

Filed On 2 JUL 2012

IN THE COURT OF CIVIL JUDGE SR. DIVISION
PUNE AT PUNE

Superintendent
Civil Court, Sr. Div., Pune.

SPL. CIVIL SUIT NO. : 839/2012

- 1) Mr. Pandurang Mhaskuji Galande)
Age about 65 Years, Occ.-Agri./Business,)
- 2) Mr. Umesh Pandurang Galande)
Age about 45 Years, Occ.-Agri./Business,)
- 3) Mr. Sham Pandurang Galande) PLAINTIFFS
Age about 40 Years, Occ.-Agri./Business,)
All R/At - S.No. 29, Ramwadi Gaonthan,)
Nagar Road, Pune 411 014.)

V/S.

- 1) Mr. Madhukar Mhaskuji Galande)
Age about 66 Years, Occ.-Agri.,)
- 2) Mr. Sanjay Madhukar Galande)
Age about 47 Years, Occ.-Agri.,)
- 3) Mr. Arvind Madhukar Galande)
Age about 39 Years, Occ.-Agri.,)
Nos.1 to 3 All R/At -)
S.No. 29, Ramwadi Gaonthan,) DEFENDANTS
Nagar Road, Pune 411 014.)
- 4) Karan Group Development Corporation)
A registered Partnership Firm,)
Having its office at -)
4, Abhivadan Apartments,)
1284, Shivaji Nagar, Pune 411 005.)
Through its Partners --)

- A) Mr. Kalyan Baburao Taware)
Age about 46 Years, Occ. – Business)
- B) Mr. Dipak Vilasrao Jagtap)
Age about 34 Years, Occ.–Agri/Business,))
“A” & “B” R/At – As above.)
- 5) Mr. Shekhar Haribhau Galande)
Age about 41 Years, Occ.–Agri/Business,))
- 6) Mr. Nitin Haribhau Galande)
Age about 39 Years, Occ.–Agri/Business,))
- 7) Mr. Maruti Krushnaji Galande)
Age about 64 Years, Occ.–Agri/Business,))
- 8) Smt. Sushila Wamanrao Galande)
Age about 41 Years, Occ.–Agri,)
- 9) Mr. Chandrakant Ramchandra Galande)
Age about 77 Years, Occ.–Agri/Business,))
- 10) Mr. Keshav Ramchandra Galande) DEFENDANTS
Age about 72 Years, Occ.–Agri/Business,))
- 11) Mr. Dnyaneshwar Ramchandra Galande)
Age about 67 Years, Occ.–Agri/Business,))
- 12) Mr. Vitthal Khanduji Galande)
Age about 87 Years, Occ.–Agri/Business,))
- 13) Mr. Laxman Khanduji Galande)
Age about 85 Years, Occ.–Agri/Business,))
Nos.5 to 13 All R/At –)
Ramwadi Gaonthan, Nagar Road,)
Pune 411 014.)

THE SUIT FOR PARTITION,
CANCELLATION . OF
DEVELOPMENT AGREEMENT AND
INJUNCTION
VALUED AT RS. /-

The Plaintiff most respectfully submits as under -

1. Description of the properties --

A) Agricultural land bearing Survey No. 59, Hissa No. 1, total admeasuring about 00 Hecter 65 Ares. + Potkharaba 00 Hecter 11 Ares., assessed at Rs. 00.50 Ps., situated at Village Vadgaonsheri, within the registration Sub-District Taluka Haveli and registration District of Pune and within the limits of Pune Municipal Corporation, and within the jurisdiction of Sub-Registrar Haveli No. VII & bounded as under --

On or towards East : S.No. 59/2
On or towards West : S.No. 55
On or towards South : S.No. 59/3
On or towards North : 12 Mtr. R.P. Road & thereafter
S.No. 52

B) Agricultural land bearing Survey No. 59, Hissa No. 3, total admeasuring about 02 Hecter 06 Ares. + Potkharaba 00 Hecter 49 Ares., assessed at Rs. 06.75 Ps., situated at Village Vadgaonsheri, within the registration Sub-District Taluka Haveli and registration District of Pune and within the limits of Pune Municipal Corporation, and within the jurisdiction of Sub-Registrar Haveli No. VII, out of the said entire land only 1/2 land is the subject matter of the suit. The remaining 1/2 property belonged to the Defendant Nos.5 to 10 & the entire land bounded as under --

