

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

Second Appeal No.55 of 1989

* Kisan Ramchandra Kokane
(Deceased) through his
legal representatives.

- 1) Babasaheb Kisan Kokane,
Age 33 years,
Occupation : Agriculture,
R/o Taklibhan,
Taluka Shrirampur,
District Ahmednagar.
- 2) Mangal Ashok Labade,
Age 22 years,
Occupation: Household,
R/o Gondhavani,
Taluka Shrirampur,
District Ahmednagar.
- 3) Anil Kisan Kokane,
Age 18 years,
Occupation : Agriculture,
R/o Takalibhan,
Taluka Shrirampur,
District Ahmednagar.
- 4) Sangeeta d/o Kisan Kokane,
Age 15 years,
Occupation: Household,
R/o As above.
- 5) Kaushalyabai Kisan Kokane,
Age Major,
occupation : Household,
R/o As above.

.. Appellants.

Versus

- 1) Anjani w/o Laxman Kapase,
(Died) through legal
representatives:
 - 1A) Meerabai w/o Dagadu Kapase,
Age 60 years,
Occupation: Household,
R/o Taklibhan,
Taluka Shrirampur,
District Ahmednagar.
 - 1B) Navnath s/o Laxman Kapase,
Age 55 years,
Occupation: Agriculture,
R/o As above.
- 2) Ramchandra Tatyaba Kokane,
Deceased through legal
representatives
 - 2A) Anusayabai w/o Mohan Wagh,
Age 45 years,
Occupation: Household
R/o Chitali, Taluka Shrirampur,
District Ahmednagar.
 - 2B) Sumabai Kushaba Musamade,
Age 40 years,
Occupation: Household,
R/o Deolali Pravara,
Taluka Rahuri,
District Ahmednagar.
 - 2C) Bhagirathibai Annasaheb Gunjal,
Age 35 years,
Occupation: Household,
R/o Kendal, Taluka Rahuri,
District Ahmednagar.
 - 2D) Chabubai Ananda Patore,
Age 32 years,
Occupation: Household,
R/o Kopargaon,

Taluka Shrirampur,
District Ahmednagar.

2E) Bhagwat Ramchandra Kokane,
died, through legal
representatives:

2E/1) Bala Bhagwat Kokane,
Age 45 years.

2E/2) Sarjerao Bhagwat Kokane,
Age 43 years.

2E/3) Madhukar Bhagwat Kokane,
Age 40 years.

2E/4) Dilip Bhagwat Kokane,
Age 38 years.

2E/5) Shivaji Bhagwat Kokane,
Age 34 years.

2E/6) Muktabai Bhagwat,
Age 60 years.

All R/o Takalibhan,
Taluka Shrirampur,
District Ahmednagar.

2E/7) Kanta Ugale,
R/o Awwalgaon,
Taluka Vaijapur.

2F) Kusnath Ramchandra Kokane,
Age 42 yeas,
Occupation: Agriculture,
R/o Taklibhan,
Taluka Shrirampur,
District Ahmednagar

2G) Hari Ramchandra Kokane,
Age 40 years,
Occupation: Agriculture,

R/o Taklibhan,
Taluka Shrirampur,
District Ahmednagar

2H) Rohidas Ramchandra Kokane,
Deceased through legal
representatives:

2H/a) Yamunabai Rohidas Kokane,
Age 50 years,
Occupation: Agriculture,

2H/b) Bapusaheb Rohidas Kokane,
Age 35 years,
Occupation: Agriculture,

2H/c) Popat Rohidas Kokane,
Age 33 years,
Occupation: Agriculture,

2H/d) Dadasaheb Rohidas Kokane,
Age 33 years,
Occupation: Agriculture,

R/o Taklibhan,
Taluka Shrirampur,
District Ahmednagar.

2H/e) Vimal Uttam Musmade,
Age 28 years,
Occupation: Household,
R/o Deolali Pravara,
Taluka Rahuri,
District Ahmednagar.

2I) Nana Ramchandra Kokane,
Age 36 years,
Occupation: Agriculture,
R/o Taklibhan,
Taluka Shrirampur,
District Ahmednagar.

