

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8872 OF 2017

Pune Krishi Utpanna Bajar Samiti, Pune,]
A Market Committee, established under the]
Maharashtra Agriculture Produce Marketing] *[Original Defendant No.2]*
(Development and Regulation) Act, 1963]
Having office at Gultekadi, Market Yard,]
Pune - 411 037.] ... Petitioner

Versus

1. Mohammad Hanif Abdul Wahid Shaikh,]
Proprietor, M/s. Shera Fruit Agency,]
Age about 66 years, Occ. Business,] *[Original Plaintiff No.1]*
R/at Survey No.8, Jijamata Nagar,]
New Khadki, Yervada, Pune - 411 006.]
2. Mohammad Asif Mohammad Hanif Shaikh,]
Age about 40 years, Occ. Business,] *[Original Plaintiff No.2]*
R/at Survey No.8, Jijamata Nagar,]
New Khadki, Yervada, Pune - 411 006.]
3. Mohammad Arif Mohammad Hanif Shaikh,]
Age about 44 years, Occ. Business,] *[Original Defendant No.1]*
R/at Kondhawa Khurd, Kausar Bagh,]
Opp. King Bakery, Pune - 411 048.]
4. Madari Kaur Dadasingh Junni,]
Age about 40 years, Occ. Business,] *[Original Defendant No.3]*
R/at 570, Market Yard, Ambedkar Nagar,]
Bibwewadi, Pune - 411 003.] ... Respondents

ALONG WITH
WRIT PETITION NO.10221 OF 2017

Madarikaur @ Amarkaur Dadasingh Junni,]
Age about 40 years, Occ. Business,] [*Original Defendant No.3*]
R/at 570, Market Yard, Ambedkar Nagar,]
Bibwewadi, Pune - 411 003.] ... Petitioner

Versus

1. Mohammad Hanif Abdul Wahid Shaikh,]
Proprietor, M/s. Shera Fruit Agency,]
Age about 66 years, Occ. Business,] [*Original Plaintiff No.1*]
R/at Survey No.8, Jijamata Nagar,]
New Khadki, Yervada, Pune - 411 006.]
2. Mohammad Asif Mohammad Hanif Shaikh,]
Age about 40 years, Occ. Business,] [*Original Plaintiff No.2*]
R/at Survey No.8, Jijamata Nagar,]
New Khadki, Yervada, Pune - 411 006.]
3. Mohammad Arif Mohammad Hanif Shaikh,]
Age about 44 years, Occ. Business,] [*Original Defendant No.1*]
R/at Kondhawa Khurd, Kausar Bagh,]
Opp. King Bakery, Pune - 411 048.]
4. Pune Krishi Utpanna Bajar Samiti, Pune,]
A Market Committee,]
Established under the Maharashtra] [*Original Defendant No.2*]
Agriculture Produce Marketing]
(Development and Regulation) Act, 1963]
Having office at Gultekadi, Market Yard,]
Pune - 411 037.] ... Respondents

ALONG WITH
WRIT PETITION NO.10774 OF 2017

Mohammad Arif Mohammad Hanif Shaikh,]
Age about 44 years, Occ. Business,] [*Original Defendant No.1*]
R/at Kondhawa Khurd, Kausar Bagh,]
Opp. King Bakery, Pune - 411 048.] ... Petitioner

Versus

1. Mohammad Hanif Abdul Wahid Shaikh,]
Proprietor, M/s. Shera Fruit Agency,]
Age about 66 years, Occ. Business,] [*Original Plaintiff No.1*]
R/at Survey No.8, Jijamata Nagar,]
New Khadki, Yervada, Pune - 411 006.]
2. Mohammad Asif Mohammad Hanif Shaikh,]
Age about 40 years, Occ. Business,] [*Original Plaintiff No.2*]
R/at Survey No.8, Jijamata Nagar,]
New Khadki, Yervada, Pune - 411 006.]
3. Pune Krishi Utpanna Bajar Samiti, Pune,]
A Market Committee,]
Established under the Maharashtra] [*Original Defendant No.2*]
Agriculture Produce Marketing]
(Development and Regulation) Act, 1963]
Having office at Gultekadi, Market Yard,]
Pune - 411 037.]
4. Madari Kaur Dadasingh Junni,]
Age about 40 years, Occ. Business,] [*Original Defendant No.3*]
R/at 570, Market Yard, Ambedkar Nagar,]
Bibwewadi, Pune - 411 003.] ... Respondents

Mr. Shriniwas S. Patwardhan for the Petitioner in WP/10774/2017 and WP/10221/2017.

