

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

Second Appeal No.18 of 1992

- 1) Pandurang s/o Sambhaji Sanap,
Age 58 years,
Occupation : Agriculture & Service,
R/o Wagdara, Taluka Gangakhed.
- 2) Pandhari s/o Sambhaji Sanap,
Died through his legal
representatives.
- 2/1) Balaji s/o Pandhari Sanap,
Age 35 years,
Occupation: Agriculture,
R/o Wagdara,
Taluka Gangakhed,
District Parbhani.
- 2/2) Samindra Dattrao Mundhe,
Age 30 years,
Occupation: Housewife,
R/o Ghatdaithna,
Taluka Parali, District Beed.
- 2/3) Parwati Balaji Andhale,
Age 25 years,
Occupation: Housewife,
R/o Yalam, Taluka Parali,
District Beed.
- 3) Gayabai w/o Sambhaji Sanap,
Died her legal representatives
- 3/1) Pandurang s/o Sambhaji Sanap,
Age 48 years, R/o Gangakhed.
- 3/2) Bhagubai w/o. Govind Nagoraoji,
Age 68 years,
Occupation: Household,
R/o Dampuri, Taluka Gangakhed.

- 3/3) Gayabai w/o Ramrao Phad,
Age 63 years,
Occupation: Household,
r/o Dampuri, Taluka Gangakhed.
- 3/4) Chandrakala w/o Nagorao Dahiphale,
Age 58 years,
Occupation: Household,
R/o Gangakhed.
- 3/5) Shivabai w/o. Nivrati Phad,
Age 46 years,
Occupation: Household,
R/o Gangakhed.
- 3/6) Pandhari s/o Sambhaji Sanap,
Age 53 years,
Occupation: Agriculture
R/o Gangakhed.

.. Appellants.

Versus

- 1) Sitaram s/o Manaji Gharjale,
Age 50 years,
Occupation : Agriculture,
R/o Sirsam (Shelgaon)
Taluka Gangakhed.
- 2) Pandit s/o Sitaram Gharjale,
Age 20 years,
Occupation: Agriculture
R/o As above.
- 3) Tukaram s/o Dhanaji Sanap,
Died through legal
representatives
- 3/1) Udhav s/o Tukaram Sanap,
Age 35 years,
Occupation: Agriculture
R/o Wagdara, Taluka Gangakhed.

- 3/2) Balaji s/o Tukaram,
Age 25 years,
Occupation: Agriculture
R/o Waghdhara.
- 3/3) Subhabai w/o Tukaram,
Age 35 years,
Occupation Household,
R/o As above.
- 3/4) Tulsabai w/o Panditrao Mundhe,
Age 20 years,
Occupation: Household,
R/o Arbhujawadi,
Taluka Gangakhed.
- 3/5) Padminibai w/o Raghunath Dhad,
Age 50 years,
Occupation Household,
R/o Wagdhara, Taluka Gangakhed.
- 4) Hanuman s/o Tukaram Sanap,
Age 12 years,
Minor under guardianship of
Subhabai w/o Tukaram Sanap,
Age 40 years, R/o As above. .. **Respondents.**

Shri. A.P. Chaware, Advocate, for appellants.

CORAM: T.V. NALAWADE, J.

DATE : 9th JUNE 2016.

JUDGMENT:

- 1) The appeal is filed against the judgment and decree of Regular Civil Suit No.114/1978 which was

pending in the Court of the Civil Judge, Junior Division, Gangakhed, District Parbhani and against the judgment and decree of Regular Civil Appeal No.228/1982 which was pending in the Court of the Additional District Judge, Parbhani. The suit filed by the present appellants for the relief of partition and possession and also for declaration is dismissed. Heard learned counsel for the appellant.

2) The suit was filed in respect of agricultural lands like Survey Nos.363/3, 363/1, 364/2 and 364/10 situated at village Isad, Tahsil Gangakhed and also in respect of one house property situated at village Wagdara, Tahsil Gangakhed. Relief of declaration was claimed in respect of sale deeds dated 6-3-1969, 17-5-1977 and 16-5-1977 that the sale deeds are not binding on the plaintiffs.

3) Plaintiff Nos.1 and 2 are real brothers inter se and plaintiff No.3 is their mother. Defendant No.1 Sambhaji was their father and he died during pendency of the suit. It is the case of the plaintiffs that defendant No.1 was extravagant and when there was no legal necessity he sold some suit property to defendant Nos.2 and 3 which is

transferred to defendant Nos.4 and 5 by defendant Nos.2 and 3 and some suit property was directly sold by defendant No.1 to defendant No.4 and 5. It is contended that the transaction was also sham and from the sale proceeds the debts were not paid. Alternate contention was made that under the sale deed of 1969 some amount was taken from defendant No.2 but it was in fact mortgage transaction and only Rs.500/- was paid though more amount of consideration was shown. It is alternatively contended that to save the property the property was transferred by defendant Nos.2 and 3 at the instance of the plaintiffs to defendant No.4 who is relative of the plaintiffs. It is contended that defendant No.4 then changed his mind and he wants to grab the property. It is contended that the land Survey No.364 was shown to be transferred in favour of defendant No.5 but it was also mortgage transaction.