- 2J) Raosaheb Ramchandra Kokane
Age 34 years,
Occupation: Agriculture,
R/o Taklibhan.
- 2K) Vithabai Ramchandra Kokane,
Deceased, through her
legal representatives:
- 2K/1) Anusayabai w/o Mohan Wagh,
Age 47 years,
Occupation: Household
R/o Chitali, Taluka Shrirampur,
District Ahmednagar.
- 2K/2) Sumabai Kushaba Musamade,
Age 43 years,
Occupation: Household,
R/o Deolali Pravara,
Taluka Rahuri,
District Ahmednagar
- 2K/3) Bhagwat Ramchandra Kokane,
died, through legal
representatives:
- 2K/3.1) Bala Bhagwat Kokane.
Age Major, Occ: Agriculture.
- 2K/3.2) Sarjerao Bhagwat Kokane,
Age Major, Occ: Agriculture.
- 2K/3.3) Madhukar Bhagwat Kokane,
Age Major, Occ: Agriculture.
- 2K/3.4) Dilip Bhagwat Kokane,
Age Major, Occ: Agriculture.
- 2K/3.5) Shivaji Bhagwat Kokane,
Age Major, Occ: Agriculture.

2K/3.6) Muktabai Bhagwat Kokane
Age Major, Occ: Agriculture.
All R/o Takalibhan,
Taluka Shrirampur,
District Ahmednagar.

2K/3.7) Kanta Ugale,
Age Major, Occ: Agriculture.
R/o Khandala, Taluka Vaijapur.
District Aurangabad.

2K/4) Hari Ramchandra Kokane,
Age 44 years, Occu: Agriculture,
R/o Taklibhan,
Taluka Shrirampur,
District Ahmednagar

2K/5) Rohidas Ramchandra Kokane,
Age 42 years, Occu: Agriculture,
R/o Taklibhan,
Taluka Shrirampur,
District Ahmednagar.

2L) Dagadabai Ramchandra Kokane,
Age 65 years,
Occupation: Household,
R/o Taklibhan, Taluka Shrirampur,
District Ahmednagar.

3) The Chairman,
Ahmednagar District Land
Mortgage Bank, Ahmednagar.

.. Respondents.

Shri. V.D. Hon, Senior Counsel, instructed by Shri. V.B.
Anjanwatikar, Advocate, for appellants.

Shri. Ajinkya Kale, Advocate, holding for Shri. S.B.
Talekar, Advocate, for respondent Nos.1-A and 1-B.

CORAM: T.V. NALAWADE, J.

DATE : 20th JUNE 2016.

JUDGMENT:

1) The appeal is filed to challenge the judgment and decree of Regular Civil Suit No.119/1967 which was pending in the Court of the Civil Judge, Junior Division, Shrirampur, District Ahmednagar and also against the judgment and decree of Regular Civil Appeal No.2/1983 which was pending in District Court Ahmednagar. Both the sides are heard.

2) In short, the facts of the institution of present case can be stated as follows :-

3) Anjanibai Kapase, original plaintiff, had filed suit for recovery of possession of agricultural land bearing Survey No.267 (Gat No.304) situated at village Takalibhan, Tahsil Shrirampur. The land admeasures 12 acres 8 Gunthas. Relief of mesne profit was also claimed.

4) The suit property was originally owned by Laxman Dalvi, father of plaintiff. Laxman had two wives viz. Dhondabai and Laxmibai. Dhondabai died during

lifetime of Laxman leaving behind the plaintiff Anjanibai as the only issue. Laxman died in or about the year 1931. Thus at the time of death of Laxman he had two heirs like widow Laxmibai and daughter Anjanibai. The parties are Hindus.

5) It is the case of the plaintiff that as per Hindu law, Laxmibai was limited owner of the suit property but she sold the property to father of defendant No.1, Tatyaba under registered sale deed dated 21-4-1934. It is contended by the plaintiff that there was no legal necessity and the plaintiff was giving crop share to Laxmibai by cultivating the suit land.

6) Laxmibai died on 22-3-1966. The suit came to be filed in the year 1967. It is the case of Anjanibai that as reversioner, under Hindu law, she is entitled to get the suit property and the transaction which was made by Laxmibai in favour of father of defendant No.1 is not binding on her. As the property was mortgaged by defendant No.3, son of defendant No.1 to defendant No.2, bank, the bank was also impleaded in the suit. On the date

of the suit, the property was in possession of defendant No.3. Laxmibai, Tatyaba and his son Ramchandra are dead but Anjanibai was alive when the evidence was recorded in the trial Court.

7) Defendant No.3 filed written statement and contested the suit. He contended that Laxmibai was absolute owner of the property and so Anjanibai has no right to claim possession from the purchaser. He denied that there was no legal necessity for the transaction. He contended that the land was with plaintiff and her husband on Batai basis but they were not giving anything even for livelihood to Laxmibai. It is his case that for legal necessity Laxmibai sold the property for valuable consideration to Tatyaba, father of the defendant No.1. It is his case that during last days, Laxmibai was required to work as sweeper in a private school for her survival.