Mr. Murlidhar L. Patil for Respondent No.3 in WP/10774/2017 and WP/10221/2017 and for the Petitioner in WP/8872/2017.

Mr. Jayesh Kocheta for Respondent No.4 in WP/8872/2017 and WP/10774/2017 and for the Petitioner in WP/10221/2017.

Mr. Shailendra S. Kanetkar for Respondent Nos.1 and 2 in WP/8872/2017.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 25TH APRIL, 2018.

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard finally, at the stage of admission itself, by consent of Mr. Patwardhan, Mr. Patil, Mr. Kocheta and Mr. Kanetkar, learned counsel for the respective parties.

2. All these three Writ Petitions are arising out of the order dated 5th June 2017 passed by the District Judge-12, Pune, thereby allowing Miscellaneous Civil Appeal No.16 of 2017 and dismissing Miscellaneous Civil Appeal No.25 of 2017 and hence, these Writ Petitions are decided by this common Judgment.

3. Both these Miscellaneous Civil Appeals were preferred against the order dated 9th December 2016 passed by the 13th Joint Civil Judge, Senior Division, Pune, below the application at "Exhibit-5" filed in Special Civil Suit No.431 of 2016. Miscellaneous Civil Appeal No.16 of

2017 was preferred by the Original Plaintiff Nos.1 and 2; whereas, Miscellaneous Civil Appeal No.25 of 2017 was preferred by Original Defendant Nos.1 and 3. Writ Petition No.10774 of 2017 is, accordingly, preferred by Original Defendant No.1; Writ Petition No.8872 of 2017 is preferred by Original Defendant No.2; and Writ Petition No.10221 of 2017 is preferred by Original Defendant No.3, against the impugned order passed by the District Judge-12, Pune.

4. For the sake of convenience, the parties are referred to by their original nomenclature.

5. Brief facts, which are essential for deciding these Writ Petitions, can be stated as follows :-

. Plaintiff No.1 is the father and Plaintiff No.2 and Defendant No.1 are the sons of Plaintiff No.1. As per the case of the Plaintiffs, by virtue of an 'Agreement' dated 20th May 1992, the suit Shop bearing No.878 at New Fruit Section, Market Yard at Agricultural Produce Market Committee, Pune, was transferred in the name of Plaintiff No.1 by one Shekhar Kunjir. Since then, Plaintiff No.1, along with Plaintiff No.2 and other family members, was running the business therein. At that time, however, instead of getting the 'Lease Deed' executed in his name, Plaintiff No.1 got the 'Lease Deed' in respect of the suit Shop executed in the name of his elder son i.e. Defendant No.1. On the basis of the said

'Lease Deed', Defendant No.2-APMC has issued the license for 'Fruit Shop' in the name of Defendant No.1 with effect from 24th May 1996. The license of the said business is, accordingly, standing in the name of Defendant No.1.

6. As per further case of the Plaintiffs, an 'Agreement of Partnership' came to be executed between Plaintiff Nos.1 and 2 and Defendant No.1 on 16th December 2002 in respect of the suit Shop and also the business run therein. It was specifically agreed therein that the shop premises and the business run therein will be conducted in the partnership business for a period of ten years. An 'Irrevocable Power of Attorney' also came to be executed, accordingly, on 16th March 2015 by Defendant No.1 in favour of the Plaintiffs. Subsequent thereto, an 'Agreement' dated 11th May 2015 was executed by Defendant No.1 in favour of Plaintiff No.1. On the basis of all these documents, it is the case of the Plaintiffs that, they are in possession of the shop premises and also running and conducting the business therein. However, Defendant No.1 tried to create third party interest in the said shop premises in favour of Defendant No.3 and as a result thereof, the Plaintiffs were constrained to file the Suit. Along with the Suit, the Plaintiffs have also filed the application for interim injunction, which came to be resisted by Defendant No.1 herein.

