

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

**SECOND APPEAL NO. 429 OF 2015
IN
CIVIL APPLICATION NO. 10761 OF 2015**

Avinash Anil Kerure and others ...APPELLANTS

versus

Anil Rajaram Kerure and others ...RESPONDENTS

.....
Mr. V.D. Patnoorkar, Advocate for appellants
Mr. P.G. Godamgaonkar, Advocate for respondents No.2 and 3
Respondents No. 1 and 4 to 6 served.
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CORAM : SUNIL P. DESHMUKH, J.

DATED : 15th FEBRUARY, 2016.

Order :-

1. Heard learned counsel for parties at length.
2. Original plaintiffs are in second appeal against judgment and decree dated 24-03-2015 in regular civil appeal No. 05 of 2009 passed by District Judge-1 Kandhar, link court Mukhed confirming the judgment and decree in regular civil suit No. 28 of 2004 passed by civil judge, junior division, Mukhed, on 31-01-2009 dismissing their suit for partition and cancellation of sale-deed.
3. Regular civil suit No. 28 of 2004 had been instituted by the plaintiffs for partition and cancellation of sale-deed dated 01-07-1996 executed by defendant No. 1 i.e. father of plaintiffs No. 1 and 2 and husband of plaintiff No. 3 under which agricultural land Gut No. 131

admeasuring 1 hectare, 99 Aar situated at village Walanki Tq. Mukhed District Nanded had been sold in favour of defendants No. 2 and 3.

4. Mr. Patnoorkar, learned counsel appearing for appellants-plaintiffs vehemently submits that the courts have not appreciated the facts and circumstances in proper perspective and the sale – deed had been executed by defendant No. 1 in favour of other defendants immediately after birth of plaintiffs No. 1 and 2 without any legal necessity and that entire ancestral land wherein plaintiffs No.1 and 2 had right by birth came to be sold.

5. On the other hand, it is the contention of defendants No. 2 and 3 – purchasers that plaintiffs No.1 and 2 were not born at all on the date of execution of sale - deed and that the property had been dealt with by defendant No. 1 in their favour on account of legal necessities, since defendant No. 1 had to repay certain debts.

6. Upon evidence by the parties, it has emerged on record that plaintiff No. 1 was born on 20-05-1996 a few days before execution of sale deed and plaintiff No. 2 was born on 13-11-1997 i.e. one and half year after execution of sale deed. It has further emerged on record that there were debts incurred by defendant No. 1 and evidence had been adduced that the property was being dealt with for repayment of loans. The purchasers had adduced evidence in respect of the same and the same has been appreciated by both the courts.

7. Further, it appears that plaintiff No. 3 - wife of defendant No. 1 was present while sale-deed had been executed in favour of purchasers

defendants No. 2 and 3. Since it emerges on record that property had been dealt with for legal necessity, the fact which cannot be said to have been disproved by the plaintiffs, substantial question of law cannot be said to have arisen in present second appeal, rather the question of fact is being raised. The trial court as well as appellate court appear to have properly appreciated the evidence on record.

8. In the circumstances, second appeal stands dismissed.

9. In view of aforesaid, nothing survives in civil application and the same stands disposed of accordingly.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK