

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL SIDE JURISDICTION

NOTICE OF MOTION NO.673 OF 2010  
IN  
SUIT NO.2434 OF 2010

|                                  |     |                            |
|----------------------------------|-----|----------------------------|
| Damodardas B Bhuta & Ors.        | ... | Applicants /<br>Plaintiffs |
| Vs.                              |     |                            |
| Landmark Construction Co. & Ors. | ... | Defendants                 |

Mr. Anil R Mishra, Adv. a/w. Abhijit Singh, Adv. for plaintiffs / applicants.

Vijaysingh Thorat, Adv. i/b. Bipin Joshi, Adv. for defendant No.1.

Armin Wandrewalla, Adv. a/w. Prayag Joshi, Adv. i/b. Bipin Joshi, Adv. for defendant No.2.

**CORAM : MRS. ROSHAN DALVI, J.**

**DATE : 25<sup>th</sup> June, 2015.**

**P.C. :**

1. The plaintiffs are individuals and trustees of a trust. The plaintiffs entered into an agreement of sale with the defendants on 30<sup>th</sup> May, 2005 in respect of the suit land bearing survey nos. 46 and 36, CTS Nos.166 & 166/1 to 426 (which are structures on the land). The plaintiffs executed an irrevocable Power of Attorney on 3<sup>rd</sup> September, 2005 in favour of the defendants to do various acts in respect of the land. The said power did not contain the power of sale. The defendants have nevertheless conveyed the suit property to themselves as constituted attorney (CA) of the plaintiffs. The land is admeasuring 10,622.72 Sq.mtrs in area. There are four conveyance deeds stated to be executed. Two conveyance deeds are challenged in the suit. One of these conveyance deeds is not executed by the defendants themselves as the CA of the plaintiffs. It is executed by the son of plaintiff No.3 in favour of the defendants. The plaintiffs have

disputed the execution of the conveyance for the extent of the land conveyed under that conveyance deed executed by the son of plaintiff No.3. The plaintiffs have sought to show various shares of the various plaintiffs acquired by them; some of them are acquired by inheritance. Nevertheless when the son of plaintiff No.3 has himself executed a conveyance in respect of specific portion of the suit land, the plaintiffs would be bound by that conveyance.

2. It is the other conveyance which is executed by the defendants as the CA of the plaintiffs without the power of sale that becomes rightly challengeable.

3. Both counsel on behalf of the defendants have sought to show the Court the power of sale in the POA dated 3<sup>rd</sup> September, 2005. The reading of the POA to make out a power of sale is rather amusing. The Court is informed that the power of sale is contained in Clause 3 read with clause 13. The relevant part which is stated to be the power of sale runs thus :

**Clause 3**

*In our name and on our behalf to apply if necessary for permission of the competent Authority or the State Government any other authorities under the Urban Land Ceiling Act of 1976 for permission to execute the document of transfer of conveyance in respect of the land hereditaments, premises described in the Schedule hereunder written and for that purpose to make any declaration or sign forms in our names and on our behalf as our Attorneys shall deem fit and also to appear before any of the officer or officers appointed under the said Urban Land (Ceiling and Regulation) Act of 1976 and Maharashtra Housing and Area Development Board / Authorities and to represent us before them and also if necessary to sign all applications, affidavits, memos of appeal or other applications or documents as Our Attorneys shall deem fit and also to appear before the Appellate authorities under*

*the said act and / or State Government in connection with the permission for transfer of the said land as aforesaid.*

**Clause 13**

*To prepare, sign, execute agreements to sell, sale deeds, tenancy agreements, etc., in respect of shops, flats, garages, hoardings etc., and to negotiate with intending buyers, tenants, etc. to accept consideration, rent etc.*

4. Whereas the power under the clause 3 is to apply for permission to execute a document of transfer of conveyance, the defendants would contend that the power is to execute the document of transfer or conveyance deeds. This would make a mockery of a complex sentence in the English language. It is not known how it can be accepted. Whereas the power under clause 13 is to sign, execute agreements of sale deeds in respect of shops, flats, garages and hoardings, it is contended that the power is given to sign and execute sale deeds for the land and the structures thereon. That also beats a plain reading of the English language.

5. The conveyance which is executed by the defendants as the CA of the plaintiffs which is challenged in the suit dated 7<sup>th</sup> August, 2008 Exh.J to the plaint is in respect of survey No.46, H. No.8 B, C and D, CTS Nos.166 and 166/1 to 426. Clause 1 of the conveyance shows the conveyance of the undivided right, title and interest mentioned and described in schedules to the conveyance. The first schedule to the conveyance shows the entire land admeasuring 10,622.85 Sq.mtrs. The second schedule of the conveyance shows land admeasuring 1770.47 Sq.mtrs and another land admeasuring 405.95 Sq.mtrs.

6. The plaintiffs have themselves not executed the conveyance. The defendant No.4 has executed the conveyance as the plaintiff's constituted attorney. He is shown to have signed and thumb impressed as the vendor. His photograph is shown in the execution clause as vendor. Another defendant, who is the other director of defendant No.2, is shown to have thumb impressed as the purchaser with his photograph next to his signature. The conveyance would, on a plain reading, show that there are two parties who have executed it. However, both the parties are defendants. The vendor is the CA of the plaintiffs. He is CA without the power to convey. He is, therefore, CA that never was so far as the conveyance is concerned. It is impossible for the Court to allow the defendants to act upon such a conveyance. Such a conveyance is executed without a power of sale and hence cannot be allowed to be acted upon.

