

Sneha Shankar Katariya and others.

Vs

Subhash Tipnna Nelge and others.

ORDER BELOW EXH- 5.

This is an application filed by plaintiffs under Order 39 Rule 1 of Code of Civil Procedure for temporary injunction to restrain defendant no.32 to 68 from creating third party interest in suit property and changing the nature of the same. Read application and say filed. Heard both sides.

2. According to plaintiffs, on 03/06/1991 defendant no.5 to 15 executed an agreement to sale of suit property in favour of defendant no.1 to 4 alongwith power of attorney giving right to sale property. Then, defendant no.1 to 18 sold suit property to the Shankar Premchand Katariya by sale deed dated 20/01/1994 and possession was also delivered to him. Thereafter, on 14/07/1994 Shankar Katariya executed an agreement to sale and power of attorney of suit property in favour of plaintiff no.4. On 11/10/1996 correction deed was executed between Shankar Katariya, plaintiff no.4, defendant no.26 to 28 and defendant no.1 to 8, defendant no.10 to 16 and thereby sale deed dated 20/01/1994 was corrected by deleting name of defendant no.17. In fact, said correction deed is not registered and not signed by all parties. Thus, said correction deed is null and void. Thereafter, defendant no.17 sold 93.5 R land out of suit property to defendant no.68 by sale deed dated 10/08/2000. On 11/09/2000, defendant no.25 sold 56 R land

out of suit property to defendant no.67. Thereafter, defendant no.67 sold 34.05 R land out of suit property to the defendant no.32 to 66 by sale deed dated 04/02/2021. Defendant no. 67 and 68 sold 1H. 2.45 R land to defendant no.64 by sale deed dated 05/02/2021. Shankar Katariya died on 21/08/2014 and plaintiff no.1 to 3 are his legal heirs. Plaintiff no.1 to 3 executed an agreement to sale dated 08/11/2021 in favour of plaintiff no.4 and thereby confirmed agreement to sale dated 14/07/1994. Defendant no.17, 25, 67 and 68 had no right to sale suit property. Said transactions are illegal and not binding on plaintiffs. Consequently, suit has been filed for declaration, cancellation and permanent injunction. Plaintiffs have prima facie case and balance of convenience also lies in their favour. If the temporary injunction is not granted, plaintiffs will suffer irreparable loss. Hence, requested to allow the application.

3. In support of contention plaintiffs have relied on **Jagannath Sakharam Sahale Vs Vasudev Vyankatesh Kanade and others, 1987 SCC OnLine Bom. 73**, wherein Hon'ble High Court held that “*In order to satisfy the requirements of section 41 of the Transfer of Property Act, the transfer has to prove the following facts :*

- (i) *That the transferor is an ostensible owner;*
- (ii) *he is so by the consent, express or implied of the real owner;*
- (iii) *the transfer is for consideration;*
- (iv) *the transferee has acted in good faith, taking reasonable care to ascertain that the transferor had power to transfer.”*

4. On the other hand, defendant no.32 to 68 have objected to the application. They have denied all the adverse contentions raised in application. It is their contention that, defendant no.5, 8, 10 to 13, 18, 24 and 25 are no more alive and suit cannot be proceeded against dead persons. Suit is filed in collusion with defendant no.1 to 4. Similar kind of suit R.C.S.No.1175/2005 was filed by defendant no.1 to 4 against Shivajirao Ganpatrao Kadam which came to be dismissed. Suit property was belonged to Deo family headed by Vinayak Deo and Gangadhar Deo. Gangadhar Deo had half share in suit property which was succeeded by his only heir daughter defendant no.17. The persons who executed power of attorney in favour of defendant no.1 to 4 had no right to sale share of defendant no.17. Thus, Shankar Katariya or defendant no.1 to 4 cannot claim any right in suit property. Sale deed dated 20/01/1994 was registered in the year 2001 and there is no explanation for delay. Defendant no.68 purchased half share of defendant no.17 and defendant no.67 has purchased individual share of defendant no.9, 11 and 25. Defendant no.17 was not vendor of sale deed dated 20/01/1994. Defendant no.67 and 68 had right to sale property and the persons who purchased property from them have spent substantial amount and they intend to construct houses thereon. In such situation, defendants will suffer irreparable loss, if temporary injunction is granted. Defendant no.32 to 66 have filed counter claim seeking declaration of their ownership over land purchased by them and permanent injunction. Hence, urged to reject the application.