8) It is the case of the defendant No.3 that plaintiff had filed similar suit in the past but it was withdrawn and so present suit is not tenable. It was also contended by defendant No.3 that the suit is not within

limitation. He contended that due to principle of feeding to the grants by estoppel, the suit was not tenable. Alternatively he contended that the defendants have become owner due to adverse possession. Defendant No.3 contended that in partition amongst members of the family of defendant No.1, the property was allotted to his share. He also contended that the land was mortgaged with defendant No.2 and it was possessory mortgage and defendant No.2 had given the land for cultivation to the defendant No.3.

9) Defendant No.2-Bank contested the matter by contending that under possessory mortgage the land was mortgaged by defendant No.3 with it and the bank is entitled to recover the mortgage money. The bank contended that the defendant No.3 was shown as owner on record and so the loan was advanced to defendant No.3. It admitted that the defendant No.3 was in possession as the land was given by the bank to defendant No.3 for cultivation.

10) Issues were framed on the basis of aforesaid pleadings. The trial Court held that Laxmibai was limited owner and the transaction with Tatyaba was not for legal necessity. The trial Court held that the transaction of defendant No.3 with the bank was also not bona fide. Decree of possession is given by the trial Court and the decree of mesne profit is also given. Similar findings are given by District court in the first appeal.

11) This Court, other Hon'ble Judge, admitted the appeal on the following substantial questions of law.

(i) When there was no Class I or Class II heirs and Laxmibai was the widow of the deceased Laxman, whether the property would revert in favour of reversioner ?

(ii) Whether in absence of any Class I and Class II heir, Laxmibai would be treated as absolute owner of the property ?

(iii) Whether Anjanibai the daughter of Dhondabai the first wife of Laxman would get any right or title in presence of Laxmibai the widow of Laxman ?

12) All the aforesaid questions revolve around the case as to whether Laxmibai widow of Laxman was absolute owner of the property. The Courts below have considered Shastric Hindu Law and the effect of codified law on the Shastric law and the point of legal necessity is decided by holding that Laxmibai was limited owner. This Court allowed both the sides to argue on the point of legal necessity as the said point is the main point in the present matter and so following substantial question of law is also considered by this Court.

"Whether the Courts below have committed error in not considering the relevant material and relevant position of law on legal necessity and due to that error is committed by the Courts below ?"

13) To prove the legal necessity the defendants have mainly relied on the following circumstances :-

(i) The recitals of the sale deed of 1934 in support of case of legal necessity. Execution of the sale deed is admitted by plaintiff and the Courts below have come to the conclusion that sale deed was not sham, without consideration.

(ii) Laxmibai was not having support of anybody like relatives from her husband's side or her daughter's side, the so called reversioner. The land was given to Anjanibai, plaintiff and her husband for cultivation by Laxmibai but Laxmibai was required to file litigation against them as Anjanibai and her husband were not giving anything even for survival of Laxmibai.

(iii) The tenancy authority has given finding in favour of Laxmibai and against Anjanibai and possession was given to Laxmibai of the suit land. Laxmibai never cultivated the land personally, she was always attempting to give it for cultivation to others.

(iv) In the past, in the year 1944, suit was filed by Anjanibai to challenge the transaction of sale made by Laxmibai with Tatyaba, father of defendant No.1. The transaction between Tatyaba and Laxmibai was within knowledge of Anjanibai right from beginning as Tatyaba was related to Laxmibai from her parents side and he was helping her.

(v) Anjanibai withdrew the suit filed by her for relief of declaration that there was no legal necessity for the transaction made by Laxmibai and the suit was for other relief like possession also. This suit was withdrawn with the permission of the Court to

institute new suit but till the year 1967, till death of Laxmibai, Anjanibai did not file suit.

(vi) When the suit was filed by Anjanibai, both Laxmibai and the purchaser Tatyaba were dead and so no evidence of witnesses, who were witnesses to the transaction was available to prove legal necessity.

(vii) Anjanibai did not dare to step into witness box and her son who was not having understanding at the relevant time and who had no personal knowledge regarding the transaction between Laxmibai, Anjanibai and Tatyaba gave evidence for plaintiff. Due to this circumstance at least adverse inference can be drawn against Anjanibai.

14) The evidence given by both the sides needs to be considered and appreciated in view of the aforesaid admitted circumstances. It can be said here only that most of the aforesaid circumstances are not considered by the Courts below and the law laid down in respect of implication of the aforesaid circumstances and the inference which can be drawn on the basis of the aforesaid circumstances is also not considered by the Courts below.

