

**Dusane**

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.321 OF 2023  
WITH  
INTERIM APPLICATION NO. 4321 OF 2023**

Ashok Raghunath Save & Ors. ...Appellants

V/s.

Smt. Darshana Dashrath Lokhande ...Respondents  
& Ors.

Mr. Girish S. Godbole, Senior Counsel i/by Mr.  
Devashish Godbole for Appellants.

Mr. Aniket Ransubhe for Respondents.

**CORAM: MADHAV J. JAMDAR, J.  
DATE: 2nd May 2023**

**P.C.:**

- 1.** Heard Mr. Girish Godbole, learned Senior Counsel appearing for the Appellants and Mr. Aniket Ransube, learned Counsel appearing for the Respondents.
- 2.** The Appellants are the original Defendant Nos.1 and 2 and the Respondents are the original Plaintiffs.
- 3.** The Plaintiffs filed Regular Civil Suit No.125 of 2014 in the Court of learned Civil Judge, Junior Division, Palghar praying that the sale-deed dated 5th September 2007 registered with the

Sub-Registrar, Palghar be declared as illegal, not binding on the Plaintiffs and the same is executed by playing fraud on the Plaintiffs. The Plaintiffs have also sought possession. The learned Trial Court by the Judgment and Decree dated 29th September 2022 decreed the suit and the learned First Appellate Court by the Judgment and Decree dated 18th March 2023 passed in Regular Civil Appeal No. 37 of 2022 has confirmed the decree passed by the learned Trial Court. The Appellants are challenging the legality and validity of both these Judgments and Decrees by way of the present Second Appeal.

**4.** Mr. Godbole, learned Senior Counsel appearing for the Appellants raised following substantial questions of law:

(i) Whether the Suit filed by the Plaintiffs is within limitation?

(ii) Whether the Plaintiffs have proved that fraud has been played on them?

(iii) Whether the validity of sale-deed dated 5th September 2007 can be challenged as the same has been executed by Defendant No.1 on behalf of the Plaintiffs in favour of Defendant No.2 on the basis of valid power of attorney dated 19th July 2007?

**5.** Before considering the substantial questions of law raised by Mr. Godbole, learned Senior Counsel appearing for the Appellants, it is necessary to set out certain factual aspects.

**6.** On 19th July 2007, the agreement of sale was executed between the Plaintiffs in favour of Defendant No.1. Said agreement dated 19th July 2007 (Exhibit 56) is produced by DW-2 i.e. Defendant No.2. As far as the said document at Exhibit 56 produced on behalf of Defendant Nos.1 and 2 is concerned, it is important to note that the total consideration as per the said document is Rs.1,74,730/-, however, the total amount paid as per receipt on page 9 of the said document is Rs.2,40,000/-. Apart from that, if Clause 1(a) is considered, then an amount of Rs.1,00,000/- was to be paid within 15 days. Clause No. 1(d) on page 4 also mentions that an amount of Rs.34,730/- would be paid within one month from the date of sale permission. It is further significant to note that the said agreement dated 19th July 2007 records that the possession has been handed over on the very day. It is admitted position that the said agreement dated 19th July 2007 (Exhibit 56) produced on behalf of the Defendants is not registered document. It is also significant to note that the Clause 4 of said document contemplates execution of power of attorney for the purpose of obtaining sale permission. The said Clause No. 4 reads as under:

"वर वर्णन केलेली मिळकत ही कुळकायद्याची आहे. त्याकरिता विक्री परवानगी मिळवणे आवश्यक आहे. सदरची विक्री परवानगी संबंधित अधिका—याकडून मिळवायची आहे. विक्री परवानगी मिळालेनंतर आम्ही तुमचेकडून उर्वरित रक्कम स्विकारून खरेदीखत तुमचे नावे किंवा तुम्ही सांगाल त्याचे नावे करून देवू. दरम्यानचे काळात आमचेपैकी कोणासही मृत्यू आल्यास हया कराराची पुर्तता आमचे वालीवारस अथवा कुटूंबीय यांनी करावयाची आहे. त्याकामी आवश्यक असणारे कधीही रद्द न होणारे कुळमुखत्यारपत्र आम्ही तुम्हास देवू त्या आधारे तुम्ही आमचे खर्चाने विक्री परवानगी मिळविणेची आहे. विक्री परवानगी मिळालेनंतर १ महिन्याचे आंत तुम्ही वर उल्लेखित उर्वरित रक्कम आम्हास देवून नोंदणीकृत खरेदीखत करून घेणे तुमचेवर कायदेशीररित्या बंधनकारक राहिल."

