

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

83 WRIT PETITION NO. 5289 OF 2016

DWARKABAI VASANTRAO KARAD
VERSUS
HARIBAI VISHWANATH MUNDHE AND OTHERS

Shri. S.B. Solanke, Advocate, for petitioner.

Shri. Laxman H. Kawale, Advocate, holding for Shri. K.J. Suryawanshi, Advocate, for respondent Nos.1 to 9.

CORAM: T.V. NALAWADE, J.

DATE : 5 DECEMBER 2016

ORDER:

1) The petition is filed to challenge the order made by the learned District Judge Latur on Exhibits 39 and 40 in Regular Civil Appeal No.409/2012. Both the sides are heard.

2) The suit was filed against present petitioner and others for relief of partition and possession. Defendant No.1 of the suit is husband of plaintiff No.1 and plaintiff Nos.2 and 3 are issues of plaintiff No.1 born from defendant No.1. Present petitioner, defendant No.2, is

made party as some properties are sold by defendant No.1 under registered sale deed to defendant No.2. The suit is decreed even against present petitioners, purchaser.

3) In the appeal, by the aforesaid applications, present petitioner prayed for framing additional issues as under :-

(i) Whether the plaintiff proves that the defendant No.2 is the necessary party to the suit or whether the plaintiff proves that they are having locus standi to institute the suit against the defendant No.2.

(ii) Whether the plaintiffs prove the sale deeds executed by the respondent No.4 in favour of defendant No.2 are not binding upon their shares or not.

(iii) Whether the suit is maintainable without challenging the sale deed as well as claiming any relief against the sale deed and defendant No.2.

(iv) Whether defendant No.2 proves she is the bona fide purchaser of the suit land.

(v) Whether plaintiff proves that they are in possession and cultivation of the suit land.

(vi) Whether the suit is filed by the plaintiff in collusion with the defendant No.1.

(vii) Whether the suit is property valued or not.

(viii) Whether the plaintiffs prove the cause of action against the defendant No.2 to institute the present suit.

4) When the suit is filed for relief of partition by Hindu, if some property is sold by one member, who was apparently Karta, the burden is always on the vendor and the purchaser to prove that there was legal necessity for the transaction. In some cases vendor does not appear and the burden entirely shifts on the purchaser to prove legal necessity. In such circumstances, Court can consider the circumstances like probability of vendor joining hands with the plaintiff and that circumstances can be used in support of the case of the purchaser. Thus, the aforesaid issues are not required to be framed. There is also no need to challenge the sale deed in view of position of law as it is the burden on the purchaser to prove the legal necessity. Thus, the application itself was misconceived. This Court holds that the appellate Court has not committed any error in rejecting the applications. In the result, the petition stands dismissed.

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

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