15) Dagadu, son of Anjanibai, gave evidence for proof of the case when Anjanibai was alive. Power of attorney was given to Dagadu by Anjanibai. No evidence was given to show that Anjanibai was not in a position to come to court for giving evidence. On the basis of his age and the admissions given by him it can be said that he had no personal knowledge about the circumstances which were prevailing at the time of the dispute which was going on between Laxmibai and Anjanibai. When in the plaint itself Anjanibai had admitted that she and her husband started cultivating the land after the death of Laxman, Dagadu avoided to admit that Laxmibai never cultivated the land personally. Suggestion was given to him that the land was situated at a long distance from the residential place of Laxmibai, the village, she was not having agricultural implements and she was not able to cultivate the land. These suggestions are denied but the fact remained that Laxmibai did not cultivate the land personally. Immediately after the death of Laxman, Anjanibai and her husband started cultivating the land and after getting possession of the land from Anjanibai, the land was sold to Tatyaba.

16) Suggestions were given to Dagadu that when his parents were cultivating the land for Laxmibai, they were not giving dues of Laxmibai like crop share and so it had become difficult for Laxmibai to survive. When it is not pleaded, Dagadu tried to say that Laxmibai was doing money lending business. It is clearly a false contention. The evidence on the record and the rival contentions show that the suit land was the only property from which income could have been obtained by Laxmibai and it was jirayat land. This land was never cultivated by Laxmibai. He, however, admitted that Laxmibai had filed proceeding before the tenancy Court for getting possession of the suit property from his parents on the grounds that his parents were not giving her crop share.

17) There is no specific pleading in the plaint but Dagadu has tried to say in the evidence that per year they were getting 100 gunny bags of food grains from the suit land. He denied the suggestion that Laxmibai had become destitute lady. She was required to live in the house of third person like Kamble and during her last days care of Laxmibai was taken by defendant Nos.1 and 3, relatives of

Laxmibai on parents side. Thus on one hand, Anjanibai, step daughter was there but there was dispute between Anjanibai and Laxmibai and Anjanibai was not providing anything even for maintenance of Laxmibai and on the other hand the defendants and relatives from parents side were helping Laxmibai. These circumstances, which are not rebutted, are sufficient to establish that Laxmibai had no source of income, sufficient for her maintenance and she was living at the mercy of others.

18) One Pandharinath Banekar, aged about 65 years, is examined as witness by the plaintiff. He has given evidence that 80 to 90 bags of food grains were received from the suit land by parents of Dagadu when they were cultivating the land. He has tried to say that Laxmibai was giving food grains on loan basis to the villagers and on that basis she was making income. There is no such case of the plaintiff herself. He has also tried to say that his father had taken Rs.500/- from Laxmibai. There is no evidence given regarding such loan transaction of Laxmibai and there is no such pleading. Due to these circumstances the Courts below have not

believed that Laxmibai was doing money lending business.

19) In rebuttal to aforesaid evidence given by the plaintiff and his witnesses, Kisan, defendant No.3 has given evidence. It can be said that Ramchandra, defendant No.1 had knowledge about transaction as he was sufficiently old at relevant time. Tatyaba died before 1940. Evidence is given by defendant No.3 that Ramchandra died in the year 1957. It can be said that Kisan has also no personal knowledge regarding the transaction and the circumstances which were there at the relevant time.

20) Kisan, defendant No.3 has given evidence that the suit land was the only property with Laxmibai but she was not getting any income from that land and she had incurred debt for her survival. He has given evidence that due to these circumstances Laxmibai sold the land to Tatyaba.

21) Kisan has given evidence that after selling the land to Tatyaba, Laxmibai shifted to Shrirampur and lived there in the house of son of her sister. He has given evidence that Laxmibai was required to work as sweeper in a school during her last days. He has given evidence that during her last days she returned to Takalibhan, her village and then her care was taken by Ramchandra and Kisan. He has given evidence that his family spent on funeral of dead body of Laxmibai. Though Kisan was born in the year 1940 his evidence about other aforesaid circumstances is relevant.

22) Parashram, witness from Takalibhan, aged about 85 years, is examined by the defendants. His evidence shows that his land is situated in the vicinity of the suit land. He has given evidence that the suit land is not of good quality and only when there is good rain, 12 to 15 *mans* food grains can be obtained from the suit land. He has given evidence that Laxmibai tried to get income from the land by giving the land to Anjanibai and her husband for cultivation on batai basis but she was not getting anything. He has given evidence that Laxmibai

incurred loan and only due to insistence of Laxmibai and the villagers to help Laxmibai, Tatyaba purchased the land from Laxmibai. He has given evidence that the land was offered to the plaintiff also but she refused to purchase it. Evidence is given by this witness, who is sufficiently old that there was legal necessity to Laxmibai as she was not having anything for her maintenance and the land was not giving any income to her. He has given evidence that during last days Laxmibai was suffering from leprosy and in those days also Ramchandra and defendant No.3 took care of her.