(Emphasis added)

**7.** Thus, it is clear that the power of attorney contemplated under Clause 4 is for the purpose of obtaining sale permission. It is further significant to note that said Clause No. 4 specifically mentions that after the receipt of permission, the balance payment would be received by the Plaintiffs and thereafter sale deed would be executed. Page Nos.3 and 9 of the said agreement i.e. part of Exhibit 56 produced by the Defendants are very important and therefore the same are scanned and reproduced herein-below:

1. 1st 2nd 3rd 4th 5th 6th 7th 8th 9th 10th 11th 12th 13th 14th 15th 16th 17th 18th 19th 20th 21st 22nd 23rd 24th 25th 26th 27th 28th 29th 30th 31st 32nd 33rd 34th 35th 36th 37th 38th 39th 40th 41st 42nd 43rd 44th 45th 46th 47th 48th 49th 50th 51st 52nd 53rd 54th 55th 56th 57th 58th 59th 60th 61st 62nd 63rd 64th 65th 66th 67th 68th 69th 70th 71st 72nd 73rd 74th 75th 76th 77th 78th 79th 80th 81st 82nd 83rd 84th 85th 86th 87th 88th 89th 90th 91st 92nd 93rd 94th 95th 96th 97th 98th 99th 100th

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श्री नरेश्वरी  
प्रमाण अधिकारी  
मह. नि. गौ. शा. पाठ्य, पल्लव

**Above scanned portion is typed as below :**

“कारणे सदरचा साठेकरार लिहून देतो की,

१) मिळकतीचे वर्णन— गांव मौजे वावे, जिल्हा व तुकडी ठाणे, तालुका व पोटतुकडी पालघर, मे. दुय्यम निबंधक पालघर हयांचे अधिकार क्षेत्रातील खालील वर्णनांची मिळकत—

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| स.नं. | हि. नं. | क्षेत्र (हे.आर.) | आकार (रू.पै.) |
| १३५   | —       | ०-८६-५           | १.९३          |

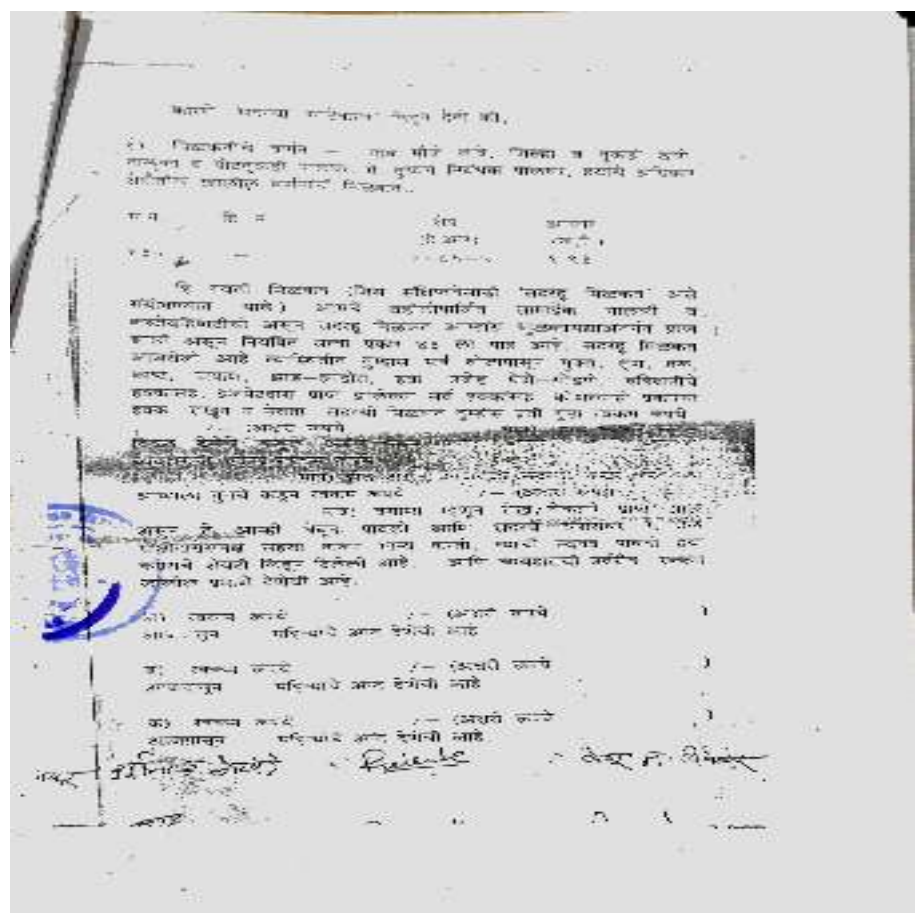
ही गवती मिळकत (जीस संक्षिप्ततेसाठी ‘सदरहू मिळकत’ असे संबोधण्यात यावे) आमचे वडीलोपार्जित सामाईक मालकी व कब्जेवहिवाटीची असून सदरहू मिळकत आम्हास कुठकायद्याअंतर्गत प्राप्त झाली असून नियंत्रित सत्ता प्रकार ४३ ला पात्र आहे. सदरहू मिळकत आजरोजी आहे त्या स्थितीत तुम्हास सर्व बोजापासून मुक्त, तृण, तरू, काष्ट, पाषाण, झाड—झाडोंरा, हवा, उजेड घेणे—सोडणे, वहिवाटीचे हक्कांसह, इजमेंटद्वारा प्राप्त झालेल्या सर्व हक्कांसह, कोणत्याही प्रकारचा हक्क राखून न ठेवता सदरची मिळकत तुम्हास प्रती गुंठा रक्कम रूपये २०२०/— (अक्षरी रूपये दोन हजार वीस मात्र) हया भावाने कायम विकत देणेचे कबूल आणि मान्य करीत असून सदर भावाप्रमाणे व्यवहाराची एकूण रक्कम रूपये १,७४,७३०/— (अक्षरी रूपये एक लाख चौ—याहत्तर हजार सातसे तीस मात्र) होत असून आजरोजी सदरचा करार करतेवेळी आम्हाला तुमचे कडून रक्कम रूपये ४०,०००/— (अक्षरी रूपये चाळीस हजार मात्र) बयाणा म्हणून रोख/चेकद्वारे प्राप्त झाले असून ते आम्ही घेवून पावलो आणि सदरचे करारावर खालील साक्षीदारांसमक्ष सहया करून मान्य करतो, त्याची स्वतंत्र पावती हया कराराचे शेवटी लिहून दिलेली आहे. आणि व्यवहाराची उर्वरीत रक्कम खालील प्रमाणे देणेची आहे.

