

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 480 OF 2017

Suraj Shankarrao Nevse And Anr.

... Appellants

Versus

Iqbal Abbas Bagwan (Decd.) Thr. Lrs.

Dilshad Iqbal Bagwan And Ors.

... Respondents

Mr. Rahul S. Kate *for the Appellants.*

Mr. Utkarsh Pondkule *a/w Mr. Rupesh A. Zade for Respondent Nos. 1 a to 1d.*

CORAM : SANDEEP V. MARNE, J.

DATE : 9 SEPTEMBER 2026.

P.C. :

1) The Appeal challenges Judgment and decree dated 4 December 2015 passed by the Ad-hoc District Judge-2, Baramati dismissing the Civil Appeal No. 45 of 2010 and confirming the decree of the Trial Court dated 18 February 2010, passed by the Joint Civil Judge, Junior Division, Baramati, in Regular Civil Suit No. 66 of 1998. The First Appellate Court has reversed the findings of the Trial Court on the issues of limitation as well as suit properties being ancestral properties. However, the First Appellate Court has agreed with the finding of the Trial Court that the suit properties were alienated by father-Defendant No.2 vide sale deeds dated 18 June 1986 because of legal necessity. Thus, on the issue of legal necessity, there are concurrent findings of fact by both the Courts.

2) I have heard Mr. Kate, the learned counsel appearing for the Appellants and Mr. Pondkule, the learned counsel appearing for Respondents and have considered the submissions canvassed by them.

3) The suit was instituted by the Plaintiffs challenging the sale deeds dated 18 June 1986 and seeking a declaration that the same are not binding on their share. Plaintiffs' father (Defendant No.2) executed the said two sale deeds dated 18 June 1986 in favour of Defendant No.1 during minority of the Plaintiffs. It was the case of Defendant No.1-Purchaser that the suit property was alienated by Defendant No.2/Father due to the legal necessity. On the other hand, it was the assertion of the Plaintiffs that there are no requirement of funds by Defendant No.2-Father and that he was addicted to liquor and gambling and hence sold the ancestral suit property in which Plaintiffs have a share. The suit was resisted by Defendant No.1 on the ground of limitation, as well as by taking the plea that the suit property is not the ancestral property. The Trial Court accepted the version of Defendant No.1 on both the issues and proceeded to hold that the suit was not within limitation and that suit properties are not ancestral properties. These two findings are however reversed by the First Appellate Court holding that the suit is within limitation and that the suit properties are the ancestral properties.

4) Thus, the only issue that remains to be decided was about existence of legal necessity for Defendant No.2-father to execute the sale deeds dated 18 June 1986.

5) According to Mr. Kate, Defendant No. 1 gave an emphatic admission during the course of his cross-examination that no member of family of Defendant No.2 was seriously ill during the period 1983 to 1986, when payments are shown to have been made by Defendant No.1 to Defendant No.2. I have gone through the cross-examination of Defendant No.1 and there appears to be an admission of absence of any serious illness of family member of Defendant No.2 during 1983-1986. However, there are at least three factors which indicate the need for funds by Defendant No.2. Witness Bashir Bagwan deposed before the Trial Court that Defendant No.2 used to borrow money from him for the purpose of medical treatment of his intellectually disabled daughter. Plaintiff No.1 admitted in his cross-examination that the said daughter (Padmini) passed away at the age of 10 years. It has also come in evidence that both the Plaintiffs were minors at the time of alienation of the suit properties and were taking their education. Thus, there is evidence on record to demonstrate the legal necessity of funds for medical treatment and education. There is total absence of any evidence that Defendant No.2 was addicted to liquor and gambling as sought to be suggested by the Plaintiffs. Defendant No.2 was alive when the suit was decided. However, Plaintiffs took a chance and did not examine Defendant No.2 and withheld his evidence from the Court. In my view, therefore, there is some material on record to presume existence of legal necessity, which is also reflected in the recitals to the sale deeds.

6) Mr. Kate has relied on judgment of this Court in ***Basheer S/o Amir Patel (since Deceased) Through its L.Rs. Madina Bee Bashir Patel & Ors. Vs. Dnyaneshwar S/o Bhikarchand Through its L.Rs. Dattu***

Dnyaneshwar Sonawane & Ors.¹ in which it is held in paragraph 17 as under:

17. The learned District Judge has considered this aspect in paragraphs 15 observed that, no doubt, there was outstanding amount of loan of Tagai. However, there was no pressing demand for recovery of said loan. There was neither any attachment nor any notice for sale of the suit land. At the most, it can be said that there was dues and the said dues are from 1954-55. The liability was not pressing liability. In the case of Smt. Rani and another (supra), the Apex Court has held that **legal necessity does not mean actual compulsion. It means pressure upon the estate which in law may be regarded as serious and sufficient.** The onus of legal necessity may be discharged by the alienee by proof of actual necessity or by proof that he made proper and bona fide enquiries about the existence of the necessity and that he did all that was reasonable to satisfy himself as to the existence of the necessity. Perusal of the recitals in the sale deed shows that the property was sold for meeting private expenses. It, however, does not refer to either Govt. debt or debt obtained privately. No material is produced on record by the defendant No. 2 as regards the legal necessity at the time of the execution of the sale deed dated 8-4-1969. No material is also produced by defendant No. 2 to show that he had made proper and bona fide enquiries and he did all that was reasonable to satisfy himself as to the existence of the necessity. If the tests laid down by the Apex Court in the case of Smt. Rani and another (supra) are applied to the present case, I do not find that the learned District Judge committed any error in holding that the defendant No. 2 did not establish expenses of legal necessity.

No doubt, legal necessity means the existence of circumstances requiring alienation of ancestral property. In the present case, Defendant No.1 has established existence of circumstances which would have necessitated alienation of suit property by Defendant No.2. The case does not involve total absence of evidence regarding existence of any compulsive eventuality requiring alienation of the suit property.

1 2015 (5) Mh.L.J. 853

7) In view of the above discussion, I am not inclined to interfere in the concurrent findings of fact recorded by the Trial and First Appellate Court on the issue of existence of legal necessity. No substantial question of law is involved in the Appeal. The Second Appeal is accordingly **rejected**.

[SANDEEP V. MARNE, J.]