

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

**APEAL FROM ORDER NO. 124 OF 2013
WITH CA/2887/2014 IN AO/124/2013**

**GIRIDHAR SHANKARRAO DESHPANDE
VERSUS
SHARAD SHANKARRAO DESHPANDE AND OTHERS**

...
Advocate for Petitioners : Mr. Deshpande Gaurav L
Advocate for Respondents 1, 2 and 47 to 49 : Mr. Mr. Arvind Deshmukh

...
CORAM : S. V. GANGAPURWALA, J.

DATE : 24th August, 2015

PER COURT :

1. Mr.Deshpande, the learned counsel for the appellant submits that on the basis of forged and fabricated power of attorney, Onkar has transferred 28 plots in the name of his brother. The same is to deprive the plaintiffs of his rights over the said property. On the basis of signatures on blank documents obtained by the said Onkar, the power of attorney is allegedly shown to have been executed, which is illegal.

2. Learned counsel submits that even on 12.08.2011, proclamation was given by the plaintiff that power of attorney has been revoked. Still, thereafter, on 17.08.11 said Onkar has made a statement before the Registrar that the said power of attorney is still exists. The learned counsel submits that the respondents are required to be restrained from constructing further in respect of the suit property as the same would change the nature of the suit property and in case the decree is passed, it would be difficult to execute the decree.

3. According to the learned counsel, the trial court, while rejecting the the application, has not considered the same. Learned counsel further submits that even respondents 47 and 48 are required to be restrained from alienating the said properties further.

4. Mr. Deshmukh, learned counsel for respondents 1, 2, 47 and 49 submits that the appellant Girdhar has already constructed a residential house and is residing in the same. The learned counsel, on instructions, submits that some of the plots are alienated and on majority of the plots construction is complete.

5. I have considered the submissions. Whether the power of attorney was a genuine document or forged one can be conclusively adjudicated only after the parties have adduced their evidence. At this stage, it would be inappropriate to make any comment on the same. It is submitted that on some of the plots, constructions have been made, some are alienated. In the application, pursuant to which the order is passed, there was no prayer made so as to restrain the respondents from alienating or creating third party interest in the suit property. In absence of any prayer being made, the trial Court was not required to consider the same. The impugned order is of February 2013, more than two and half years have lapsed. Much constructions have been completed as is submitted by the learned counsel for the respondents. In case the appellant is so advised the appellant may file an application before the trial Court with regard to the

prayer of restraining the defendants from alienating creating third party interest which application shall be considered by the trial court on its own merits and in accordance with law.

6. Appeal from Order is accordingly disposed of. Civil application also stand disposed of. No costs.

7. Learned counsel submits that trial court be directed to expedite the suit. The trial court shall endeavour to dispute of the suit expeditiously.

(S. V. GANGAPURWALA, J.)

JPC