अ) रक्कम रूपये १,००,०००/— (अक्षरी रूपये एक लाख मात्र) आजपासून १५ दिवसांचे आत देणेची आहे.”

**पावती**

“सदरची पावती लिहून देतो की, वर उल्लेखित व्यवहाराचे रक्कमेपैकी आजतागत रक्कम रूपये २,४०,०००/— (अक्षरी रूपये दोन लाख चाळीस हजार मात्र) लिहून घेणार यांचेकडून लिहून देणार यांना रोख/चेकद्वारे प्राप्त झाले असून ते खालील साक्षीदारांसमक्ष सहया करून मान्य करीत आहेत.”

**8.** It is significant to note that the said document at Exhibit 56 is signed by all the Plaintiffs and Defendant No.1 on every page. It is also significant to note that the Plaintiffs have produced photocopy of the said document i.e. agreement dated 19th July 2007 (Exhibit 29). It is very relevant to note that the said Exhibit 29 document is also executed by all the Plaintiffs and the Defendant No.1. It is relevant to note page No. 3 of the said document. It is also significant to note that the said document bearing Exhibit 29 has no page No. 9 i.e. the Receipt which is annexed to the document at Exhibit 56 produced by the Defendants. The said page 3 of Exhibit 29 is scanned and reproduced hereinbelow:



Above scanned portion is typed as below :

“कारणे सदरचा साठेकरार लिहून देतो की,

१) मिळकतीचे वर्णन— गांव मौजे वावे, जिल्हा व तुकडी ठाणे, तालुका व पोटतुकडी पालघर, मे. दुय्यम निबंधक पालघर हयांचे अधिकार क्षेत्रातील खालील वर्णनांची मिळकत—

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| स.नं. | हि. नं. | क्षेत्र (हे.आर.) | आकार (रू.पै.) |
| १३५   | —       | ०—८६—५           | १.९३          |