4) It is the case of the plaintiffs that the market value of the property was much higher and this single circumstance is sufficient to infer that the transactions were not of sale but they were mortgage transaction. They

contended that they requested the defendants to return the property but the defendants have refused to do so.

5) Defendant Nos.1 to 3 did not file written statement. As the property was with defendant Nos.4 and 5 on the date of the suit, they filed written statement and they contested the matter. They denied that the aforesaid transactions were mortgage transactions and there was no legal necessity. They contended that the defendant No.1 was indebted and he was in need of money for family expenses and also for repayment of loan taken from Land Development Bank and cooperative society. It is contended that the lands were sold by defendant No.1 after taking the consent of the plaintiff Nos.1 and 2 for lawful consideration and the transactions are binding on plaintiff Nos.1 and 2.

6) Issues were framed on the basis of the aforesaid pleadings. The trial Court held that the aforesaid transactions were sale transactions and the land was sold by defendant No.1 for legal necessity of joint Hindu family. The trial Court held that the transactions

were not mortgage transactions. Similar observations are made by the first appellate Court for dismissing the appeal. This Court admitted the appeal by holding that the substantial questions of law as raised in Grounds IV and V need to be decided. The grounds are as under :-

(IV) In fact, there is no admission in support of case of defendant in the strict sense of this term, as is understood within the meaning of sections 17 to 21 of the Indian Evidence Act, 1893.

(V) Merely because the family of the plaintiffs and their father required money, it does not mean that there was legal necessity so pressing need to dispose of the valuable property comprising of the suit land, on which alone the entire sustenance of the family depended.

7) This Court has carefully gone through the evidence given by the plaintiffs and also the defendant Nos.4 and 5. It is true that the burden to prove that there was legal necessity was on the defendants. The burden to prove that it was mortgage transaction and it was not absolute sale was on the plaintiffs.

8) During evidence, the plaintiff has given admission that on the date of the transaction the plaintiffs were living with defendant No.1 in joint Hindu family and defendant No.1 was Karta of the joint Hindu family. The plaintiff further admitted that their family was in need of money and to satisfy the need of money the aforesaid transactions were made. Copies of the sale deeds are produced on the record and the plaintiff has given admission in the cross-examination that on all the registered documents plaintiff Nos.1 and 2 have signed as witnesses. In the documents the vendor has mentioned that for satisfying the family needs, the transaction was made. In view of the contents of the documents and the circumstance that plaintiff Nos.1 and 2 signed on those document as witnesses, there was not much room to the plaintiffs to prove that the transactions are not binding on them.

9) One more vital admission is given by the plaintiff. He has admitted that partition took place between the plaintiffs Nos.1 and 2 on one hand and the defendant No.1 and some landed property was given to

the plaintiffs in the partition. It is also admitted that revenue record was created accordingly. No such mention is made in the suit which was filed for partition.

10) The plaintiffs examined some witnesses to show that the intention behind the transaction was to secure the loan. The documents on the record are sale deeds and the Courts below have considered the interpretation of sections 91 and 92 of the Evidence Act. The oral evidence was not found convincing by the Courts below and the witnesses examined by the plaintiffs are not believed by the Courts below.

11) The learned counsel for the appellant submitted that the admission given by the plaintiff that for satisfying the needs of the family, the transactions were made cannot make much difference and it was necessary for the defendants to prove that the necessity was pressing and coercive steps were taken against them for recovery of any debts from the joint family. This proposition is not acceptable. The plaintiffs had virtually given consent to the transactions by signing as witnesses on the documents

and the contents of documents mention that for satisfying the family needs the transactions were made. Further there are specific admissions that the loan was taken from the society and the Land Development Bank and for repayment of that loan the transaction was made. One officer of the bank is examined to show that the loan of Rs.2,500/- was taken for taking well and immediately after one transaction the repayment of some amount of that loan was made. This evidence along with the admissions given by the plaintiffs is more than sufficient to hold that for legal necessity the transactions were made. The plaintiffs failed miserably to prove that the transactions were mortgage transactions and the legal necessity is proved by the defendants.

12) So, the aforesaid points are answered against the appellants and the appeal is dismissed.

Sd/-
(T.V. NALAWADE, J.)

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