23) The plaintiff's counsel gave suggestion to Parashram that the villagers were giving food to Laxmibai. It is brought on the record that there was no bank in the village in the year 1934 when the land was sold. Though he has admitted that under the provisions of Bombay Prohibition Act one case was filed against him he has denied that the plaintiff was witness in that case against him and so he has given evidence against the plaintiff.

24) Sale deed dated 21-4-1934, Exhibit 106 shows that before the Sub Registrar amount of Rs.200/- part of total consideration of Rs.400/- was actually received by Laxmibai. This document shows that the amount of Rs.200/- was already paid to Laxmibai for repayment of debt taken by her. There is no specific pleading and there is no convincing evidence to show that the price shown in the sale deed was not proper, reasonable price. The Courts below have already held that it was not sham document.

25) The first suit was filed in the year 1944 (Exhibits 110 and 121). The said suit was filed after 11 years of the sale transaction but it was withdrawn by Anjanibai. At that time Tatyaba, the purchaser was dead. His son Ramchandra who could have given evidence on legal necessity was alive. Ex parte order was made in the said suit against Laxmibai. Then the suit was fixed for framing issues. The suit was withdrawn in the year 1945 though with the permission of the Court by Anjanibai. After that the suit was not filed till death of Laxmibai. Thus when evidence could have been given on legal

necessity in addition to the contents of the document, the plaintiff avoided to take decision.

26) Exhibits 133 and 134 record of tenancy proceeding which was filed by Laxmibai against husband of Anjanibai shows that the proceeding was filed for possession by Laxmibai on the ground that the husband of Anjanibai was not giving crop share to her. These documents include evidence of Laxmibai recorded before the tenancy Court and there is both, the examination-in-chief and the cross-examination of Laxmibai. This record is considered by the Courts below as Laxmibai is dead and it is relevant matter under section 32 of the Evidence Act. This record shows that maximum quantity of six *mans* food-grains was given to Laxmibai by the husband of Anjanibai in one year and in one year only three *mans* food-grain was given. The record shows that Laxmibai had tried to convince the husband of Anjanibai to give more food-grains as crop share for her survival and that was done through mediator also. But the husband of Anjanibai had refused to give her crop share. In the cross examination of Laxmibai it was suggested to her that

under agreement with husband of Anjanibai, land was given for cultivation and she had no objection against the husband of Anjanibai to cultivate the land if he was acting as per the terms and conditions of lease. It was brought on the record that Laxmibai had made attempts to give the suit land to one Mohan for cultivation. Laxmibai had stated that due to husband of Anjanibai, Mohan had refused to cultivate the land. Thus, difficulties, which Laxmibai had faced in cultivating the land and get it cultivated through others were stated before the authority by Laxmibai.

27) The aforesaid discussion shows that Laxmibai had become helpless. The family of the plaintiff was not taking care of her. She was not in a position to personally cultivate the land. Further the land was not giving sufficient income and for survival she was required to take some steps. Considering the value of the land it was not possible for her to raise money by mortgaging the land for her survival. Further there would have been question of repayment of loan. In view of these circumstances Laxmibai sold the property to Tatyaba. It is specifically

mentioned in the sale deed that she wanted to repay the loan and she wanted to use the remaining money, part of the consideration, for family expenses, for maintenance. This evidence was certainly sufficient to create probability that there was legal necessity and there was no other alternative before Laxmibai than to sell the property. The effect of the aforesaid circumstances ought to have been considered by the Courts below in view of the law laid down in that regard. The aforesaid circumstances are not separately and cumulatively considered by the Courts below.

28) The parties are governed by Mitakshara School of Hindu Law. This Court has referred to 20th Edition of Principles of Hindu Law by Mulla published in the year 2007 and from that book relevant portions, paragraphs are quoted. After quoting these provisions, this Court will be quoting the law developed on the principles of Hindu Law of inheritance and also the law developed with regard to the rights of limited owners like widows.

29) Paragraph 25 shows that 5 female heirs of Hindu male were recognized and they were entitled to succeed to the property of Hindu. They include both widow and daughter. In Para 27, the law relating to inheritance of property of the last full owner is quoted. These principles show that female could not become full owner of property unless the property was held by her as *Stridhana*. Para 34 again shows that the property of sole coparcener passes to his heirs by succession as provided in para 43. Para 43 shows widow becomes entitled to get share equal to that of son but she gets limited estate as provided by Hindu Women's Right to Property Act 1937. This para further shows that daughters do not get property unless all widows are dead. In para 72 also it is made clear that in order of succession the daughter comes after widow and she is not entitled to get property along with widow. Paras 122, 170 and 171 show that for Bombay School of Mitakshara, the property inherited by widow, the woman who had entered gotra of deceased due to marriage does not become her *Stridhana*. Principles mentioned in paras 170 and 174 show that the property inherited by Hindu woman from her husband is her

limited estate. Para 175 shows that on the death of female owner opens inheritance to reversioners and one most nearly related at the time of last full owner becomes entitled to possess.

