

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

SECOND APPEAL NO. 512 OF 1991

1. Ramchandra Gangaram Sangole,
deceased through his heirs:
- 1A. Sadashiv Ramchandra Sangle,
Deceased heirs.
 - a. Vijay Sadashiv Sangle, 14 years,
 - b. Vinod Sadashiv Sangle, 12 years,
 - c. Sangita Sadashiv Sangle, 9 years,
 - d. Laxmi Sadashiv Sangle, 5 years,

(a to d minors through their guardian
Mother Sugandha Sadashiv)
- B. Bhimrao Ramchandra Sangole, 38 years,
- C. Tukaram Ramchandra Sangle
Deceased Per LRS.
- 1C(i) Mirabai Tukaram Sangle
Age: Major, Occu. Household
R/o Bhor, Tal. Raver
Dist. Jalgaon
- 1C(ii) Rajnish Tukaram Sangle
Age: Major, Occu: Agriculture
R/o As above
- 1C(iii) Nilesh Tukaram Sangle
Age: Major, Occu: Agriculture
R/o As above
- 1C(iv) Jayesh Tukaram Sangle
Age: Major, Occu: Agriculture
R/o As above
- D. Shantaram Ramchandra Sangle, 31 years,
- E. Vasant Ramchandra Sangle, 25 years,

- F. Sutandha Sadashiv Sangle, 32 years,
(Nos. B to F - R/o Bhor, Tal. Raver)
- G. Suman Pandurang Kute, Age: 35 years,
Occu: Household Work, R/o C/o
Pandurang Shankar Kute, Village
Saikheda, Tal. Niphad, Dist. Nashik.
- H. Pushpa Bhaskar Gite, Age : 28 years,
Occu: Household work, R/o
Shingane, Tal. Niphad, Dist. Nashik.
- I. Meera Keru Kedar, Age: 21 years,
Occu: Household, R/o Chincholi,
Tal. Sinner, Dist. Nashik.
- J. Sonabai W/o Ramchandra Sangle,
Age: 67 years, Occu: Household work, (Deleted)
- K. Bhikabai W/o Ramchandra Sangle,
Age: 60 years, Occu: Household work, (Deleted)
- L. deubai W/o Ramchandra Sangle,
Age: 60 years, Occu: Household work, (Deleted)
- (Nos. G to L R/o Bhor, Tal. Raver,
Dist. Jalgaon.)

(R. Nos. J, K, L, were deleted as per
order Passed by the Hon'ble courts
dated 3/11/2014 in CA No. 6492/10.)

2. Natharmal Savaldas Sindhi, Since
deceased through his legal heirs,
- 2A. Shri Jairam Natharmal Sinndhi,
Age: 42 years, Occu: Business,
- 2B. Shri Suresh Natharmal Sindhi,
Age: 34 years, Occu: Business,
Both R/o Bhor, Post Punkheda, Tal. Raver,
Dist. Jalgaon.

....Appellants.
(Ori. Defendants)

Versus

1. Shri Prakash Eknath Choudhari,
Age: 28 years, Occu: Agril., and
Labourer, R/o Khirward, Tal. Raver.
2. Smt. Laxmibai W/o Eknath Choudhari,
Age: 48 years, Occu: Labourer,
R/o Khirwad, Tal. Raver.
3. Shri Devidas Eknath Choudhari,
Age: 23 years, Occu: Education,
4. Shri Ashok Eknath Chaudhari,
Age: 21 years, Occu: Education,
5. Shri Vinayak Eknath Chaudhari,
Age: 19 years, Occu: Education,

All R/o Khirward, Tal. Raver,
Dist. Jalgaon.

....Respondents.
(Ori. Plaintiffs)

Mr. S.S. Bora, Advocate for appellants.

Mr. V. J. Dixit, Senior Counsel instructed by Mr. G.V. Wani,
Advocate for respondent Nos. 1 to 5.

CORAM : T.V. NALAWADE, J.
DATED : 10th August, 2016.