ही गवती मिळकत (जीस संक्षिप्ततेसाठी ‘सदरहू मिळकत’ असे संबोधण्यात यावे) आमचे वडीलोपार्जित सामाईक मालकी व कब्जेवहिवाटीची असून सदरहू मिळकत आम्हास कुळकायद्याअंतर्गत प्राप्त झाली असून नियंत्रित सत्ता प्रकार ४३ ला पात्र आहे. सदरहू मिळकत आजरोजी आहे त्या स्थितीत तुम्हास सर्व बोजापासून मुक्त, तृण, तरू, काष्ठ, पाषाण, झाड—झाडोंरा, हवा, उजेड घेणे—सोडणे, वहिवाटीचे हक्कांसह, इजमेंटद्वारा प्राप्त झालेल्या सर्व हक्कांसह, कोणत्याही प्रकारचा हक्क राखून न ठेवता सदरची मिळकत तुम्हास प्रती गुंठा रक्कम रुपये ——— (अक्षरी रुपये ——— मात्र) हया भावाने कायम विकत देणेचे कबूल आणि मान्य करीत असून सदर भावाप्रमाणे व्यवहाराची एकूण रक्कम रुपये ——— (अक्षरी रुपये ——— मात्र) होत असून आजरोजी सदरचा करार करतेवेळी आम्हाला तुमचे कडून रक्कम रुपये ——— (अक्षरी रुपये ——— मात्र) बयाणा म्हणून रोख/चेकद्वारे प्राप्त झाले असून ते आम्ही घेवून पावलो आणि सदरचे करारावर खालील साक्षीदारांसमक्ष सहाय्य करून मान्य करतो, त्याची स्वतंत्र पावती हया कराराचे शेवटी लिहून दिलेली आहे. आणि व्यवहाराची उर्वरीत रक्कम खालील प्रमाणे देणेची आहे.

अ) रक्कम रुपये ——— (अक्षरी रुपये ——— मात्र) आजपासून — महिऱ्यांचे आत देणेची आहे.

ब) रक्कम रुपये ——— (अक्षरी रुपये ——— मात्र) आजपासून — महिऱ्यांचे आत देणेची आहे.

क) रक्कम रुपये ——— (अक्षरी रुपये ——— मात्र) आजपासून — महिऱ्यांचे आत देणेची आहे.”

**9.** Thus, it is clear that although Exhibit 29 is photocopy of Exhibit 56 i.e. said agreement dated 19th July 2007 yet page no.

3 of Exhibit 29 shows blanks with respect to material particulars whereas on page 3 of Exhibit 56, the blanks are filled but the same are not countersigned by the parties to the document. On the basis of the evidence on record, both the Courts have concurrently held that the said agreement is obtained by playing fraud on the Plaintiffs. The relevant discussion of the learned Trial Court is to be found in paragraphs 14, 15 16, 20, 21, 24 and 25, which read as under:

**"14) On perusal of the said xerox copy of the agreement (filed by Plaintiffs) at Exh. 29** it made clear from the open eye that all pages are signed by the parties including Plaintiffs. On page No. 02, some portion is filled up by pen (handwritten-by pen). It also made clear that **page Nos. 03 and 04 are having some blank portions ( which is not filled) and it has concerned to the agreed sale amount, earnest amount, remaining to be paid.** No doubt these two pages show the signatures of the parties. Page No. 07 shows that it was executed on 19/07/2007 and having signed by the Plaintiff Nos. 01, 02 and affixed their photos. Page No. 08 shows that Plaintiff Nos. 03 to 06 and Defendant No. 01 signed it by affixing their photos. It has total eight pages and typed document. It is not registered document.

**15) On perusal of the said original copy of the agreement (filed by Defendants' witness DW-2) at Exh. 56,** it made clear from the open eye that all pages are signed by the parties, witnesses including Plaintiffs. **On page No. 02, some blank portion is filled up by pen (handwritten-by pen). It also**

**made clear that on page Nos. 03 to 04, some blank portion is filled up by pen (handwritten-by pen) and it has concerned to the agreed sale amount, earnest money, remaining amount to be paid.** Page No. 07 shows that it was executed on 19/07/2007 and having signed by the Plaintiff Nos. 01, 02 by affixing their photos. Page No. 08 shows that Plaintiff Nos. 03 to 06 and Defendant No. 01 signed it by affixing their photos. **It is pertinent to note that this document has one more page i.e. page No. 09 styled as receipt (पावती) and it has been signed by the Plaintiffs and two witnesses. No doubt this page No. 09 is missed in the xerox copy filed by the Plaintiff at Exh. 29. Means this page is not the part of the agreement at copy (Exh. 29).**

