] In support of the pleadings, the plaintiff no.1 examined himself as P.W.1 at **Exh. 56**.

10] The plaintiffs have relied upon the documentary evidence i.e. 7/12 extract of S. No. 168 and 168/2 at **Exh. 60 to 66** respectively, Original copy of Mutation Entry No. 828, 3699 at **Exh. 67 & 68** respectively, Certified copy of Sale Deed dated 28/04/1966 at **Exh. 69**, Certified copy of Development Agreement dated 03/02/2004 at **Exh. 70**, Office copy of Notice dated 07/08/2010 and Notice reply of 07/09/2010 at **Exh. 76** collectively, copy of Sale deed dated 23/03/2010 at

Exh. 77 and copy of Power of Attorney dated 03/02/2014 at Exh. 89.

11] The plaintiff has filed the evidence closed pursis at Exh.112.

12] The defendants had not adduced any documentary evidence.

13] The defendant no. 1, 2(i), 5 and the defendant no. 3 and 4 has filed the evidence closed pursis at Exh.116 and Exh.117 respectively.

14] I have Heard argument advanced by learned Advocate for the plaintiff. He argued as per the contents mentioned in the plaint.

AS TO ISSUE Nos. 1 to 4, 8 to 10 :

15] These issues are interlinked with each other and to avoid the repetition, they are discussed together.

16] It is the contention of the plaintiff that, Sopana Khandu Shelar is ancestor of the plaintiffs. Sopana and his brother Shankar Khandu Shelar divided Survey no. 168 by M.E. No. 828. Thereafter Survey no. 168/2 came to the share of Sopana by virtue of M.E. No. 67. After the death of Sopana

the names of his two sons viz. Onkar and Maruti were brought on record. The property in the hands of Onkar and Maruti was an ancestral property belonging to joint Hindu property consisting of their children. One Gangubai Dnyanoba Shelar who is predecessor – in – title of the defendant no. 3 to 5 purchased suit property from Onkar and Maruti Shelar by virtue of Registered Conveyance Deed bearing no. 1223/66 dated 28/04/1966. The property in favour of Gangubai was not disposed of in the capacity as Karta and Manager of joint Hindu family.

17] According to the plaintiff, suit property till today is joint Hindu Family of the plaintiffs. To prove this fact the plaintiff no. 1 give his evidence affidavit below Exh. 56. In his chief-examination he reiterated all the contents in respect of contention of joint Hindu family. It has come in his cross-examination that at the relevant time when his father expired, he was no more an owner of the suit property. After the death of his father all the properties owned by his father became his properties by way of succession. After the death of his father he did not acquired any rights in the suit property. He was aware about sale of the suit property to Gangubai at the time when his father expired in the year 1974. He further deposed that he has not given any explanation as to why no suit was filed within 3 years from the death of his father or from

knowledge of execution of sale deed in favour of Gangubai either for partition or for declaration. He further deposed that neither ownership nor possession of the suit property was with them since the year 1966 till today. His father and uncle did not challenge the sale deed in any court and mutation entries in any revenue court. At the time of execution of sale deed the plaintiff no. 2 to 4 are minor. He was having sufficient understanding when his father died. After demise of his father, plaintiffs names were mutated to the other properties and not to the suit property. At that time they did not raise any objection for the same. He did not challenge the entry in the name of Gangubai which was made in the record of rights of the suit property after 2005. From 2005 to 2011 he did not challenge the sale deed in favour of Gangubai in any court.

18] It is an admitted fact that previously the suit property was belonged to Sopana Khandu Shelar. Sopana Khandu Shelar expired leaving behind his two sons namely Onkar and Maruti. On 28.04.1966 Onkar and Maruti sold out the suit property in favour of Gangubai Dhondiba Shelar by virtue of registered sale-deed. Gangubai expired leaving behind the defendant no.3 to 5 as a legal heirs. With these admitted background, it is necessary to discuss the disputed aspects.

19] The plaintiff specifically came with the case that suit property is their ancestral property. In support of his oral testimony, he relied on mutation entry no. 828 below Exh. 67 which indicates that as per the partition, in between Sopana and Shankar suit property becomes separate property of Sopana. It is an admitted fact that Sopana is having two sons namely Onkar and Maruti. From overall admissions given by the plaintiff in his cross-examination it reveals that, Onkar and Maruti as Class one heirs of the deceased. Sopana on 28.04.1966 sold out the suit property in favour of Gangubai Dhondiba Shelar. It indicates that on 28.04.1966 Onkar and Maruti lost their title over the suit property then why did the plaintiff kept mum about their objection on sale-deed from 28.04.1966 till the year 2011 is not satisfactory explained by the plaintiffs. Further it appears from 7/12 extract below Exh.65 that the name of the defendant no. 3 to 5 was mutated in the record of rights after the death of the Gangubai. The plaintiff has not shown any document which will indicate that they have taken objection to the said mutation. The plaintiff has not proved that the suit property continued to be their ancestral property.

20] Ld. Advocate for the plaintiff argued that there is reference of ancestral property in the sale deed below Exh. 69 therefore the plaintiff has proved that suit property is their

ancestral property. I have perused Exh. 69, it reveals that reference of ancestral property is not mentioned but it is mentioned as 'Vadilarjit' means acquired by the father and not as ancestral. As discussed above Smt. Gangubai became the absolute owner of the suit property by virtue of sale deed dated 28/04/1966 (Exh. 69) and below Exh.64 her name was also mutated in 7/12 extract of the suit property by virtue of Mutation Entry bearing no. 1348. As per the provisions of Section 14 of Hindu Succession Act, the suit property was the absolute property belonging to Smt. Gangubai. As per Section 15 of Hindu Succession Act after her demise the names of the defendant no. 2 to 5 were mutated in 7/12 extract in the year 1996-1997 in the capacity of Class-I legal heirs of Smt. Gangubai. From evidence it reveals that at that point of time, none of the plaintiffs objected the said entries. It is also not the case of the plaintiffs that they were not aware of the revenue record of the suit property or that the said revenue records were collected by them for the first time in the year 2011. From evidence it reveals that the place of residence of the plaintiffs is not far away from the suit property therefore, it is impossible to believe that since the year 1966 the plaintiffs never visited the suit property or that they did not know the revenue record of the suit property.