On or towards East : S.No. 59/2
On or towards West : S.No. 55
On or towards South : S.No. 59/3
On or towards North : 12 Mtr. R.P. Road & thereafter
S.No. 52

Hereinafter aforesaid properties are called "the suit land A and B"

C) Agricultural land bearing Survey No. 55, Hissa No. 2, assessed at Rs. 10.00 Ps., situated at Village Kharadi, within the registration Sub-District Taluka Haveli and registration District of Pune and within the limits of Pune Municipal Corporation, and within the jurisdiction of Sub-Registrar Haveli No. VII, inspite of the fact that the land allotted to the share of Plaintiff in Partition Deed dt. 29/05/2006, but inspite to the same the Defendant No.1 sold out various pieces of land out of this land to third parties and due to the reasons mentioned below, the said is land put to partition in this suit.

D) Agricultural land bearing Survey No. 21, Hissa No.5, total admeasuring about 00 Hector 02 Ares., assessed at Rs. 00.06 Ps., situated at Village Vadgaonsheri, within the registration Sub-District Taluka Haveli and registration District of Pune and within the limits of Pune Municipal Corporation, and within the jurisdiction of Sub-Registrar Haveli No. VII

E) Agricultural land bearing Survey No. 21, Hissa No. 4, total admeasuring about 00 Hector 18.2 Ares., assessed at Rs. 00.56 Ps., situated at Village Vadgaonsheri, within the registration Sub-District Taluka Haveli and registration District of Pune and within the limits of Pune Municipal Corporation, and within the jurisdiction of Sub-Registrar Haveli No. VII

F) Agricultural land bearing Survey No. 30, Hissa No. 9, total admeasuring about 00 Hector 03 Ares., assessed at Rs. 00.03 Ps., situated at Village Vadgaonsheri, within the registration Sub-District Taluka Haveli and registration District of Pune and within the limits of Pune Municipal Corporation, and within the jurisdiction of Sub-Registrar Haveli No. VII

G) Agricultural land bearing Survey No. 23, Hissa No. A/9, total admeasuring about 00 Hector 06 Ares., assessed at Rs. 00.28 Ps., situated at Village Vadgaonsheri, within the

registration Sub-District Taluka Haveli and registration District of Pune and within the limits of Pune Municipal Corporation, and within the jurisdiction of Sub-Registrar Haveli No. VII

Hereinafter the aforesaid properties are called "the Suit Properties".

2. The Plaintiffs state that the Suit properties are the ancestral and joint family properties of the Plaintiffs and the Defendant Nos.1 to 3. One Mr. Namaji Bhivji Galande was the grand father of the Plaintiff No.1 and the Defendant No.1. Subsequently the suit properties came to the exclusive name and possession of Mr. Mhaskuji Namaji Galande. Mr. Mhaskuji Namaji Galande expired on 31/07/1959. After the death of Late Mhaskuji, the names of the Plaintiff, the Defendant No.1, Tarabai Dattatraya Shewale, Mrs. Hirabai Shahaji Khandve and Nirabai Mhaskuji Galande were entered in revenue record of the suit properties being the sons and daughters and the only heirs of Late Mhaskuji Galande. Subsequently the daughters gave up their share by executing Release Deeds and thus the Plaintiffs and the Defendant Nos. 1 to 3 have become the absolute owners of the suit properties.

3. The Plaintiffs state that the Plaintiff Nos.2 & 3 are the sons of the Plaintiff No.1 and the Defendant Nos.2 & 3 are the sons of the Defendant No.1. Thus the Plaintiffs are jointly having 1/2 undivided share in the suit properties and the Defendant Nos.1 to 3 are having jointly 1/2 undivided share in the suit properties.