**16) Thus, record made clear that xerox copy at Exh. 29 having eight pages signed by the parties on every page and there is blank portion on the page NO. 03 and 04 as regards agreed sale amount, earnest amount and remaining amount to be paid. It also made clear that this document has not attached with page No. 09 i.e. receipt (पावती). On the contrary, record also made clear that, original copy at Exh. 56 having nine pages signed by the parties on every page and there is blank portion filled up by pen (handwritten-by pen) on the page Nos. 03 and 04 as regards agreed sale amount, earnest amount and remaining amount to be paid. It also made clear that this document has attached with page No. 09 i.e. receipt (पावती).**

**20) Apart from this, defendant have not taken care to lead the proper evidence or cogent evidence to prove their original copy of agreement (Exh. 56). Because, original copy of agreement (Exh. 56) was not filed by the**

**Defendants at the time of commencing evidence or before starting cross-examination of plaintiff. It is the matter of record that, it was not referred to the plaintiff Darshana or shown to her during cross-examination which means that, attention of witness (plaintiff Darshana) was not drawn towards the handwritten portion on the page Nos. 03 and 04 and page No. 09 i.e. receipt (पावती) of the said original agreement deed (Exh. 56). Therefore, adverse inference can be drawn against defendants that, they intentionally had not produced the same at proper stage. Because, the burden is cast on the defendants to prove the handwritten contents at page Nos. 03 and 04 written in the said original agreement by showing to the Plaintiff -Darshana during her cross-examination. **Cogent evidence did not come on record as to why they have not filed the original documents at proper stage and not shown to the Plaintiffs' witness i.e. Plaintiff-Darshana.** Defendants witness i.e. DW-2 Vikas in his cross-examination at Exh. 49 on page No. 06 specifically admitted that he possessed the original agreement and original power of attorney from the year 2007 to 2012 and thereafter, it has been given to the defendant Ashok. He also admitted that, but he has filed both the documents in the Court while filing his affidavit-in-chief (Exh. 49). He also admitted that, these documents were given to him by the defendant No. 1 and he filed it on the record. This fact itself shows that, **though defendant No. 01 possessed the said original documents but intentionally has not filed on record before commencing evidence and failed to show the same to the plaintiff- Darshana in her cross-examination, which means that Plaintiff did not get an opportunity to give explanation in respect of contents of these documents. Moreover, these documents have been filed****

after recording the evidence of Defendant No. 1 at Exh. 46. It is made clear that plaintiff did not get an opportunity to cross-examine in respect of contents of these documents (specially in respect of handwritten contents at page Nos. 3, 4 and 09 at Exh. 56. Therefore, it can be said that, original agreement (Exh. 56) is not proved by the defendants against the Plaintiffs.

21. To prove the document agreement for sale, it is necessary to prove the sale amount, earnest amount and remaining amount be paid. Burden always on the person to prove it to come to the Court or claiming the rights. No doubt in the present case **plaintiffs have duty to prove the agreement in (Exh.29) as per their story. In this connection it can be said that, plaintiffs have proved the said agreement by showing that blank portion was there and was not filled up as regards the sale amount, earnest amount and remaining amount to be paid.** But they failed to show that Defendant No. 01 was agreed to purchase the suit land for Rs. 2,00,000/- per guntha and given earnest amount Rs. 4,80,000/-. Because nothing documentary evidence on record filed by the plaintiffs. In this situation burden shifts on the defendants to prove their contentions. No doubt **receipt at page No. 09 at Exh. 56 has not shown to the plaintiff Darshana. On perusal of the present receipt, it shows that, it has been signed by the plaintiffs and two witnesses. It does not bear the signature of defendant No. 01 though he is party to the said document.** It also shows that, **for agreed sale amount, plaintiffs have received amount of Rs. 40,000/- by cash and amount of Rs. 2,00,000/- by two cheques dated 20/07/2007 i.e. total amount of Rs. 2,40,000/-.** But it does not show that, from whom it was received, as name and signature of defendant