1) The appeal is filed against judgment and decree of Regular Civil Appeal No. 233/1983, which was pending in the Court of 2nd Additional District Judge, Jalgaon. The appeal of original plaintiffs against judgment and decree of Regular Civil Suit No. 89/1975 is allowed by the First Appellate Court and decree of possession is given by the District Court in favour of

original plaintiffs. Both the sides are heard.

2) In short, the facts leading to the institution of the appeal can be stated as follows :-

The suit was filed in respect of agricultural land bearing Survey No. 32 (Gat No. 107) admeasuring 3 H. 45 R. situated at village Khirwad, Tahsil Raver, District Jalgaon. It is the case of plaintiffs that the suit property was ancestral property of their father Eknath. Eknath was husband of plaintiff No. 2. It is contended that Eknath was addicted to bad habits like consuming liquor and gaming Satta.

3) It is the case of plaintiffs that defendant No. 1 is shrewd and cunning businessman, but Eknath trusted him very much. It is contended that defendant No. 1 made false representation to Eknath and when Eknath was under influence liquor, defendant No. 1 got first sale deed executed on 2.7.1969 of area of 4 Acres 20 Gunta of the suit land and then again by making false representation, defendant No. 1 got executed second sale deed dated 9.2.1971 in respect of remaining portion of 4 Acres 1 Gunta of the suit land from Eknath. It is contended that no consideration was paid by defendant No. 1 to Ekanth. It is contended that Joint Hindu Family of Ekanth, plaintiffs are not

benefitted due to these transactions and there was no legal necessity for selling the suit property. It is contended that in any case, Eknath had only 1/6th share in this property, as it was ancestral property of Ekanth, so transaction made by Ekanth in respect of 5/6th share of plaintiffs is not binding on the plaintiffs.

4) It is the case of plaintiffs that on 2.7.1969 the price of 4 Acres 20 Gunta land was more than Rs. 60,000/-. It is contended that when the second sale deed was executed, the price of the said land was more than Rs. 80,000/-. It is contended that on both the occasions, there was promise from defendant No. 1 to reconvey the property to Eknath.

5) The plaintiffs also contend that prior permission for execution of sale deeds was necessary of the Collector, but no such permission was obtained. It is contended that defendant No. 1 then transferred the property to defendant No. 2 and defendant No. 2 is not agriculturist and transaction made in favour of defendant No. 2 is not binding on the plaintiffs. They had prayed for relief of possession of entire portion of aforesaid survey number and in alternatively, they had prayed for possession of 5/6th share.

6) Defendant No. 1 filed written statement and denied the aforesaid contentions. Defendant No. 1 contended that Eknath was Karta of Joint Hindu Family of plaintiffs and Eknath. He contended that Dodhu was father of Eknath and during lifetime of Dodhu, loan was taken for taking well in Survey No. 32 for Dodhu and one more person. He contended that initially one motor pump run on electricity was fixed on well and then one oil engine was purchased for pumping water and for that also, there was need of money. It is contended that Dodhu and Eknath had started taking banana crop in Survey No. 32 and also in other lands taken for cultivation by them on Batai basis, but they could not make profit and so, they were heavily indebted. It is contended that they had laid pipeline for irrigation purpose and for that also, they had spent huge money. Defendant No. 1 specifically contended that loan was taken from Land Development Bank and one Vikas Society of the village. He contended that there was need of money to Eknath after the death of Dodhu due to aforesaid antecedent debt and for making payment of price of oil engine etc. He contended that the price of motor run on electricity was also not paid and Poona Machinery Shop was pressing for making payment of the price. It was contended by defendant No. 1 that some amount was taken by Dodhu and Eknath from persons like Laxman Nago Patil and

Damu Choudhary etc.

7) It is the case of defendant No. 1 that at the time of death of Datta, which took place in the year 1968, the family was heavily indebted and there was pressure on Eknath to make payment to aforesaid bank, society and other persons. It is contended that as the agriculture was not profitable, Eknath decided to sell the property and so, the first sale deed was executed on 2.7.1969.