7. The defendants would contend that the plaintiffs received the consideration mentioned in the conveyance. The consideration is shown under the receipt clause. The receipt clause shows a mere receipt. It does not show receipt by whom. We would assume that the receipt is by the vendor. The vendor is the CA of the plaintiffs. Defendant No.4 as the CA of the plaintiffs executed the document. Hence he was person to receive the consideration. It is stated that the consideration was given to plaintiff No.1, who was 88 years old and who could not attend in the registrar's office to execute the conveyance. The receipt would, therefore, show that the consideration was paid where plaintiff No.1 was residing. It is, therefore, not shown why plaintiff No.1 could not have at least thumb impressed the document himself and why the defendants were required to execute the document. In any event plaintiff No.1 has not even signed the

receipt clause.

8. The plaintiffs' case that the consideration amount has been deposited in the plaintiffs account after the conveyance was executed stands to reason. In fact, it is surprisingly argued that the amount is not returned by the plaintiffs and hence the plaintiffs have acted upon the conveyance. Surely the amount was not paid to be returned. It was deposited in the account. This aspect of the actual payment and the receipt is stated by counsel on behalf of the defendants upon the instructions of defendant No.4 who is present in Court. Such fact is not in the affidavits of the defendants. It is given in Court in response to the Court's query about how, when and to whom the consideration was paid which is stated to be received and not returned by the plaintiffs.

9. Oral evidence would be required, therefore, to see how consideration was paid by the defendants to the plaintiffs when the conveyance was executed by one of the defendants as the CA to the plaintiffs and not any of the plaintiffs.

10. The plaintiffs have sought reliefs in respect of the aforesaid two conveyances dated 7<sup>th</sup> August, 2008 and 24<sup>th</sup> September, 2008. Only conveyance dated 7<sup>th</sup> August, 2008, Exh.J to the plaint is prima facie seen to be invalidly executed. The plaintiffs cannot be given any reliefs in respect of the conveyance deed dated 24<sup>th</sup> September, 2008, Exh.K to the plaint which has been executed by the son of plaintiff No.3 in favour of the defendants.

11. The description of the suit property in the schedule of the

property Exh.A to the plaint shows land admeasuring 6270 Sq.mtrs. of plaintiff No.4 trust, out of which 1761.84 Sq.mtrs. is of plaintiff No.1 and further 1761.84 Sq.mtrs. (not shown to be of any specific plaintiff) aggregating to 9792 Sq.mtrs. The aforesaid two conveyances show the total land admeasuring 10,622 Sq.mtrs. It is only the land shown in the conveyance, Exh.J to the plaint which cannot be sold, alienated, encumbered, parted with possession or transferred by the defendants and the defendants cannot create any third party rights as per the injunction sought. Hence out of the total suit land of 9792 Sq.mtrs. the injunction against the defendants would be for land admeasuring 1770 Sq.mtrs. + 405.75 Sq.mtrs. = 2175.42 Sq.mtrs. which is shown to be the land of plaintiff No.1.

12. Though the plaintiff would have been entitled to an injunction in respect of the land unlawfully conveyed under the aforesaid conveyance, Exh.J to the plaint, the plaintiffs have not given sufficient particulars of the property so conveyed for which the reliefs in respect of the conveyance Exh.J are sought. The particulars of the suit property in the schedule of property, Exh.A only shows the CTS, survey numbers and Hissa numbers. Which is the specific land conveyed under the conveyances which are challenged being Exh.J and K to the plaint are not shown even in the plan, Exh.B to the plaint.

13. The plaintiffs claim that the land was subdivided showing the share of plaintiff No.1 separately which is sought to be conveyed under the conveyance, Exh.J to the plaint. That subdivision is not shown by the plaintiffs.

14. The plaintiffs challenge to conveyance Exh.K is prima facie not seen to be maintainable.

15. The defendants have contended that there are two other conveyances similarly executed by defendant No.4 on behalf of respective plaintiffs as shown in those conveyances. The defendants have been conveyed other portions of entire suit land shown to be 10,622.72 Sq.mtrs. The plaintiffs have not challenged those conveyances.

16. The challenge, therefore, is sustainable only in respect of the part of the suit property. The plaintiffs claim that it was divided. Hence plaintiffs must show the specific division and the specific part of the suit property which went to the share of plaintiff No.1 which has been sought to be wrongfully conveyed under the conveyance, Exh.J to the plaintiff. The plaintiffs have not shown that specific part of the suit property. The conveyance also does not show the description of the suit property within specified boundaries.

17. Consequently despite the wrongful act of the defendants, reliefs in respect of specified portion of the suit property by way of injunction is not possible to be granted at present. Under these circumstances there shall be no order in this Notice of Motion. No order as to costs.

18. Two written statements are filed by the defendants by two separate advocates. The defendants shall specify which written statement is to be considered in the suit.

19. Notice of Motion disposed of accordingly.
20. Suit is adjourned to 5<sup>th</sup> August, 2015 for framing of issues.

**( ROSHAN DALVI, J. )**