7. After considering the submissions advanced before it, the Trial

Court was pleased to hold that, the dispute involved in the present case was, *‘whether Defendant No.1 alone has right over the suit premises or all the family members are having such right?’* It was considered by the Trial Court that, at this stage, it would not be proper to enter into the questions of facts and, accordingly, the Trial Court has partly allowed the application for interim injunction and directed the parties to maintain status-quo in respect of the title of the suit Shop. As a result, the relief relating to restraining Defendant No.1 from causing obstruction to the Plaintiffs' possession in the suit Shop was not granted.

8. The Plaintiffs, therefore, preferred the Appeal challenging the said order. Similarly, as Defendant No.1 was restrained from creating third party interests in the shop premises, Defendant No.1 also preferred the Appeal against the said order and, as stated above, the Appellate Court has decided both the Appeals by its common Judgment and vide the impugned order, allowed the Appeal preferred by the Plaintiffs, but dismissed the Appeal preferred by Defendant No.1.

9. By the impugned order, the Appellate Court has restrained Defendant No.1 from obstructing the possession of the Plaintiffs in the suit Shop or from carrying on business of fruits and selling agricultural products in the suit Shop and further also restrained both the Plaintiffs and Defendant No.1 from creating third party interests in the suit premises.

10. While challenging this order of the Appellate Court, the submission of learned counsel for Defendant No.1 is that, the Appellate Court has not at all considered the provisions of the Benami Transactions (Prohibition) Act, 1988, which clearly estop the party from claiming any relief stating that, *'the property was purchased in the name of another person'*. Section 4 of the Benami Act even restricts filing of such Suit and, therefore, according to him, in the present case, the Plaintiffs are estopped from contending that, though the suit Shop was purchased in the name of Defendant No.1, they were the real owners thereof.

11. However, at the outset itself, it has to be stated that, this contention was neither raised in the 'say' filed to the application at "Exhibit-5", nor raised in the Miscellaneous Appeal filed before the Appellate Court or in the Writ Petition and, therefore, such contention, raised in the course of arguments, cannot be considered, as the scope of these Writ Petitions is otherwise also limited, only to the extent of deciding the legality and validity of the impugned order passed by the Appellate Court.

12. While challenging the impugned order of the Appellate Court, the next submission of learned counsel for Defendant No.1 is that, the Appellate Court has considered, in paragraph No.15 of its order, several facts as undisputed, though they were disputed by Defendant No.1 in his

'say'. It is submitted that, the Appellate Court has observed that there is no dispute that Plaintiff No.1 has paid the amount of Rs.1,20,000/- as consideration of the suit Shop to Shekhar Kunjir and Dhanraj Patil, though this fact is disputed by Defendant No.1. It is further submitted that, the Appellate Court has held that the jointness of the family is not challenged by Defendant No.1, though this fact is also denied and challenged. Hence, according to him, the impugned order of the Appellate Court suffers from perversity.

13. However, in this respect, even accepting that Defendant No.1 has challenged these facts, the documents on record, namely, the 'Agreement' dated 20th May 1992 executed between Plaintiff No.1 and Dhanraj Daulatrao Patil and Shekhar Tatyaba Kunjir, goes to show that this amount of Rs.1,20,000/- was paid by Plaintiff No.1 to them and, therefore, at this stage, the Court has to proceed on the basis of this document on record, which shows that Plaintiff No.1 has advanced consideration for purchase of the suit Shop. It is undisputed that the 'Lease Deed' of the suit Shop stands in the name of Defendant No.1, but then, the 'Agreement of Partnership' and also the 'Irrevocable Power of Attorney', which are relied upon by Plaintiff No.1, clearly go to show that, even Defendant No.1 has put this business in the hotch pot of the joint family and has accepted that the business and the suit property is in partnership and also the contribution of the family therein. At this

stage, these documents cannot be disbelieved or challenged, coupled with the 'Agreement' dated 11th May 2015 executed by Defendant No.1 in favour of the Plaintiffs.

