

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

rpa

SECOND APPEAL NO.1015 OF 2005

Maruti Hanumant Mane
Vs.
Balu Bapu Dhang & Ors.

.. Appellant
.. Respondents

....
Mr.Umesh Mankapure, Advocate for the Appellant.
Mr.A.A. Garge, Advocate for Respondent No.1.
....

CORAM : RAVI K. DESHPANDE, J.

DATED : JUNE 8, 2015.

P.C. :

Regular Civil Suit No.128 of 1988 was partly decreed by the trial Court directing the defendants to deliver the possession of 5/16 share of the plaintiff in Gat No.257. This decision of the trial Court on 3rd July, 1997, was the subject matter of challenge in Regular Civil Appeal No.485 of 1997. The Appeal was allowed on 13th January, 2005 and the plaintiff is held entitled to 5/16 of the suit land Block No.155 and its partition and possession. The defendant no.9 who was the purchaser of the property during the pendency of the proceedings is before this Court in this Second Appeal.

2 The question involved was whether the land in question was sold for legal necessity. Undoubtedly, the plaintiff was minor aged about nine years at the time when the sale by the defendant no.1 mother to the defendant no.4 took place. The plaintiff has examined witnesses and the defendant no.4 purchaser of the property has also entered into the witness box and deposed. Both the Courts below have considered the evidence brought on record. The trial Court recorded the finding that the plaintiff has not brought on record any material to show that the defendant no.1 was having other income source which was sufficient for the expenses of the education of the minor child. The Appellate Court has recorded the finding after considering the evidence on record that the defendant no.4 has failed to establish that the alienation of the suit land was for legal necessity.

3 Undoubtedly, the burden was upon the defendant no.4 and the Appellate Court has on appreciation of evidence held that the defendant no.4 has failed to establish the legal necessity. The Appellate Court has further held that the defendant no.1 was not the *coparcener* and was not possessing legal position of a Karta of a joint Hindu family. It further holds that no permission was obtained from the Court for alienation of the minor's property. The Appellate Court has also taken into consideration the fact that the

defendant nos.4, 8 and 9 were the bonafide purchasers for valuable consideration and the said plea has been rejected. It is a matter clearly of appreciation and re-appreciation of the evidence, not giving rise to any substantial question of law. The Second Appeal is dismissed.

(RAVI K. DESHPANDE, J.)