30) Para 176 contains principles with regard to instances of widow's estate. They show that the widow can alienate the property inherited by her for legal necessity. The alienation may be by way of mortgage or sale as mentioned in para 181B. In para 181B the illustrations of legal necessity are given and they include the maintenance of herself. Whether widow can sell the property for future maintenance depends on facts and circumstances of the case. Paras 178, 181 and 182 are with regard to the power of limited owner to alienate the property. They show that the burden of proof of existence of legal necessity is on the alienee, purchaser. This burden can be discharged in two ways viz. (a) by proving that there was legal necessity (paragraphs 181-182) or (b) that alienee after reasonable inquiry as to necessity acted honestly in the belief that necessity existed (para 181-182).

31) The meaning of reversioner is given as heirs of last full owner who would be entitled to succeed on the death of widow or other limited heir if they be then living, may be male or female. So, the daughter is reversioner and after the death of widow the property reverts back to full owner notionally and then passes to nearest relative of the full owner like daughter. Thus, there cannot be dispute that in ordinary course the property would have gone to Anjanibai after the death of Laxmibai. Much was argued on the basis of provisions of Hindu Succession Act as amended in 1956 and particularly on the basis of provision of section 14 of the Act. Case law developed on this provision is discussed at proper place. The law shows that the provision was made for the benefit of the female heir and not for the benefit of the purchaser of female heir when the transactions were made by female heirs limited owners prior to coming in to force of the Act, 1956 and the property was parted with by the limited owners. Thus protection of section 14 could not have been given in favour of the purchaser, defendant.

32) Paras 185 and 190 show that alienation made by widow without legal necessity is not void but voidable by the next reversioner. So, reversioner may affirm the alienation or may treat the alienation as nullity. The election of affirmation or treating it as nullity may be made after reversioner has fallen into the possession or even before. Para 199 shows that decree against widow in respect of property in her possession is binding on the reversioner as the decree binds the estate. Thus it becomes the duty of the Court to ascertain as to whether by keeping silence or by other conduct, the reversioner had given tacit consent and there was estoppel against the reversioner.

33) The aforesaid principles of the Hindu Law need to be kept in mind at the time of the consideration of the ratio laid down by the Apex Court and various High Courts in the cases cited by both the sides.

34) Reliance was placed by the learned Senior Counsel for the appellant on the case reported as **1985 (3) SCC 350 (Brahmvart Sanathan Dharam Mahamandal,**

Kanpur v. Prem Kumar). In this case the Apex Court has observed that if the transfer of limited estate which is violable is not challenged by co-limited owners or at the instance of the reversioners during life time of the transferee, it can be presumed that the transfer made by one of the limited owners had consent of the others. In such circumstances, the transferee would be entitled to protection of provision of section 43 of the Transfer of the Property Act which substantially amounted to satisfying the equitable principle of feeding to the grants by estoppel. In the present case also the first suit to challenge the transaction made by Laxmibai was filed by Anjanibai in the year 1944, after 10 years of the transaction but the suit was withdrawn though with permission to file fresh suit. The suit was then filed only after the death of Laxmibai, transferee and son of transferee. In view of these circumstances learned Senior Counsel submitted that the observations made by the Apex Court in this reported case need to be used against Anjanibai There is force in this submission. The principles in this regard of Hindu Law are already quoted.

35) In the case reported as **1954 BCI 153 (Ranchhod Ramnarayan v. Manubai)** Bombay High Court, the suit was filed against the limited owner by transferee. Provision of Section 53A of the Transfer of Property Act, cases of legal necessity were considered and it was held that transferee had proved that for legal necessity the property was given in possession under agreement of sale by the limited owner to the transferee. Decree was given against limited owner and this decree was held to be binding on the reversioner. This opportunity was there to Anjanibai and she could have obtained declaration in respect of the existence or non existence of legal necessity for the disputed transaction during lifetime of Laxmibai and transferee but she avoided to do so.

36) In the case reported as **AIR 1965 SC 825 (Potti Lakshmi Perumallu v. Potti Krishnavenamma)** cited for the appellants the Apex Court observed that the interest given to the Hindu widow by the Act of 1937 was in substitution of her right under pre-existing Hindu law to claim maintenance. This Court has already quoted the relevant provisions giving meaning of legal necessity in

this regard. Such right was there with the widow even prior to the year 1937. Learned Senior Counsel for the appellant placed reliance on **AIR 1962 SC 83 (Jaisri Sahu v. Rajdewan Dubey)**. Right of widow to sell the property is discussed as under :-

"When a Hindu widow succeeds as heir to her husband, the ownership in the properties, both legal and beneficial, vests in her. She fully represents the estate, the interest of the reversioners therein being only spes successionis. The widow is entitled to the full beneficial enjoyment of the estate and is not accountable to any one. It is true that she cannot alienate the properties unless it be for necessity or for benefit to the estate, but this restriction on her powers is not one imposed for the benefit of reversioners but is an incident of the estate as known to Hindu law.

