

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

ANTICIPATORY BAIL APPLICATION NO.1775 OF 2019

Anil hari Dardi & Anr.

.... Applicants

versus

The State of Maharashtra

.... Respondent

.....

- Mr.Saurabh Butala i/b. Amogh P. Khadye, Advocate for Applicant.
- Ms.S.S. Kaushik, APP for the State/Respondent.
- Mr.Manish Mazgaonkar, Advocate for complainant.
- PHC Mr.Anil Pandurang Chandane, Khed Police Station, Ratnagiri, present.

CORAM : SARANG V. KOTWAL, J.

DATE : 26th AUGUST, 2019

P.C. :

1. The Applicants are seeking anticipatory bail in connection with C.R.No.193/19 registered with Khed Police Station, Ratnagiri, under sections 420, 423, 463, 464, 465, 468, 470, 471 r/w 34 of the Indian Penal Code.
2. The FIR is lodged on 19/06/2019 by one Bhiva Sadashiv Fage. A copy of the FIR was not available with the

Applicants. On the last occasion learned APP gave a copy of the same to the learned Counsel for the Applicant. A copy of the same FIR is produced in the Court today. It is taken on record and marked as 'X' for identification.

3. The FIR dated 19/06/2019 mentions that the first informant was one of the owners of the land situated at Survey No.311/A1 admeasuring 16.78 R. Out of that the names of the co-owners including the first informant was mentioned in respect of the land admeasuring 8 R. It is mentioned further that on 26/03/2010 the Applicant No.1 got one power of attorney executed in his favour purportedly by the informant's uncle Sitaram Keru Fage and Sonu Keru Fage. The power of attorney was registered with the Sub-Registrar vide document No.520/2010. On that day, both the executants were alive. The informant has alleged that the said document was executed without seeking consent from the other co-owners including the first informant. On 18/05/2010 the land admeasuring 8 R from the said survey number was sold by the Applicant No.1 to the

Applicant No.2. The Applicant No.1 had executed that document by virtue of the power of the attorney executed in his favour by Sitaram Fage and Sonu Fage. It is mentioned in the FIR that the said sale was fraudulent and the Applicant No.1 could not have executed the said power of attorney because Sonu Fage had expired before that. It is mentioned that the Applicant had given a false declaration that both the executants i.e. Sitaram Fage and Sonu Fage were alive on the date of registration of the sale deed in favour of Applicant No.2. On this basis, the FIR is lodged.

4. Heard learned Counsel Mr.Saurabh Butala for the Applicant, learned Counsel Mr.Manish Mazgaonkar for the Intervener and learned APP Ms.S.S. Kaushik for the State.
5. Mr.Butala submitted that the Applicants were residing in a house built in the same land since prior to 1995 and the informant was aware of their possession. He submitted that the permission to repair the house was obtained in the year 1995

itself and therefore the informant after so many years again claimed that they were not aware of the existence of the house in the land. He further submitted that the power of attorney was executed in favour of the Applicant No.1 for consideration and therefore even after death of one of the executants of that document, the power of attorney survived and was effective. He further submitted that section 44 of the Transfer of Property Act, 1882, gives a right to the co-owners to sale their share of the property and that is what exactly Sitaram Fage and Sonu Fage had done and there is nothing wrong in the transaction. He submitted that if at all there is any dispute, it could be a civil dispute. The informant has not approached the Civil Court in exercise of his rights and for declaration of his rights. He therefore submitted that custodial interrogation of the Applicant is not necessary.

6. Learned Counsel for the informant submitted that the transaction was entered into by the Applicant No.1 firstly while executing the power of attorney and secondly while executing

the sale deed without informing the other co-owners. He submitted that the name of the present Applicant No.2 is not entered into the revenue records and the litigation is pending before the Divisional Commissioner. He submitted that the Applicant did not have any right to this property and the entire transaction is fraudulent. Learned APP relied on the report of the Sub-Divisional Officer, which has reiterated the allegations in the FIR.

7. I have considered these submissions. The learned Counsel for the Applicant rightly relied on the permission granted by the Gram Panchayat in the year 1995, wherein the Applicant No.2 was granted permission for carrying on construction and repairs in the house. Survey number mentioned in that permission matches with the survey number of the land in question i.e. Survey No.311 and even the area is also mentioned as 8 R. Thus, right from the year 1995, the Applicant No.2 was treated as the owner of that building and was in possession. The informant has not taken any action since

1995. The power of attorney was executed in respect of 8 R of the land out of 16 R mentioned in the 7/12 extract. Thus, executant Sitaram Fage and Sonu Fage had sold their share of the land, which they were entitled to transfer. The sale deed executed by the Applicant No.1 in favour of Applicant No.2 mentions recitals with the sellers i.e. Sitaram Fage and Sonu Fage were selling land in their share. Thus, the informant's share was not affected by this transaction. The only wrong doing on the part of the Applicant No.1 appears to be the false declaration in respect of Sonu Fage who had already died before this sale deed was executed. The Applicant No.1 had given a declaration that on the date of registration of the sale deed, he was alive. This, obviously, was a false declaration. However, the document speaks for itself and for that purpose his custodial interrogation is not necessary. Rights of the parties including that of the first informant can be established through proper civil proceedings. The Applicant No.1 will have to establish that the power of attorney was executed for consideration. The contentious issues can be resolved in the appropriate civil proceedings. In this view

of the matter, taking into account that the Applicant No.2 purchased the property for consideration and the co-owners were entitled to part with their property, custodial interrogation of the Applicant is not necessary. Hence, the following order :

ORDER

- (i) In the event of their arrest in connection with C.R.No.193/19 registered with Khed Police Station, Ratnagiri, the Applicants are directed to be released on bail on his furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) each, with one or two sureties each, in the like amount.
- (ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)