4. The Plaintiffs state that except aforesaid suit properties there are some other lands bearing S.Nos. 23A/7, 23A/9, 35/3/2, 21/2/1, 29/A/1/3/14 were also there belonged to the Plaintiffs and the Defendant Nos.1 to 3. But the Plaintiffs and the Defendant Nos.1 to 3 got the said properties partitioned in between them as per registered Partition Deed dt. 29/05/2006.

The said Partition Deed duly registered at Sr.No. 4271/1986 in the office of Sub-Registrar Haveli No. XX. However the suit properties kept joint in between them and remained to have been partitioned till today. Thus the suit properties has not been partitioned by metes and bounds in between the Plaintiffs and the Defendant Nos.1 to 3 till today. The Plaintiffs and the Defendant Nos.1 to 3 being co-owners, were/are jointly in actual and physical possession of the suit properties.

5. The Plaintiffs state that the Plaintiffs and the Defendant Nos.1 to 3 thought to have financial capacity of their own to develop their own business, decided to develop the suit land A & B. Being aware about the idea of the owners of the suit lands A & B, the Defendant Nos. 4(a) to 4(b) (For sake and brevity hereinafter referred as "the Defendant No.4) approached to the Plaintiffs and other owners. After having talk in between the owners of the suit land A & B and the Defendant No.4 would develop the suit lands A & B on behalf of the owners of the suit properties.

6. The Defendant No.4 had also negotiated with the Defendant Nos.5 to 13 and their family members being owners of the lands bearing Survey No. 59/2 and 1/2 of S.No. 59/3 for development. The Plaintiffs or Defendant Nos.1 to 3 have no concern with the said lands or with the owners of the said lands. The Plaintiffs are not having any interest or claim against the said lands or the owners thereof. No relief is claimed in respect of the said lands or in respect of the transaction in between the owners of the aforesaid lands and the Defendant No.4. However since the Defendant No.4 decided to prepare and to execute one Development Agreement in respect of suit lands A & B and the aforesaid lands together and since the Defendant No.4 also agreed to pay total consideration of Rs. 4,50,00,000/- (Rs. Four Crore Fifty Lakh only) to the Plaintiffs, Defendant Nos.1 to 3 and 4 to 13 and their family members as per their share in the suit lands A & B and above mentioned lands of the Defendant Nos.5 to 13, the Plaintiffs have made the head of

family as the party Defendants being Defendant Nos.5 to 13 to avoid any technical objection. The Defendant Nos.5 to 13 are having no concern with the suit properties. They do not have any kinds of right, title and interest in the suit properties. Thus the Defendant Nos.5 to 13 may not appear in this suit and may remain absent if they so desire.

7. The Plaintiffs state that accordingly the development Agreement was came to be executed on 24/11/2005. The said Agreement was duly registered at Sr.No. 9879/2005. The owners of the suit land A & B also executed General Power of Attorney on the same day authorizing the Defendant No.4 to complete all the work conveniently, smoothly and rapidly.

8. The Plaintiffs state that as per the aforesaid Development Agreement, 40500 Sq.Mtrs. lands were to be given to the Defendant No.4 by the Plaintiffs and the Defendant Nos.1 to 3 and 5 to 13 and their family members. As per the said Agreement it was agreed that the rate of the suit land A & B would be Rs. 1111.12 per Sq.Mtrs. Accordingly the Plaintiffs were entitled to get a total sum of Rs. 1,13,05,646/- (Rs. One Crore Thirteen Lakh Five Thousand Six Hundred and Fourty Six only). And the Defendant Nos.1 to 3 were entitled to get a total sum of Rs. 1,13,05,646/- (Rs. One Crore Thirteen Lakh Five Thousand Six Hundred and Fourty Six only). Out of the said total amount, the Defendant No.4 had given an amount of Rs. 26,00,000/- (Rs. Twenty Six Lakh only) at the time of entering into the Development Agreement and more substantial amount of Rs. 87,05,646/- (Rs. Eighty Seven Lakh Five Thousand Six Hundred Fourty Six only) (hereinafter called "the due amount") was to remained to be given to the Plaintiffs, as per their share in the suit properties, from the total remaining amount of Rs. 3,37,50,000/-. The Defendant No.4 did not pay the due amount till today.

