

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 292 OF 2011

SUNIL @ MAHALSAKANT AND ORS
VERSUS
SHIVMURTI KESHAV YADAV (DIED) AND ORS

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Advocate for Appellants : Smt. Kulkarni M.A.
Advocate for Respondents 1A to AC : Shri Khandare N.B.
Advocate for Respondents 4 & 5 : Shri Bhumkar V.R.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 17, 2015

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PER COURT :-

1. The contention of the appellants / original plaintiffs is that the RCS No.431 of 1994 was filed for seeking partition and separate possession. Issue of preferential right to purchase was raised. Defendant No.7 had opposed the suit by contending that the property was sold to defendant Nos.1 to 3 in the light of there existing a legal necessity.

2. Learned Advocate for the appellants submits that the issue of preemption was raised in the plaint and as such, the trial Court should have framed an issue. It is further submitted that in the absence of the said issue, the trial Court could not have proceeded with the suit.

3. The judgment of the trial Court in RCS No.431 of 1994, dated 26.7.1994, has resulted in the suit being partly decreed. The plaintiffs were held entitled for partition and separate possession to the extent of 1/4th share each, in the suit property, excluding the property alienated by

defendant No.7 in favour of defendant Nos.1 to 3 by sale deed, DB No.1310, dated 21.4.1975 and DB No. 1919, dated 13.7.1976.

4. In the Regular Civil Appeal No.13 of 2000, it is evident that the issue of a preferential right to purchase the property has not been raised. Similarly, both the Courts, in the suit as well as in the First Appeal, have arrived at a conclusion that defendant No.7 had established, through oral and documentary evidence, that the portion of the land was sold to defendant Nos.1 to 3, out of a legal necessity, since defendant No.7 was required to repay outstanding loans.

5. Having heard the learned Advocate for the appellants and having gone through the appeal paper book as well as the memo of the plaint and the first appeal, I do not find that any substantial question of law is involved in this matter.

6. The Second Appeal is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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