Where there is necessity for a transfer, the restriction imposed by Hindu law on her power to alienate ceases to operate, and the widow as owner has got the fullest discretion to decide what form the alienation should assume. Her powers in this regard are those of the manager of an infant's estate or the manager of a joint Hindu family."

37) The learned Senior Counsel or the appellant placed reliance on two cases to show the importance of recitals of the sale deed executed by limited owner. In the case reported as **1952 BLR 223 (Mukabasappa Bhimappa Amti v. Hanmantappa)** (Bombay) observations on the point 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 transaction, 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.

The true principle is that the more ancient the transaction, strict proof may not be required in order to prove the existence of legal necessity. But it is not correct to say that apart from the circumstances and such available evidence, the Court will be justified in presuming that the transaction is for legal necessity merely on the ground that it is an ancient transaction."

In the other case reported as **2002 (3) Bom.C.R. 286 (Gunwant Mahadeorao Deshmukh v. Bapurao Krishnarao Shinde)** the observation on the same point are as under :-

"Normally burden of proof as to legal necessity will be on the purchaser, but in special circumstances of case, where sale is challenged after a period of 33 years, the widow mother who was alive in 1968 was not made a party nor examined as a witness, prove lack of bona fide on plaintiff's and mother's part. At a time when witnesses of the time are not available to defendant the collusive suit is nothing but an attempt to take unfair advantage and defendants are entitled to rely on representations made in the sale deed and plaintiff cannot get a decree in his favour."

38) The learned Senior counsel for the appellant placed reliance on more reported cases in support of his contentions that due to long delay caused in filing the suit some presumption needs to be drawn against the plaintiff. In the case reported as **AIR 1996 SC 2127 = 1996 DGLS (Soft) 937 (Gangadharan v. Janardhana Mallan)** the Court was considering the point of legal necessity in similar case and observed that due to lapse of time of 12 years presumption of existence of legal necessary can be drawn. In that case transaction was of the year 1955 and the suit was filed to challenge the transaction after 12 years. Relevant observations are at para 15 and as under :-

"It is well established by the decisions of the courts in India and the Privy council that what the alienee is required to establish is legal necessity for the transaction and that it is not necessary for him to show that every bit of the consideration which he advanced was actually applied for meeting family necessity. In this connection we may refer to two decision of the Privy council. One is Krishn Das v. Nathu Ram. In that case the consideration for the alienation was Rs.3500/-. The alienee was able to prove that there was legal necessity only to the extent of Rs.3,000.00 and not for the balance. The High court held that the

alienation could be set aside upon the plaintiff's paying Rs.3,000.00 to the alienee. But the Privy council reversed the decision of the High court observing that the High court had completely misapprehended the principle of law applicable to a case of this kind. What the alienee has to establish is the necessity for the transaction. If he establishes that then he cannot be expected to establish how the consideration furnished by him was applied by the alienor. The reason for this, as has been stated by the Privy council in some other cases, is that the alienee can rarely have the means of controlling and directing the actual application of the money paid or advanced by him unless he enters into the management himself. This decision was followed by the Privy council in *Naimat Rai v. Din Dayal* where at pp.602 and 603 it has observed : It appears from the judgment of the learned Judges of the High court that if they had been satisfied that the whole of the Rs.38,400.00 paid out of the sale proceeds was paid in discharge of debts incurred before the negotiation of sale, they would have been of opinion that the sale ought to have been upheld. With this conclusion their Lordships agree, but they are of opinion that undue importance was attached by the learned Judges to the question whether some of the payments were made in discharge of debts incurred in the interval

between the negotiation of the sale and the execution of the sale deed. Even if there had been no joint family business, proof that the property had been sold for Rs.43,500.00 to satisfy pre-existing debts to the amount of Rs.38,000.00 would have been enough to support the sale without showing how the balance had been applied, as held by their Lordships in the recent case of *Krishn Das v. Nathu Ram*. Both these decisions state the correct legal position, Mr. Sinhas argument must, therefore, be rejected."