9. It was agreed that the due amount was to be given by the Defendant No.4 to the Plaintiffs when work of development

would be started and also within two years thereafter. But the Defendant No.4 did not do anything towards the development of the suit lands A & B till today. The Defendant No.4 did not pay the due amount to the Plaintiffs. Seven years passed away, but the Defendant No.4 purposefully neglected to carry or work for development only with malafide intention to withhold further payment and kept the Plaintiffs upon pendulum. There was no injunction from any court of law in or upon the suit land A & B or there was no hurdle of any kind for the Defendant No.4 for development and for payment of due amount to the Plaintiffs. However whenever the Plaintiffs inquired about the development and payment of due amount, the Defendant No.4 replied in evasive manner. The Defendant No.1 started making false pretext one after another and started avoiding the Plaintiffs for years together. Lastly the Defendant No.4 have said that "do whatever you want, you cannot do anything to us. We will not give you a single paisa. All shareholders of the lands of the agreement are with us.". Hence the Plaintiffs had reason to belief that the Defendant No.4 colluded with the Defendant Nos.1 to 3 with malafide intention to deprive the Plaintiffs from getting consideration of the agreement. The Defendants tried to grab the lawful consideration of the Plaintiffs in the agreement against the suit lands A & B.

10. On the other hand the Defendant Nos.1 to 3 also started various fraudulent game to harass the Plaintiffs. As stated above that the Plaintiff No.1 and the Defendant No.1 entered into a partition Deed dt. 29/05/2006 in respect of the agriculture lands bearing Survey Nos. 23A/7, 23A/9, 35/3/2, 21/2/1, 29A/1/3/14 and Survey No. 55/2. the Plaintiffs and the Defendant Nos.1 to 3 kept the suit properties joint for jointly develop the suit properties. However since the Defendant Nos.1 to 3 illegally and fraudulently have sold out certain piece of land out of land bearing Survey No. 55/2 behind the back of the Plaintiffs and violating the partition deed, the Plaintiffs now do not want keep the suit properties joint with the Defendant Nos.1 to 3. Hence the Plaintiffs have filed the suit for partition of all the remaining lands, kept joint after partition deed, and have put the land bearing Survey No. 55/2 for re-partition in this partition suit.

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11. the Plaintiffs states that, the Plaintiff No.1, thus, sent Notice dt. 04/12/2010 to the Defendant No.1 for partition of the suit properties through their Advocate Vijay S. Pharate. However very surprisingly the Defendant No.1 denied for the partition of the suit properties and sent reply dt. 15/12/2010 to the Plaintiffs with false and concocted contents in malafide intention to grab the share of the Plaintiffs in the entire suit properties. The Plaintiffs state that the Defendant Nos.1 to 3 have been colluded with the Defendant No.4 and instigated to grab the legal share in the suit lands A & B. The Plaintiffs have also sent Notice dt. 06/07/2011 to the Defendant No.4 through their Advocate Vijay S. Pharate and terminated the Power of Attorney and the development Agreement dt. 24/11/2005 to the extent of their share in the suit lands A & B. The Defendant No.4 received the said notice of the Plaintiffs but still did not pay a single paisa to the Plaintiffs or offered to pay. The Plaintiffs, then given Public Notice in the daily Newspaper "Prabhat" dt. 05/12/2011 informed the Public at large regarding the termination of Power of Attorney and Agreement. However the very surprisingly the Defendant No.4 sent reply of the said Public Notice and denied to stop work on the basis of the said Power of Attorney. The Plaintiffs, thereafter, constrained to execute Deed of declaration dt. 01/12/2011 and registered the same declaring the fact of cancellation of Power of Attorney at Sr.No. 10542/2011 in the office of Sub-Registrar Haveli No. VII. It is very surprising to note the Defendant No.4 has never shown his willingness to pay the remaining amount to the Plaintiffs. On the other hand the Defendant No.4 is not threatening to the Plaintiffs in collusion with the other Defendants and taking the undue advantage of joint agreement with other Defendants.