14. The Appellate Court has rightly considered that, though Defendant No.1 may contend that he has filed some protest application to Defendant No.2-APMC, stating that he has not executed such documents, the fact remains that he has not taken any legal action against Plaintiff No.1 for cancellation of these documents or not even initiated any criminal action that these documents are false, fabricated and bogus, as they are not signed by him. At this interim stage, therefore, the Court has to rely upon these documents to hold that, it is Defendant No.1, who has put this business and the shop in the joint family. Defendant No.1 has also entered into the 'Agreement of Partnership' on 16th December 2002 and the 'Irrevocable Power of Attorney' on 16th March 2015 in favour of Plaintiff No.1. In such situation, no fault can be found in the impugned order passed by the Appellate Court holding that, if these documents prima facie show that Plaintiff No.1 is in possession of the suit premises and the business run therein, then, Defendant No.1 is required to be restrained from causing obstruction to the possession of the Plaintiffs.

15. Similarly, at this stage, if third party interests are created in the

suit premises, then, both the Plaintiffs and Defendant No.1 are bound to suffer and hence, the Appellate Court has rightly restrained both of them from creating third party interests in the suit Shop. Hence, on that count also, no fault can be found in the impugned order passed by the Appellate Court.

16. Even if Defendant No.3 is having some 'Agreement' executed by Defendant No.1 in his favour and he has parted with some amount of consideration, in that case also, Defendant No.3 will have to wait till the decision of this Suit, as, at this stage, the Court cannot allow the third party interest created in the suit premises. Therefore, the Writ Petitions preferred by Defendant Nos.1 and 3 need to be dismissed.

17. However, as regards the Writ Petition preferred by Defendant No.2-APMC, the Appellate Court has relied upon the provisions of 'Deemed License' and, accordingly, held that, despite the application made by Plaintiff No.1, if the APMC has not granted the license, then, the Court can hold that, Plaintiff No.1 is having the 'Deemed License'. However, as rightly pointed out by learned counsel for Defendant No.2-APMC that, the application filed by Plaintiff No.1 was not in the proper format and, therefore, the said application was "filed" and he was informed about it. Hence, he cannot be entitled to get the benefit of the provisions of 'Deemed License'. Learned counsel for Defendant No.2-APMC has, in this respect, also relied upon the Judgment of this Court in

the case of *Shree Shyambaba Cotton Company, Saoner Vs. Agricultural Produce Market Committee, Parseoni and Ors.*, 2012 (4) Mh.L.J. 791, wherein, in paragraph No.7, it was held that,

“If the application is not in a prescribed format, accompanied with fees and information, as required in the prescribed format and as essential under the Act and Rules framed thereunder, nor supplied the documents, as required by the APMC under the Rules, then, the proviso of the “Deemed License” would not come into play, unless the Petitioner shows that he had submitted such application in prescribed format.”

18. Here in the case, therefore, no fault can be found with Defendant No.2-APMC, if it has not granted such license. Of-course, Plaintiff No.1 was at liberty to file a fresh application with proper compliances; but he has not done so. Hence, to that extent only, the observations made by the Appellate Court relating to the ‘Deemed License’ are required to be quashed and set aside.

19. Accordingly, the Writ Petition Nos.10774 of 2017 and 10221 of 2017, preferred by Defendant Nos.1 and 3, respectively, stand dismissed.

20. Writ Petition No.8872 of 2017, preferred by Defendant No.2-APMC, is allowed only to the limited extent of quashing the observations

made in the impugned order relating to the provisions of the 'Deemed License'.

21. Rule is discharged.

[DR. SHALINI PHANSALKAR-JOSHI, J.]