No. 01 has not shown on this receipt. Therefore, **it is difficult to hold that, the present receipt is the part of original agreement deed or it has been acknowledged against defendant No. 01.** Considering it has been signed by the plaintiffs and his receipt is identified by the defendant witness DW-2 Vikas it is necessary to verify the pleading and evidence of the defendants. **Defendants themselves are asserted that, agreed sale amount was Rs. 2,020/- per guntha i.e. total amount of Rs. 1,74,730/- and earnest amount of Rs. 40,000/- was paid on the date of agreement. They also asserted that, they paid Rs. 2,40,000/- to the plaintiffs. In my view, defendants are pleaded contrary to the contents of the document (Exh.56).** Because page No. 03 of the original agreement (Exh.56) show that, earnest amount Rs. 40,000/- was paid on the date of agreement and page No.09 (styled as 'receipt') shows that Rs. 2,00,000/- was paid by the cheques. **It can not be digest that, purchaser can paid more amount to the seller than the agreed amount. Because defendants pleading and evidence shows that, they paid Rs. 65,270/- extra or more than agreed amount to the plaintiffs.** This calculation itself show that, as per the pleading of defendants, they have not paid Rs. 2,00,000/- to the plaintiffs for measurement of the land, repayment of the loan taken by the plaintiffs on the suit land. **Therefore, considering the evidence of plaintiffs and defendants it can be said that, plaintiffs shows probabilities that, some portion was kept blank while executing the said agreement.**

24. **Copy of agreement (Exh.29) shows that on page No. 04, there is condition mentioned that, remaining amount will be paid within one month after obtaining permission for sale.** No doubt this paragraph is not completed and some portion was

kept blank (in copy of agreement at Exh.29). But original copy of the agreement (Exh.56) filed by the defendants and relied by them shows that, page No. 04 and said para are filled up which shows the said condition specifically. Second thing is that, **Power of Attorney in (Exh.30) is the admitted document which supported to the said condition.** Para No. 03 specifically highlighted on the fact that, Power of Attorney holder has authority to apply for permissions to sale. These two documents are having binding force on the future transactions in respect of permission for the sale. Plaintiffs asserted that, **as per these documents defendant No. 01 was having or duty to apply for permission for sale and to get it.** No doubt in pleading and in evidence defendant No. 01 denied the said obligation. But **in cross-examination at Exh. 46 he admitted that, as per the said Power of Attorney he is bound to apply for permissions and to get it.** It is the matter of record that, **defendants are not filed copy of said permissions or are not filed to show that, defendant No. 01 was applied for the same. Sale deed (Exh.34)** is important document in respect of this crucial point. On perusal of this copy, it shows that, copy of permission for sale is not attached with it. Contents nowhere supported to the facts that, before execution of the sale deed, such permission was obtained. **Therefore, in view of the above discussion it can be said that, the above said sale deed was not executed by following due process of law. Because it is admitted position that, suit land is protected land or tenancy land and required permission for sale.** Thus, plaintiffs proved that, the sale deed executed illegally or having no legal force.

25. In view of the above said discussion it can be said that, appreciation on oral and documentary facts are completed. Now it is necessary to look into the

legal aspect in respect of the said agreement, said Power of Attorney and the said sale-deed. **Xerox copy of the agreement (Exh.29) is filed by the plaintiffs and the original copy of the agreement (Exh. 56) is filed by the defendants and they have relied on it. No doubt copy (Exh.29) shows that there is blank portion in respect of the agreed sale amount, earnest amount and amount remaining to be paid.** Therefore, it is difficult to consider the agreement amount. But **copy of the defendants filed at Exh. 56 made it clear that, it was agreed to sale suit land for Rs. 2,020/- i.e. for total amount of Rs. 1,74,730/-.** It means that, valuation of the suit land is more than Rs. 100/-. In view of this aspect, it can be said **that it was required to register the said agreement. Because both copies are reflected that, possession of the suit land was delivered to the defendant no. 01 on the day of execution of the said agreement. Both copies are the unregistered document.** As per provisions of Indian Registration Act, this document is not come under the purview of registered document. Therefore, transactions take place under this document are not legal.

(Emphasis added)

**10.** The learned First Appellate Court has confirmed the said finding regarding fraud. Thus both the Courts have recorded concurrent finding regarding fraud. It is relevant to note the observations of the learned First Appellate Court in paragraph nos. 43, 46 and 51, which read as under:

**"43.** Considering the nature of the aforesaid two documents and the controversy *inter se* the parties relating to the same, it appears that **both the parties were under bona fide belief at the time of execution thereof that a permission for sale was**

**necessary.** However, the entry relating to the same has been taken at a later time in August 2007. Therefore, their belief about necessity seeking permission for sale appears proper. **However, when the defendant No. 1 came to know about the position of law as he claimed that permission for sale was not required, he did not bring the same to the notice of the plaintiffs. He allowed them to be remained under that belief and further on the basis of the aforesaid power of attorney, sold the suit land to the defendant No.2. However, the agreement for sale does not show that the consideration amount was finalised and fixed. It appears that the defendant No. 1 by playing fraud relating to consideration amount and by keeping the plaintiffs in dark, sold the suit land to defendant No. 2.**

**46.** Therefore, it shows that **the amount of consideration was agreed different than Rs.1,74,730/-.** The defendant No. 1 by means of the receipt represented the plaintiffs that out of total consideration, he was paying them Rs.2,40,000/- and subsequently, filled in figures in the agreement especially in clause No.1, suitable to him and played fraud on the plaintiffs. Under such circumstances, when the consent of the plaintiffs was not free and so obtained by fraud, the agreement for sale itself became voidable at the option of the plaintiffs who were aggrieved by the same.