12. The Plaintiffs state that last 7 years the Defendant No.4 kept the Plaintiffs upon pendulum. The Defendant No.4 was allowed to enter into possession of the suit lands A & B for the purpose of development while entering into the Development Agreement. But the Defendant No.4 did not take the opportunity

to develop the suit land A & B and kept the Plaintiffs lingering to fulfil the transaction for last 7 years. There was no hurdle of any kind for development of the suit properties but the Defendant No.4 never made effort for development and for payment of due amount of the Plaintiffs. Had the Plaintiffs received the entire consideration in time they could have utilized the same in their business and could have earned a lot. On the other hand the price of the properties reached to sky within the 7 years. Within 7 years the price has gone upto 10 times more than it was before 7 years. Considering all the aspects, the Plaintiffs have sustained a heavy monetary loss of more than Fifty Lakhs in the development agreement with the Defendant No.4. Hence the Defendant No.4 is not entitled to get back the amount of Rs. 26,00,000/- (Rs. Twenty Six Lakh only) from the Plaintiffs. The suit lands A & B still open and vacant and in possession of the Plaintiffs and the Defendant Nos.1 to 3 jointly. Thus the title and possession of the suit lands A & B have not been passed to the Defendant No.4 legally and validly till today.

13. Now the Plaintiffs have no faith upon the Defendants. The Plaintiffs do not want to allow the Defendant No.4 continuous lingering the transaction by taking undue advantage of joint Development Agreement and Power of Attorney dt. 24/11/2005. However, inspite of terminating the joint development Agreement and Power of Attorney by the Plaintiffs in law full manner, the Defendant No.4 is still claiming development right upon the suit lands A & B by taking the undue advantage of the said joint Development Agreement and Power of attorney (Hereinafter referred as the "the POA" instead) and using the same on behalf of the Plaintiffs unlawfully in high handed manner. Hence the Plaintiffs have filed the suit for declaration to the effect that the Development Agreement and POA has been legally and validly cancelled and terminated by the Plaintiffs and also for injunction.

14. The Plaintiffs state that the Plaintiffs are having 1/2 undivided share in the suit properties. They do not want to keep their possession joint with the Defendant Nos.1 to 3 hereafter. Hence the Plaintiffs are seeking partition of the suit properties

and for getting their share divided by metes and bounds in this suit itself.

15. As stated above, the cause of action for the suit of partition arose when the Plaintiff No.1 sent Notice dt. 04/12/2010 to the Defendant No.1 for claiming partition of the suit properties through their Advocate Vijay S. Pharate and very surprisingly the Defendant No.1 denied for the partition of the suit properties and sent reply dt. 15/12/2010 to the Plaintiffs with false and concocted contents in malafide intention to grab the share of the Plaintiffs in the entire suit properties and the same is being continued till today. Similarly when the Plaintiffs inquired about the development of the suit lands A & B and for payment of the due amount of consideration to the Defendant No.4 in the month of June, 2011 and the Defendant No.4 replied in evasive manner and said that, "do whatever you want. You cannot do anything to us. We will not give you a single paisa. All other shareholders of the lands of the agreement are with us." The said cause of action again arose when the Plaintiffs sent Notice dt. 06/07/2011 to the Defendant No.4 through their Advocate vijay S. Pharate and terminated the Power of Attorney and the Development Agreement dt. 24/11/2005 to the extent of their share and called upon the Defendant No.4 for not to do anything and any development activity, towards development on the suit lands A & B for and on behalf of the Plaintiffs on the basis of Power of Attorney, but the Defendant refused to do so and sent reply dt. 01/08/2011 with false and baseless contents. The Plaintiffs thereafter have given public Notice in the daily News paper "Prabhat" dt. 05/12/2011 informed the public at large regarding the termination of Power of Attorney and Agreement. However the very surprisingly the Defendant No.4 sent reply dt. 20/12/2011 to the said Public Notice and denied to stop work on the basis of the said POA. The Plaintiffs thereafter, constrained to execute Deed of Declaration dt. 01/12/2011 and registered the same declaring the fact of cancellation of POA, at Sr.No. 10542/2011 in the office of Sub-registrar Haveli No. VII. But the Defendant No.4 instead of stopping itself from claiming right of development, is now threatening to the Plaintiffs in collusion

with the other Defendants and it gives raise the cause to file the suit, which is being continued day today till today. The Plaintiffs state that the Development Agreement is void for without consideration and the same and the POA has been legally and validly terminated by the Plaintiffs. Now the Defendant No.4 has not right, title or interest to do any work or claim any interest in the suit properties A & B on the basis of the said development Agreement and POA.