8) It is the case of defendant No. 1 that from the agreed consideration of Rs. 15,000/- for the first transaction, he had directly paid the amount of Rs. 3,388/- to Land Development Bank and amount of Rs. 1,000/- to Raver Panchayat Samiti as the amounts were due to them from Eknath. He contended that the remaining amount was given to Eknath in presence of Sub-Registrar and he was to make payment of the other amount which was due. Defendant no. 1 contended that due to these circumstances, there was legal necessity. He denied that Eknath was addicted to bad vices and he was deceived and no consideration was paid to Eknath.

9) It is the case of defendant No. 1 that Eknath was

taking banana crop in his own land and also in the land of others and he could not repay the other debt and he again sustained losses. Defendant No. 1 contended that for repayment of antecedent debts and the amounts due to other creditors Eknath sold the remaining portion of the land under the second sale deed dated 9.2.1971 for consideration of Rs. 20,000/-. It was contended that the second transaction was also for legal necessity for making payment of antecedent debts and also for family expenses. It was denied that false representation was made to Eknath and no consideration was paid to him. Defendant No. 1 also denied that promise was given to reconvey the property to Eknath. It is contended that due to these circumstances, both the transactions are binding on plaintiffs.

10) Defendant No. 1 denied that market price of the land purchased by him was much more than shown in the sale deeds. He denied that defendant No. 2 was not agriculturist. He gave particulars of the lands cultivated by defendant No. 2. Defendant No. 2 filed separate written statement and he took the defence which is similar to the defence taken by defendant No. 1. In addition to that, defendant No. 2 contended that other properties are not included and the plaintiffs ought to have filed suit for general partition.

11) Issues were framed on the basis of aforesaid pleadings and they were as many as 10 issues. Both the sides gave evidence. The Trial Court had held that Eknath was Karta of Joint Hindu Family and the defendants have proved that for both the transactions, there was legal necessity. The Trial Court had held that consideration was paid by defendant No. 1 to Eknath. The Trial Court had further held that plaintiffs failed to prove that there was promise to Eknath from defendant No. 1 to reconvey the suit property. On the other hand, the First Appellate Court has held that no consideration was paid on both the occasions and the transactions were not made for legal necessity.

12) This Court (Other Hon'ble Judge) had initially allowed the appeal, but the said decision was challenged in Apex Court and in Civil Appeal No. 4584/2007 the Hon'ble Apex Court set aside the decision of this Court and the matter was remanded back. In the said decision, the Apex Court has held that the two substantial questions of law formulated by this Court at that time were not substantial questions of law within the meaning of section 100 of the Civil Procedure Code. Thus, the matter is before this Court for fresh consideration. In view of the aforesaid contentions and the reasoning given by the Courts below, this

Court formulated substantial questions of law by order dated 3.8.2016. They are as under :-

(i) Whether the District Court has committed error in not considering the material on the basis of which inference could have been drawn that consideration had passed for the sale transactions dated 2.7.1969 and 9.2.1971 ?

(ii) Whether the District Court has committed error in not considering the material and the circumstances from which inference can be drawn that the aforesaid two transaction were made for legal necessity ?

13) The burden to prove 'legal necessity' was on defendant No. 1. To ascertain as to whether this burden is discharged, not only the evidence of defendants needs to be considered, but the nature of contentions of the plaintiffs in the plaint, the admissions given during evidence by plaintiffs and other circumstances like revenue record also need to be considered. Thus, inference needs to be drawn on the basis of entire material and not only on the basis of evidence given by the defendants.