**51)** Moreover, the defendant no.1 being an agent-power of attorney holder of the plaintiffs was under duty to inform such material changes to their principal. He was also under obligation to inform the plaintiffs about execution of the suit land in favour of the defendant no.2 within reasonable time. However, as admitted by him, the plaintiffs came to know about such sale-deed in 2013. **The defendant No. 1 has**

**not disclosed as to why he kept suppressed the factum of sale for about six years.** Such silence also amounts to a big fraud, which kept the plaintiffs waiting for such permission for sale for a long time. **Moreover, execution of such sale would be contrary to the condition in clause Nos. 4 and 14 of the agreement (Exh. 56) to the effect that the plaintiffs had agreed to execute the sale-deed in the name of the defendant No. 1 or any person named by him within one month of seeking such permission for sale. Thus, there is reason to believe that when on the same day 19/07/2007, the plaintiffs had put the such conditions in the agreement, execution of a deed of power of attorney by them authorising the defendant No.1 to execute the sale and accept the consideration amount would not appear logical and proper and therefore, there is reason to believe that such power of sale also had been obtained by fraud by the defendant No.1 by deceitfully inserting the same though, the deed of power of attorney is titled as general power of attorney and not a special power of attorney."**

(Emphasis added)

**11.** Mr. Godbole, learned Senior Counsel has failed to point out that the concurrent findings recorded by both the Courts regarding fraud is not in accordance with the evidence on record. It is further significant to note that the said agreement is dated 19th July 2007 and power of attorney is dated 19th July 2007. It appears that in August 2007, the Revenue Authorities removed the remark that "the permission is required for sale of the land" and thereafter sale-deed was executed by the Defendant No.1 in favour of the Defendant No.2 on 5th

September 2007. The sale-deed is executed by Defendant No.1 on behalf of the Plaintiffs and in his capacity as constituted attorney on the basis of said power of attorney dated 19th July 2007. Therefore, it is relevant to note the terms and conditions of the power of attorney. The said power of attorney in paragraph 1 records that the same is general power of attorney and the purpose mentioned is to do various acts for the purpose of obtaining permission under the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948. The said relevant Clause No.1 is reproduced herein-below for ready reference:

"१) मिळकतीचे वर्णन— गांव मौजे वावे, जिल्हा व तुकडी ठाणे, तालुका व पोटतुकडी पालघर, मे. दुय्यम निबंधक पालघर हयांचे अधिकार क्षेत्रातील खालील वर्णनांची मिळकत—

| स.नं. | हि. नं. | क्षेत्र (हे.आर.) | आकार (रू.पै.) |
|-------|---------|------------------|---------------|
| १३५   | —       | ०-८६-५           | १.९३          |

ही मिळकत (जीस संक्षिप्ततेसाठी हयापुढे 'सदरहू मिळकत' असे संबोधण्यात यावे) आमचे वडीलोपार्जित सामाईक मालकी व कब्जेवहिवाटीची असून सदरहू मिळकत आम्हास कुळकायद्याअंतर्गत प्राप्त झाली असून नियंत्रित सत्ता प्रकार ४३ ला पात्र आहे. सदर मिळकत आम्ही तुम्हास दिनांक १९/७/०७ रोजीचे साठेकराराने कायम विकत देण्याचे मान्य व कबूल केले असून सदरील मिळकतीबाबत आम्हास बरीचशी कामे करावी लागणार आहेत. मात्र आम्हाला कायदयाचे पुरेसे ज्ञान नसल्यामुळे व आमचे वैयक्तिक कामधंदयामुळे वेळ मिळत नसल्याने सदर कामे करणे जमणार नाही म्हणून हया 'जनरल पॉवर ऑफ अॅटर्नी' द्वारे तुम्हास आमचे कायदेशीर कुळमुखत्यार नेमित आहोत व खाली नमुद केलेली कामे आमचे तर्फे व आमचे वतीने, आमचे नावे करणेचे अधिकार देत आहोत ते येणेप्रमाणे..."