5. Following points arise for determination to which I have

recorded findings alongwith reasons as under :-

Sr. No.	Points	Findings
1	Whether plaintiffs have made out a prima facie case ?	No.
2	Whether balance of convenience lies in favour of plaintiffs ?	No.
3	Whether plaintiffs will suffer irreparable loss if temporary injunction is not granted ?	No.
4	What order ?	Application is rejected.

: Reasons :

6. According to plaintiffs, they are owners of suit property and sale deeds executed in favour of defendants are illegal and not binding on them. On the other hand, defendant no. 32 to 66 have denied said fact and claimed their ownership on the land purchased by them. Copy of an agreement to sale dated 03/06/1991 shows that, defendant no.5 to 15 agreed to sale suit property to defendant no.1 to 4. Copy of sale deed dated 20/01/1994 shows that, defendant no.1 to 18 sold suit property to Shankar Katariya. Copy of correction deed dated 11/10/1996 shows that, correction was made in sale deed dated 20/01/1994 and thereby name of defendant no.17 came to be deleted from sale deed. Copy of sale deed dated 10/08/2000 shows that, defendant no.17 sold 93.5 R land to defendant no.68. Copy of sale deed dated 11/09/2000 shows that, defendant no. 9, 11 and 25 sold 56 R land out of suit property to defendant no.67. Copy of sale deed dated 04/02/2021 shows that, defendant no.67 sold 34.5 R land out of suit

property to defendant no.32 to 66. Copy of sale deed dated 05/02/2021 shows that, defendant no.67 and 68 sold 1H. 2.45 R land to defendant no.64. Similarly, copy of an agreement to sale dated 08/11/2021 shows that, plaintiff no.1 to 3 agreed to sale suit property to the plaintiff no.4 and thereby confirmed the agreement to sale dated 14/07/1994 executed by deceased Shankar Katariya.

7. It is not the case of plaintiffs that, defendant no.17 had no share in the property of Deo family. Copy of power of attorney dated 02/06/1991 shows that, defendant no.5 to 11 executed said document in favour of defendant no.1 to 4. Defendant no.17 Devyani is not party to said power of attorney. An agreement to sale dated 03/06/1991 bears signature of defendant no.17 as an attesting witness and not in the capacity of vendor. Thus, at this stage it cannot be said that, defendant no.17 wanted to sale property. Plaintiffs are claiming right in suit property on the basis of sale deed dated 20/01/1994. It shows that, defendant no.17 is party to sale deed as vendor. However, latter on deceased Shankar Katariya obtained correction deed dated 11/10/1996 regarding sale deed dated 20/01/1994 and thereby deleted name of defendant no.17. Whether said correction deed is legal and has force of law is a matter of evidence during trial. But, the fact remains that it indicates intention of deceased Shankar Katariya not to purchase land of defendant no.17. Therefore, prima facie it appears that, share of defendant no.17 was not subject matter of sale deed dated 20/01/1994 and consequently she had right to transfer her share.

8. Sale deed in favour of deceased Shankar Katariya was executed on 20/01/1994 but, registered in the year 2001. Plaintiff or application does not show explanation for delay in registration of sale deed. As per Section 23 of Indian Registration Act, the document needs to be presented for registration within 4 months of its execution. Similarly, plaintiff is challenging correction deed dated 11/10/1996, agreement to sale dated 14/01/1999 and sale deeds dated 10/08/2000 and 11/09/2000 by filing suit in the year 2022. It is difficult to believe that, plaintiffs had no knowledge about said instruments. It appears that, plaintiffs are not diligent in pursuing legal remedy. The conduct of plaintiffs shows that, they impliedly allowed the defendants to transfer suit property and create third party interest therein which dis-entitle them from getting discretionary and equitable relief of temporary injunction. Considering facts and circumstances of case, plaintiffs have neither prima facie case nor balance of convenience lies in their favour. Similarly, no immediate prejudice or irreparable loss will cause to them if temporary injunction is not granted. Therefore, plaintiffs are not entitled for relief of temporary injunction as prayed. Hence, I answer point no.1 to 3 in negative and pass following order.

ORDER

1. Application Exh.5 is rejected.
2. Costs in cause.

Place:Pune
Date : 13.10.2022

(V.M. Mankhair)
8th Jt. C.J.S.D., Pune.

CERTIFICATE

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

Name of Steno :- A.I.Patel (Stenographer Grade-III)

Court Name :- Shri. V. M Mankhair

8th Jt.C.J.S.D.Pune.

Date of Order :- 13.10.2022

Order signed by presiding officer on :- 13.10.2022

Order uploaded on :- 14.10.2022