14) Ramchandra, defendant no.1, the purchaser has

given evidence as per the pleadings in written statement. His evidence shows that he is resident of Bhor, Tahsil Raver, when plaintiffs are residents of village Khirwad, Tahsil Raver and the land is also situated at Khirwad. It is not disputed that neither defendant No. 1 nor defendant No.2 was related to Eknath. These circumstances need to be kept in mind while considering the case of plaintiffs that nominal sale deeds were executed to protect the land and the documents were executed as Eknath was addicted to bad vices. Defendant No. 1 has given evidence that he even did not know Eknath prior to these transactions. He has given evidence that the transactions were made only due to the mediation of one Shamrao, cousin of Eknath, who was known to defendant No. 1. This Shamrao is examined by plaintiffs.

15) Defendant No. 1 has given evidence that he had first made inquiry with Shamrao, when Shamrao had approached him for requesting him to purchase the land and then he had made inquiry directly with the Land Development Bank and Panchayat Samiti as the amounts were due to these two institutions. He has given evidence that after the inquiry he learned that Eknath was indebted and this debt was due to amount spent on agriculture. He has given evidence that Eknath and his father Dodhu were cultivating the lands of others and in agriculture, they had

sustained heavy losses.

16) Defendant No. 1 has given evidence that before 7 to 8 days of the first sale deed, he had given Rs.7,500/- as a part of consideration to Eknath in presence of Shamrao and others and the total consideration was Rs. 15,000/-. He has given evidence that the advance was given as Eknath wanted to make payments to some creditors. Then defendant No. 1 gave evidence that he paid the amount of Rs. 3,388/- to Land Development Bank and he paid Rs. 1,000/- to Panchayat Samiti, Raver and these amounts were due from Eknath. The receipt issued by the bank is produced at Exh. 59. He has given evidence that in presence of Sub-Registrar when the sale deed was executed, he gave Rs. 3,500/- to Eknath and thus, the entire consideration was paid. It can be said that something more than the consideration of Rs 15,000/- was paid.

17) In rebuttal, plaintiff No. 1 has given evidence that defendant Nos. 1 and 2 have been in the business of selling and purchasing of banana and due to that, Eknath was in touch with them. He has given evidence that Eknath was handing over banana for sale to defendant Nos. 1 and 2 and Eknath had sold banana through them for the years 1968, 1969, 1970 and 1971.

He has deposed that defendant No. 1 had paid amount of Rs. 3,000/- to Land Development Bank, but that amount was of Eknath, which was lying with defendant No. 1 in respect of the banana supplied by Eknath. He has given evidence that similarly the amount of Rs. 1,000/- was lying with defendant No. 1 in respect of banana supplied and this amount was paid to Panchayat Samiti by defendant No. 1.

18) The first sale deed was executed on 2.7.1969. Exh. 89, the receipt issued by Land Development Bank, which is duly proved is dated 3.7.1969 and it is for Rs. 3388.37 ps. This amount was deposited in loan account of Dodhu, father of Eknath. Similarly, it is admitted that the amount of Rs. 1,000/- was paid to Panchayat Samiti, Raver by defendant No. 1 though it is contended that this amount was lying with defendant No. 1 in respect of supply of banana. Thus, plaintiff No. 1 has not disputed that both these amounts were paid by defendant No. 1.

19) In pleadings and in substantive evidence, plaintiff No. 1 has admitted the execution of sale deed dated 2.7.1969 and it is at Exh. 57. The original document shows that stamp was purchased by Eknath directly from treasury. In Exh. 57, there is specific mention that amount of Rs. 3,000/- was to be

paid by defendant No. 1 to Land Development Bank as such amount was due to said bank. Similarly, there is specific mention that amount of Rs. 1,000/- was to be paid by the purchaser, defendant No. 1 to Panchayat Samiti as such amount was due to Panchayat Samiti. Thus, the contents of Exh. 57 so far as aforesaid two payments are concerned are consistent with the case of the defendant No. 1, with the aforesaid record and oral evidence. The contents of sale deeds with regard to legal necessity are relevant and this circumstance is not considered by District Court.

20) In respect of the aforesaid material, the District Court has held that the aforesaid amounts were paid by Eknath. Thus, error is committed by District Court in not considering the aforesaid material which includes the admission of plaintiff No. 1 in substantive evidence.