**12.** It is true that the power of attorney gives various powers including the power to sale. However, as rightly contended by

the learned Counsel appearing for the Respondents that the agreement of sale has specifically stated that the power of attorney is to be given only for the purpose of obtaining sale permission and accordingly Clause No.1 of the power of attorney also limits the said power. Admittedly the said power of attorney is also not registered document.

**13.** On the basis of said power of attorney acting on behalf of the Plaintiffs, Defendant No.1 executed registered sale-deed dated 5th September 2007 in favour of Defendant No.2 and it is the contention of the Defendants that the said sale-deed is a valid document.

**14.** Mr. Godbole, learned Senior Counsel has relied on the decisions of the Supreme Court in the matter of **Rajni Tandon Vs. Dulal Ranjan Ghosh Dastidar & Anr.**<sup>1</sup> and **Amar Nath Vs. Gian Chand & Anr.**<sup>2</sup>. Both these decisions are *inter alia* relating to interpretation of Sections 32 and 33 of the Registration Act, 1908. However, observations in paragraph 29 of **Rajni Tandon** (*supra*) are very important and the same is as under:-

**"29. The object of registration is designed to guard against fraud by obtaining a contemporaneous publication and an unimpeachable record of each document. The instant case is one where no allegation of fraud has**

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<sup>1</sup> 2009 14 SCC 782

<sup>2</sup> (2022) 11 SCC 460

been raised. In view thereof, the duty cast on the registering officer under Section 32 of the Act was only to satisfy himself that the document was executed by the person by whom it purports to have been signed. The Registrar upon being so satisfied and upon being presented with a document to be registered had to proceed with the registration of the same."

(Emphasis supplied)

**15.** In the present case, both the Courts have concurrently held that the said agreement dated 19th July 2007 as well as power of attorney dated 19th July 2007 have been obtained by playing fraud on the Plaintiffs. There is nothing on record, which has been pointed out before this Court that said findings are not in consonance with the evidence on record.

**16.** As both the Courts have held that the agreement dated 19th July 2007 and power of attorney dated 19th July 2007 have been obtained by fraud, both the Courts have held that the sale-deed dated 5th September 2007 executed on the basis of said fraudulent power of attorney is null and void.

**17.** Mr. Godbole, learned Senior Counsel appearing on behalf of the Appellants has also raised contentions regarding limitation, however, both the Courts have concurrently held that in 2012, the Plaintiffs came to know about certain aspects and therefore, the suit filed on 7th August 2014 is within limitation. There is no illegality in the said finding.

**18.** It is significant to note that neither the said agreement dated 19th July 2007 nor the power of attorney dated 19th July 2007 giving power to sale are registered documents. Therefore, no rights are created either in favour of the Defendant No.1 or the Defendant No.2.

**19.** Mr. Godbole, learned Senior Counsel appearing for the Appellants also raised the contention that if Courts are holding that the agreement and power of attorney dated 19th July 2007 are fraudulent and therefore, the sale-deed dated 5th September 2007 executed on the basis of such power of attorney is fraudulent then the Court should have directed refund of the amount which the Plaintiffs have received.

**20.** In this behalf, it is most important to note that said contention appears to have not been raised before the learned Trial Court as well as the First Appellate Court. Apart from that, both the Courts have concurrently held that the fraud has been played by the Defendant No.1 on the Plaintiffs. It is further significant to note that on the very day i.e. on 19th July 2007, when the agreement was executed, the possession of the suit property is handed over to the Defendant No.1 and thereafter on 5th September 2007 i.e. on the date of execution of sale-deed, the possession has been handed over to Defendant No.2. Thus, in fact, the Defendants have derived the benefit of such

fraudulent transaction, and therefore, there is no substance in the said alternate contention raised by Mr. Godbole, learned Senior Counsel.

**21.** Accordingly, there is no substance in any of the substantial questions of law raised by Mr. Girish Godbole, learned Senior Counsel appearing for the Appellants. Therefore, the Second Appeal is dismissed with costs.

**22.** In view of dismissal of the Second Appeal, nothing survives in the Interim Application No. 4321 of 2023 and the same is accordingly disposed of.

**23.** Mr. Godbole, learned Senior Counsel appearing for the Appellants seeks continuation of the interim relief as granted by the learned Appellate Court. However, for the reasons recorded hereinabove, the said request is rejected.

**(MADHAV J. JAMDAR, J.)**