21] Another contention of the plaintiffs is that, sale

deed dated 28/04/1966 executed by his predecessor in favour of Gangubai Shelar was without legal necessity and which is not binding on their share. I have perused the sale deed below Exh. 69, it reveals that the Onkar and Maruti Shelar received consideration amount of Rs.6,000/- for paying debt amounts and for construction of house. As I have discussed above the said contention of the plaintiffs is not considerable as such.

22] Ld. advocate for the defendant no.1(i),(ii) and 2(i), (ii) argued that these defendants wanted to purchase the suit property, and therefore, a search was taken by them in the office of Sub-registrar, through their advocate and a public notice was also published in daily Sakal dated 21/07/2003 and in daily Prabhat dated 16/10/2009. Upon getting clearance from advocate about the title and possession of the suit property, the defendants entered into development agreement and irrevocable power of attorney with defendant no. 3 to 5. Therefore the said documents are legal so he prayed for dismissal of the suit on this ground.

23] It has come in the cross-examination of the plaintiff that, on the date of institution of the suit, various multi storied buildings consisting of independent tenements were already constructed. The purchasers were already in physical possession of their tenements. The defendant no. 2 has got

building plan for commercial building sanctioned from the Planning Authority and R.C.C. work of commercial building upto 5th slab has already been completed. The Planning Authority has issued plinth checking certificate. The defendants have delivered the actual physical possession of the respective tenements to the purchasers. Under such circumstances, the nature of property has been changed substantially. From overall evidence it is proved that sale deed dated 23/03/2010 below Exh. 77 and power of attorney dated 03/02/2004 below Exh. 89 are legal and are binding on shares of the plaintiffs. The plaintiffs are not entitled for declaration in this respect. As such, when the suit property was never ancestral property, question of notional partition does not arise at all. Therefore, the plaintiffs are not entitled for partition, order of perpetual injunction and possession of the suit property. I have considered argument advanced by Ld. Advocate for the defendants. Hence I answer issue no. 1 to 4, 8 to 10 in the negative.

AS TO ISSUE No.5 :

24] It is the contention of the defendants that there is no cause of action to the suit and it is filed beyond period of limitation. The defendants prayed for dismissal of the suit on this ground. Perused case file it is the contention of the plaintiffs that in May 2010 when the plaintiffs visited the

village – Pimple Saudagar and came to know about the sale deed executed by the said Onkar and Maruti Shelar in the year 1966 and also came to know about the subsequent transactions entered into by the defendant no. 3 to 5 with the defendant no. 1 and 2. The plaintiff accordingly sent legal notice below Exh. 76. According to the plaintiff the cause of action to file present suit arose in May 2010. The present suit is filed on the year 2011. Therefore the present suit is filed within limitation period. Hence, I answer Issue no. 5 in negative.

AS TO ISSUE No.6:

25] It is the contention of the defendants that the plaintiffs have not made a party to the purchasers of the residential flats in the building constructed upon the suit property. The plaintiff in para no. 23 of his cross-examination admitted this fact. The said purchasers are necessary parties to the present suit and the plaintiff has not made them party in the suit. Therefore suit is bad for non-joinder of necessary parties. Hence, I answer issue no. 6 in affirmative.

AS TO ISSUE No.7:

26] It is the contention of the defendants that, admittedly the suit property is not the agriculture land and therefore, the valuation done by the plaintiff on the basis of

agricultural assessment is not correct. The suit land is used for non-agricultural purpose, much prior to the institution of the suit. Therefore, it is necessary to direct the plaintiff to make the correct valuation of the suit and also to pay necessary court fee on the same. Heard argument of both sides in this respect. The present suit is filed for perpetual injunction, declaration and partition of the suit property. According to the plaintiffs suit property is agricultural land. The defendants raised objection in this respect but there is satisfactory evidence on record to show that the plaintiffs were not having knowledge about construction over the suit property. So also the plaintiffs were not parties to the documents below Exh. 69, 70 and 89. Therefore, as per the settled principle of law the suit property which is sought to be partition therefore no court fee is required on the apparent value of the above sale deed. As per the contention of the plaintiffs and evidence adduced in this respect it is proved that suit is properly valued and proper court fee is paid. I have considered argument advanced by the Ld. Advocate for the plaintiffs. Hence, I answer issue no.7 in affirmative.

AS TO ISSUE No.11:

27] As I have answered issues above, it is necessary to dismiss the suit with costs. Hence, answer to issue no.11 I passed following order:-

ORDER

1. Suit is dismissed with costs.
2. Decree be drawn up accordingly.

Place : Pune.

Date : 03/03/2020

(Sou. H. R. Jadhav)

6th Addl. Judge, Small Causes Court
and Jt.C.J.S.D. Pune.

CERTIFICATE

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

Name of Steno : V. D. Khirid, Stenographer (Grade-II)

Court Name : Sou. H.R. Jadhav
6th Addl. Judge, Small Causes Court
and Jt. C.J.S.D.Pune.

Judgment & Order Date : 03/03/2020

Judgment & Order signed by
Presiding Officer on : 05/03/2020

Judgment & Order uploaded on : 05/03/2020