16. The suit is for partition of the suit properties and claiming 1/2 share in the same. Since the suit properties are being agriculture lands, is valued at the 200 times of the assessment of revenue i.e. Rs. 00.50 Ps. + 06.75 + 10.00 + 0.28 + 0.03 + 0.56 + 0.06 = 18.18. In the suit properties the Plaintiffs are having 1/2 share. Thus valuation of the suit for court fee would be Rs. 18.18 / 2 = 09.09 x 200 = 1818. The suit is also for declaration regarding the Development Agreement valued at Rs. 4,50,00,000/-. As stated above, the Plaintiffs are having 1/2 share in the suit lands A & B and thus the Plaintiffs were entitled to get Rs. 2,25,00,000/- as consideration in the Development Agreement. However since the said Agreement has been terminated by the Plaintiffs to the extent of their share and seeking declaration accordingly, the valuation of the suit for court fee of the Plaintiffs would be Rs. 2,25,00,000/- and 1/2 advalorem court is to be paid thereof. The suit is also for injunction and hence the valuation of the suit would be Rs. 1,000/-. Hence the total valuation of the suit would be Rs. 1,818/- + Rs. 2,25,00,000/- + Rs. 1,000/- = Rs. 2,25,02,818/- and required court fee is paid thereon.

17. The suit properties situated within the jurisdiction of this Hon'ble court. The Development Agreement is also entered into between the parties within the local limits of this Hon'ble Court and hence this Hon'ble Court has got jurisdiction to try and entertain the suit.

18. It is, therefore, prayed that --

A) The suit of the Plaintiffs may kindly be decreed.

- B) The suit properties as described in para 1 of the plaint may kindly divided by metes and bound and 1/2 share of the Plaintiffs may kindly handed over to the Plaintiffs.
- ✓ C) It may kindly be declared that the development Agreement and Power of Attorney dt. 24/11/2005 and registered at Sr.No. 9879/2005 and 9880/2005 respectively, have been terminated and cancelled, to the extent the share of the Plaintiffs in the suit lands A & B and the same are not binding upon the Plaintiffs.
- ✓ D) The Defendant No.4 may kindly be restrained perpetually from carrying out any kinds of development activity or creating third party interest in or upon the share of the Plaintiffs in the suit lands A & B.
- ✓ E) the Defendant No.4 may kindly be restrained temporarily from carrying out any kinds of development activity or creating third party interest in or upon the suit lands A & B, till the decision of the suit. A separate application for the same is filed herewith.
- F) The costs of the suit may kindly awarded to the plaintiffs from the Defendant Nos. 1 to 4.
- G) Any other just and equitable order may be passed in favour of the Plaintiffs, in the interest of justice.

PUNE

DATE : /06/2012

1)

2)

3)

ADVOCATE FOR
PLAINTIFFS

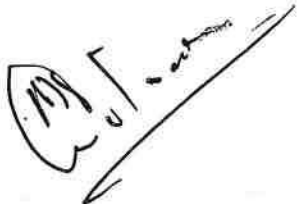
PLAINTIFFS

VERIFICATION

We, 1) Mr. Pandurang Mhaskuji Galande, Age about 65 Years, Occ.-Agri./Business, 2) Mr. Umesh Pandurang Galande, Age about 45 Years, Occ.-Agri./Business, & 3) Mr. Sham Pandurang Galande, Age about 40 Years, Occ.-Agri./Business, All R/At - S.No. 29, Ramwadi Gaonthan, Nagar Road, Pune 411 014, the present Plaintiffs state on solemn affirmation that the contents from this Plaint are true and correct to the best of our knowledge, information and belief and hence we have signed this today at Pune.

PUNE

DATE : /06/2012

- 1) 
- 2) 
- 3) 

PLAINTIFFS