21) There is substantive evidence of defendant No. 1 that he had paid Rs.3,500/- to Eknath before Sub-Registrar when sale deed dated 2.7.1969 was registered. There is such mention in Exh. 57 and there is endorsement to that effect of Sub-Registrar. This endorsement has presumptive value in view of the provisions of section 114 of Evidence Act and section 58 (c)

of Indian Registration Act. Plaintiffs have taken defence that no amount was actually paid even before Sub-Registrar. Plaintiff No. 1 was aged about 13 years in the year 1969. This circumstance and other record show that he has no personal knowledge with regard to this transaction. The aforesaid presumption is not considered by the District Court.

22) Jagannath Choudhari is examined as witness by plaintiffs to show that the said sale deed was sham. This witness had signed before Sub-Registrar only as a witness who had identified executant, Eknath and he was not witness on execution of sale deed. In spite of these circumstances, Jagannath has given evidence not only on the transaction, but also on the entire case of plaintiffs. In the cross examination, he could not say as to how much income Eknath and his father were making from agriculture. He has given evidence that he had feeling that they were making good income. His land was not situated in the vicinity of suit land and he was not required to pass by the side of suit land for proceeding to his own land. It can be said that he is from the village of plaintiffs and defendants are not from his village. Due to this circumstance, he must have been called to the office of Sub-Registrar to give identification. Further, he was Village Sarpanch of village of

plaintiffs from 1969 to 1974. This circumstance shows that he is bound to support the plaintiffs. His evidence that no amount was paid in his presence is of no use to the plaintiffs. There is endorsement of Sub-Registrar on Exh. 57 that in his presence the consideration of Rs. 3,500/- was paid by the purchaser to vendor.

23) There is evidence of one witness Devidas to show that there were negotiations prior to the execution of the sale deed of 1969. There is no need to discuss that evidence as there is aforesaid documentary evidence and there is admission of plaintiff regarding the payments made by defendant No. 1 to aforesaid two institutions. There is some inconsistency on the basis of which argument was advanced with regard to the place where negotiations were made, but that inconsistency cannot go to the root of the matter as evidence as a whole needs to be considered.

24) Vishwanath Dhake, employee of Panchayat Samiti is examined by defendants to prove that loan was taken by family of Eknath from Panchayat Samiti. He has given evidence that loan of Rs.3,000/- was taken and the amount of Rs. 1,000/- was paid in the account of Eknath at the relevant time. His evidence

and record show that one Waman Patil had come there to deposit the amount in the account. It is already observed that plaintiff No. 1 has admitted that the payment was made by defendant No. 1. It is not his case that he had given the amount to Waman Patil. The said witness is examined by plaintiffs, but he has not given evidence that plaintiffs had handed over the amount to him and then he had deposited the amount in the account in Panchayat Samiti for Eknath.

25) Laxman Patil, another witness examined by defendants has given evidence that he was having one oil engine and it was sold by him to Dodhu, father of Eknath on credit for Rs. 3,500/-. He has deposed that Dodhu had not paid the amount to him, but subsequently, Eknath paid the amount. One letter, Exh. 112, is produced to show that initial amount of Rs. 7,500/- paid by defendant No. 1 was utilized for making payments to other creditors. Even if this evidence is ignored, there is aforesaid material and inference can be drawn from the aforesaid material.

26) Evidence is given by defendant No. 1 on the second sale deed. Execution of this document is also not disputed. To prove the case in respect of the second sale deed, plaintiffs have

examined Shamrao Choudhari, cousin of Eknath. He has admitted that Dodhu had taken loan from Land Development Bank for taking well in the land. He has also admitted that Dodhu had installed one pump run on electricity and one pump run on oil engine on this well. He has also admitted that Dodhu and Eknath had started taking banana crop in the land after taking well. He has tried to say that Dodhu and Eknath were supplying banana to defendant No. 1 and he was also supplying banana to defendant Nos. 1 and 2. However, there is no record with him to prove that even he was supplying banana to defendant Nos. 1 and 2. He was not witness on first sale deed and he admits that he learned about the first sale deed when he went to act as a witness at the time of execution of second sale deed.

