

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

SECOND APPEAL NO.819 OF 2011

Shashikant Yeshwant Inamdar & Ors. ... Appellants

V/s.

Bajirao Sakharam Wagh
(Since deceased through Lrs)
1A. Vijay Bajirao Wagh & Anr. ... Respondents

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Mr.Rajesh N. Kachare i/b. Mr.Amit Palkar, Advocate for the Appellants.
Mr. B. A. Lawate, Advocate for the Respondents.

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CORAM : R.K. DESHPANDE, J.

DATED : JULY 28, 2015.

P.C.

Regular Civil Suit No.58 of 1985 filed by the plaintiff for declaration that the sale-deed executed by his father the defendant no.2 in favour of the defendant no.1 on 1st March, 1973, is not binding on the plaintiff's share in the suit land. The plaintiff also claimed possession of 3/4th share in the suit land i.e. half share in block no.1025 which is already obtained by the plaintiff to be retained with him. The suit was decreed on 31st January, 2005. The trial Court framed an issue as to whether the defendant no.1 has proved that the defendant no.2 sold the suit

property for legal necessity in the capacity of joint family manager. It is answered in the negative. In Regular Civil Appeal No.153 of 2010, the Lower Appellate Court has reversed the decision of the trial Court on the question of legal necessity on 14th July, 2011, and a suit filed by the plaintiff has been dismissed by setting aside the judgment of the trial Court. The original plaintiff is, therefore, before this Court in this Second Appeal.

2 It is brought on record that there was no partition effected between Ramchandra and his three sons namely:- Vasant, Yashwant and Shantaram. After this partition, the suit property was sold by Yeshwant on 1st March, 1973, in favour of the defendant no.1. The question was whether it was for legal necessity. Though, the trial Court recorded the finding against the defendant no.1, the Appellate Court has held that the defendant no.2 Yashwant was in need of money and it is for satisfying the execution proceeding (Darkhast) which was pending against him, that he entered into a mortgage transaction between the defendant no.1 which is at Exhibit - 50 dated 13th December, 1970. The Court considered the terms of mortgage deed to hold that Yashwant was in need of money and had taken loan of Rs.2,000/- from the defendant no.1 by

mortgaging his share out of survey no.105 for a period of five years. The decree was produced on record at Exhibit - 67 by the defendant no.2 and the sale - deed was executed in favour of the defendant no.1 on 1st March, 1973, mentioning the previous loan of Rs.2,000/- obtained in the year 1970 by the defendant. The Appellate Court also recorded the finding that the joint family constantly in need of money and the property was also sold due to family debts and it is therefore binding upon the plaintiff. The Lower Appellate Court has taken possible view of the matter which is based on evidence available on record and merely because the trial Court had taken a view in favour of the plaintiff holding that legal necessity is not proved, would not raise any substantial question of law. Second Appeal is dismissed.

JUDGE