39) This Court has no hesitation to hold that the aforesaid observations can be used in the present case in favour of the defendants and against the plaintiff. Similar observations are made by the Apex Court in the case reported as **AIR 1971 SC 1028 (Rani v. Santa Bala Debnath)**. In that case suit was filed after 10 years of the sale transaction and following observation were made:-

"Legal necessity does not mean actual compulsion: it means pressure upon the estate which in law may be regarded as serious and sufficient. The onus of proving legal necessity may be discharged by the alienee by proof of actual necessity or by proof that he made proper and bona fide enquiries about the existence of

the necessity and that he did all that was reasonable to satisfy himself as to the existence of the necessity. Recitals in a deed of legal necessity do not by themselves prove legal necessity. The recitals are, however, admissible in evidence, their value varying according to the circumstances in which the transaction was entered into. The recitals may be used to corroborate other evidence of the existence of legal necessity. The weight to be attached to the recitals varies according to the circumstances. Where the evidence which could be brought before the Court and is within the special knowledge of the person who seeks to set aside the sale is withheld, such evidence being normally not available to the alienee, the recitals go to his aid with greater force and the Court may be justified in appropriate cases in raising an inference against the party seeking to set aside the sale on the ground of absence of legal necessity wholly or partially, when he withholds evidence in his possession.

A sale-deed executed by a widow, a limited owner, in respect of joint family property contained recital that sale was for legal necessity. Circumstances proved in suit to set aside sale also corroborated the fact of legal necessity. Eldest son of the widow also participated in execution of the sale-deed and it was not proved whether he was minor or major at that time.

Held, sale could not be set aside as legal necessity was amply proved."

40) Some argument was advanced by the learned Senior Counsel for the appellant on the provisions of Order 2 Rule 2 of the Civil Procedure Code in view of the circumstance that it is second suit of Anjanibai. Some argument was advanced on the case of adverse possession of the defendant. In view of the relevant provisions of the Civil Procedure Code with regard to the right given to the plaintiff to withdraw the suit with permission of the Court to file suit subsequently and in view of the provisions of the Hindu Law with regard to the rights of reversioners to take steps after the death of limited owner, there is no need to discuss the arguments advanced by the learned Senior Counsel.

41) The learned counsel for the plaintiff, present respondents, placed reliance on some reported cases like the decision given by the Supreme Court in **Civil Appeal No.1798 of 1998** dated 5-2-1999 (between Smt. Naresh Kumari and Sh. Shakshi Lal). In this case the Apex Court has discussed the effect of provisions of Section 14(1)(2) of the Hindu Succession Act 1956. It is laid down that the transfer of property by limited owner prior to coming in to

force of the Act, 1956 does not get protection of this provision as the provision is not in favour of the purchaser and so the property reverts back to the reversioner of the husband of the deceased, limited owner. There cannot be dispute over this proposition. The other report case on this point which is cited is **(1991) 3 SCC 410 (Kalawantibai v. Soiryabai)**. There is no dispute over the propositions made in this case.

42) To answer the argument advanced by the learned Senior Counsel for the appellant regarding requirement of relief of declaration in such cases and the case of adverse possession of the defendant, some reported cases are cited. **AIR 1956 AP 141 (N. Janikamma v. Mattareddi)** and **AIR 1967 Cal 512 (Purna Chandra Bandopadhaya v. Gouri Panda Mukhopadhaya)**. They show that there is no need of such declaration and reversioner can presume that such transaction is not binding on the reversioner. Relevant provisions of the Hindu Law are quoted in this regard. The case reported as **AIR 1961 Bom. 169 (Ramaji Batanji v. Manohar Chintaman)** is in respect of adverse possession. It is laid

down that the adverse possession of the purchaser may be against the widow but is not against the reversioner. In view of the provisions of the Hindu Law the reversioner gets right after the death of the widow and so there is no need to discuss this point more.

43) The learned counsel for the original plaintiff, present respondent submitted during arguments that recitals in the document may be relevant but they are not conclusive proof of existence of legal necessity. There is no dispute over this proposition in view of observations made in the cases cited supra. Ordinarily the Court will look for some more evidence which could be independent even when there is recital of legal necessity in the document. However, when due to efflux of time independent evidence is not available the recitals in the sale deed necessarily assume greater importance. Similarly as already observed, when evidence on inquiry about legal necessity is lost due to delay in action, the recital assumes greater importance. In that case if there is evidence of reasonable belief of the purchaser that would be sufficient. Relevant observations of the Apex Court in

that regard are already quoted.

44) The discussion made above shows that the relevant material and the relevant provisions of the Hindu law were not considered by the Courts below. Due to that, error is committed by both the Courts. This Court has no hesitation to hold that the plaintiff is not entitled to the relief as the transaction was made for the legal necessity by Laxmibai. There was no need of consideration of the first three points formulated by this Court as substantial questions of law as the real point involved was different. However, the point of legal necessity was definitely involved and this point is answered against the plaintiff. In the result, the appeal is allowed. The judgments and decrees of the Courts below are hereby set aside. The suit is dismissed.

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

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