27) The second sale deed was executed in the year 1971. Shamrao has admitted that he had no personal knowledge regarding the agreement which was entered into with defendant no. 1 by Eknath. He admits that he had not gone through the contents of sale deed of 1971. In the cross examination, he has admitted before Sub-Registrar Eknath had admitted that he had received the entire consideration. He admits that the consideration amount was put on the table

before the Sub-Registrar by defendant No. 1 though he has tried to say that defendant No. 1 had taken back that amount. In view of the endorsement appearing on this sale deed, Exh.57, not much weight can be given to the evidence of Shamrao that consideration was taken back by the defendant No. 1 in presence of Sub-Registrar.

28) Shamrao has admitted in the cross examination that overall conduct of Eknath was good. He has admitted that Eknath was working as Gramsevak and his department had no occasion to take action against Eknath in respect of so called bad habits of Eknath. He has admitted that Eknath was not addicted to liquor, but he has denied that Eknath was not taking liquor. He has admitted that Eknath had never taken loan for consuming liquor. These circumstances are certainly against the case of plaintiffs.

29) Shamrao is examined on other point like the inadequacy of consideration also by plaintiffs. He admits that he had purchased 7 Gunta land in the year 1968-69 in that village for consideration of Rs.5,00/- (at the rate of Rs. 3000/- per Acre). He admits that Bhor Kela Group, Banana Collection Center was started in the year 1973. This admission shows that there is no

force in the contention of plaintiffs that Eknath was supplying banana to defendant No. 1 Kela Group and some amount was payable in respect of that banana. Some record is produced like Exh. 78 showing that Shamrao had purchased 1 H. 77 R. land for consideration of Rs. 20,000/- from the same village. There is record at Exhs. 75 and 76 shows that Shamrao purchased 1 H. 77 R. land for consideration of Rs. 6,000/- in that area. Though he avoided to admit this circumstance this record is sufficient to infer that price of land shown in this case is not on lower side. This record is not at all considered by the District Court. In respect of second transaction, it can be said that against the consideration, the amount of Rs. 13,840/- was paid by defendant No. 1 to Eknath before Sub-Registrar. There is endorsement to that effect. As against this endorsement, there is the evidence of Shamrao of aforesaid nature. In the sale deed, Exh. 63, it is mentioned that out of total consideration of Rs. 20,000/-, the amount of Rs. 3,500/- was already paid to Eknath and the amount of Rs. 2,660/- was paid to Panchayat Samiti as this amount was due from Eknath to Panchayat Samiti. One witness is examined by defendants from Panchayat Samiti and that evidence is already quoted.

30) There are copies of mutation in respect of the two

sale deeds made in the year 1969 and 1971 dated 2.12.1969 and 6.6.1971 showing that R.T.S. proceeding was also started, but the officer made order in favour of defendants. The revenue record shows that the possession of the land purchased was with defendant No. 1 from the date of sale deed. In the plaint itself, the plaintiffs have admitted that the possession is with defendants. If the transactions were nominal, the possession would not have been handed over by Eknath to the defendants. Eknath never challenged these entries in his lifetime when he survived till the year 1974.

31) The aforesaid record and circumstances show that consideration was paid by defendant No. 1 to Eknath and defendant No. 1 took the possession. Eknath had no grievance in respect of these transactions. Though issues of Eknath were minor, there was wife of Eknath, but the suit was filed only after the death of Eknath. Eknath was Karta of Joint Hindu Family and there are circumstances like that Eknath and his father were taking banana crop in their own land and also in the lands of others which were taken for cultivation purpose. There is evidence to show that amount was due to various institutions like Land Development Bank, Panchayat Samiti. There is record like decree obtained by Poona Machinery Shop showing that the

