

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.**

SECOND APPEAL NO. 430 OF 2012

1. Govind s/o Babu Lahane,
Age : 36 years, Occu : Agril.
2. Gavlanbai w/o Babu Lahane,
Age : 58 years, Occu : Agril.,
Both R/o. Mukegaon,
Tq. Renapur, Dist. Latur.
At present Borda, Tq. Gangakhed,
Dist. Parbhani.

... APPELLANTS
(Orig. Plaintiffs)

VERSUS

1. Babu s/o Kashiram Lahane,
Age : 60 years, Occu : Agril.
2. Shripati s/o Waman Lahane,
Age : 70 years, Occu : Agril.
3. Venkati s/o Pandurang Lahane,
Age : 50 years, Occu : Agril.
4. Govind s/o Nathrao Lahane,
Age: 48 years, Occu : Agril.
5. Shivaji s/o Vithal Lahane,
Age : 55 years, Occu : Agril.
6. Babu s/o Sitaram Kendre,
Age : 65 years, Occu: Agril.
All R/o Makegaon, Tq. Renapur,
Dist. Latur.
7. Madhukar s/o Govind Sanap,
Age : 50 years, Occu: Agril.
R/o. Wagdari, Tq. Gangakhed,
Dist. Parbhani.

8. Nagorao s/o Satwaji Lahane,
Age : 75 years, Occu: Agril.,
R/o Makegaon, Tq. Renapur,
Dist. Latur.

... **RESPONDENTS**
(Orig. Defendants)

.....
Mr Jayant R. Patil, Advocate for the appellants
.....

CORAM : **T. V. NALAWADE, J.**
DATE : **30TH SEPTEMBER, 2015.**

PER COURT:

. The present appeal is filed against the judgment and decree passed in R.C.S. No. 107 of 1992 and also against the judgment and decree in R.C.A. No. 6 of 2011 (Old No. 49/2002), which was pending in the Court of DJ-1 of Ahmedpur.

2. Heard learned Counsel appearing on behalf of the appellant.

3. The suit was filed by the appellants for relief of partition and separate possession of their share in the suit property. It is the case of the plaintiffs that, the property bearing Survey No. 59 of 2001 ad-measuring 1 Hecter 66 R is an ancestral property of plaintiff No. 1 and his father i.e. defendant No. 1. Plaintiff No.2 is the mother of

plaintiff No. 1 and wife of defendant No. 1. It is contended that this property is sold by defendant No. 1 to defendants No. 5 and 6 and in turn, this property is sold by defendants No. 5 and 6 to defendant No. 7. It is contended that, by the sale deed of 1981, the property was purchased by defendants No. 5 and 6 and one Narayan but, Narayan had transferred his share to defendants No. 5 and 6 in the year 1983. It is the case of the plaintiffs that, there was no legal necessity and due to the transaction made by his father, he is deprived of his share in the suit property.

4. The suit was filed in respect of the other properties also but during pendency of the suit, the plaintiffs compromised the remaining part of the suit with defendants No. 2, 3, 5 and 8 and the said portion of the suit came to be decided as per the compromise between the parties. The suit in respect of the present suit property was dismissed as against defendants No. 1, 5, 6 and 7.

5. The defendant no. 1, the father of plaintiff did not contest the suit. It is the case of the defendants No. 5 to 7 that, the suit property was sold by defendant No. 1 to them for legal necessity and from the sale proceeds another property was purchased for consideration of Rs. 6,000/- in the name of the plaintiff. It is

contended that, the suit property was purchased by them for lawful consideration for an amount of Rs. 10,000/- and, therefore, the sale deed is binding on the plaintiffs.

6. The issues were framed on aforesaid pleadings. Both the sides adduced the evidence. Both the Courts below have considered the following circumstance:

(i) The relations between plaintiff No. 1 and defendant No. 1, son and father, are good and they were not living separate. Within one year from the date of the disputed transaction, another land having area of 2 acres 6 gunthas was purchased in the name of plaintiff at the place where the plaintiffs and defendant No. 1 had shifted and the plaintiff had compromised the matter with other purchasers and defendant No. 1 had not filed W.S. to contest the suit.

(ii) Vinayak, who is the maternal uncle of the plaintiff, was not examined to substantiate the contention that aforesaid property was not purchased out of the sale proceeds and the transaction in question is also considered against the plaintiff.

7. The ld. Counsel for the appellant submitted that, in the appeal memo filed in the first appellate court, it was contended that

copy of sale deed was produced after recording of evidence of plaintiff was over and so there was no opportunity to the plaintiff to examine his uncle. He submitted that, the first appellate Court ought to have remanded the matter for giving opportunity to the plaintiff to examine his uncle. Admittedly, no application under Order 41 Rule 27 of Civil Procedure Code was made by the appellants. Such defence was taken by defendants No. 5 to 7 but no evidence was given in that regard.

8. Both the Courts below have come to the conclusion that there is apparently no dispute between the plaintiffs and defendant No. 1. The Courts below have held that, from the sale proceeds of transaction in question, another property was purchased in the name of plaintiff and so it cannot be said that there was no legal necessity. The amount of Rs. 6,000/-, which was used for purchasing the property in the name of the plaintiff in the year 1982, was a big amount and the area of 2 acres 6 gunthas was purchased. It needs to be kept in mind that in the property sold the defendant No. 1 had also share. There are no allegations against defendant No.1 from the side of the plaintiff and nothing is contended as to why the property was purchased in the name of the plaintiff by showing maternal uncle as guardian when mother has now filed a suit as next friend of plaintiff.

9. Ld. Counsel for the appellant placed reliance on the decision in the case of **Ganapati Santaram Bhosale and another v. Ramachandra Subbarao Kulkarni and others** reported in **AIR 1985. Karnataka 143** and submitted that, the present suit is governed by Article 109 of Limitation Act and not by Article 60. The property was sold as Karta by defendant No. 1 and so there is force in the submission made by learned Counsel for the appellant. It is also observed in reported cases that in suit for partition as co-parcener, there is no necessity to pray for relief of setting aside the sale made by karta.

10. The finding of both the courts below that there was legal necessity, is concurrent and all the evidence is considered by the Courts below. This Court holds that, it is not possible to formulate any substantial question of law on the basis of aforesaid contentions made by the appellant. In the result, the appeal stands dismissed.

[T. V. NALAWADE, J.]

sgp