price of engine run on electricity was not paid and decree was obtained. Thus, there is sufficient material to infer that there was antecedent debt, the debt taken by Dodhu and there was also debt taken by Eknath as per the evidence of employee of Panchayat Samiti. There is no record whatsoever with the plaintiffs to prove that they were supplying banana to defendant No. 1. When the crop or banana is supplied, some record is always created showing atleast the weight of the goods supplied. The absence of such material shows that there is no force in the contentions made by plaintiff. All this material and circumstances are not considered by the District Court and this record and material is considered by the Trial Court. The reasoning given by the Trial Court was not considered and scrutinized by the District Court from close quarters. The Trial Court had best opportunity to observe the demeanor of the witnesses and to decide as to who can be believed and who cannot be believed. These things are not at all considered by the First Appellate Court. It can be said that the decision of the District Court is based mainly on the finding that no consideration was paid for both the transactions. This finding is totally erroneous in view of the aforesaid material and so, such finding cannot sustain in law.

32) The learned counsel for appellants placed reliance on some reported cases which are as under :-

(i) MANU/SC/0366/1970 [Smt. Rani and Anr. Vs. Smt. Santa Bala Debnath and ors.],

(ii) MANU/SC/0533/1996 [Gangadharan Vs. Janardhana Mallan and Ors.],

(iii) MANU/SC/0393/1962 [Radhakrishnadas Vs. Kaluram], and

(iv) MANU/MH/1053/2016 [Kisan Ramchandra Kokane and Ors. Vs. Anjani and Ors.].

33) There is no dispute over the propositions made in the cases cited supra. In those cases, Apex Court and this Court has discussed effects of some circumstances on such matters and circumstances quoted are as under :-

(i) No challege is there to sale deeds when there is point of legal necessity.

(ii) The circumstance like recitals of the sale deed mentioning legal necessity in the sale deed itself.

(iii) The evidence on payment of antecedent debt though the payment was forming substantial portion of consideration, when there is no evidence to show that entire consideration was applied for repayment on antecedent debt, and

(iv) The circumstance like the evidence on inquiry

made by purchaser before purchasing the property with regard to the existence of legal necessity.

34) The law developed on aforesaid point, the legal necessity is quoted by this Court in the case of **Kisan Ramchandra Kokane and Ors. Vs. Anjani and ors.** cited supra and the observations are quoted from one case reported as **1952 BLR 223 [Mukabasappa Bhimappa Amti Vs. Hanmantappa] Bombay**, which are as under :-

"Under Hindu law, when an alienation is sought to be set aside for want of legal necessity, if the parties to the transaction are dead and there is no direct evidence to justify the transactions, presumptions are permissible in order to fill in details in justification of the transaction. Ordinarily, it is for the purchaser to prove that the transaction was justified by legal necessity. This, he may show by establishing that there was necessity in fact or by showing that he made due inquiry about the existence of the necessity and he believed in the existence of such necessity. There may be, again cases where transactions are ancient and there may be recitals as to necessity in regard to such ancient transactions. In cases of this type, recitals consistent with the circumstances and probabilities will be given their due weight even when direct evidence is not forthcoming. There may be a third type of cases

where there are no recitals in the sale deed showing legal necessity, and question arises whether in such a case it is or it is not permissible to the Court to raise presumptions, having regard to such evidence as is adduced in the case. It is well settled that in the last type of cases the Courts would be justified in drawing presumptions provided those presumptions are supported by the evidence and the circumstances of the case."

35) In view of the discussion of the material made already and aforesaid position of law, this Court holds that the District Court has committed grave error in holding that the defendant No. 1 failed to prove that the transactions were made for legal necessity. Thus, there is material on both points like consideration and existence on legal necessity, but the material which is relevant is not considered by the District Court. Both the points are answered against the respondents. In the result, following order is made.

ORDER

The appeal is allowed. The judgment and decree of the District Court is hereby set aside. The decision of the Trial Court is hereby restored.

[T.V. NALAWADE, J.]

ssc/