

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

SECOND APPEAL NO. 697 OF 2013

Sanjay Daulat Shinde

Appellant...

Versus

Daulat Budha Shinde & Ors

Respondents..

.....
Mr R. R. Karpe, Advocate h/f Mr A. I. Deshmukh, Advocate for
the appellant.
.....

CORAM : SUNIL P. DESHMUKH, J.
DATE : 7TH DECEMBER, 2016.

ORAL JUDGMENT :

1. Heard learned counsel for the Appellant-plaintiff. Regular Civil Suit No. 204 of 2002 instituted for declaration, that the sales of the suit properties effected by defendant No.1/plaintiffs' father in favour of defendant No. 5, and defendant No. 5 to defendant No. 6 is not binding on him and for partition thereof including of House bearing No. 106, situated at Anturli (Bk.), Tq. Pachora, Dist. Jalgaon.

2. The property bearing No. 204/2 had been encumbered by loans of various institutions and that the sale had been effected by

defendant No.1 for repayment of the same as emerges from record and the evidence of defendants No. 5 and 6. The trial as well as appellate Court and particularly the appellate Court has considered that, defendant No. 1 was Karta/manager of the joint family and as such he had right to deal with and dispose of the property of joint family for meeting the necessities of the family. The Court has observed, the relevant revenue record shows that there had been encumbrance of Anturli Cooperative Society since 1979 and yet another encumbrance since 1994, clearly evidencing that the loan had not been repaid for long time and had resulted into the transaction by defendant No. 1 in favour of defendant No. 5. It is also not the plaintiffs case, that there had been no encumbrance over the sold property. Both the courts on appreciation of evidence had concurred on that the sale had been necessitated for meeting out the encumbrances over the property. Learned counsel has referred to that, it is only after the second sale by defendant No. 5 to defendant No. 6, the loan liability has been discharged. As such, it had to be considered that, first sale was not necessitated and cannot be said to be a legal necessity. Although it is the submission of learned counsel, yet the position emerges as required, the purchasers appear to have made reasonable inquiry and had entered into the transaction and further have supported their case by

adducing evidence in respect of the liability standing against the family and its property. It may, however, be taken into account that, so far as undealt with property is concerned, the plaintiff's case for partition of the same has been decreed by the Court.

3. In the circumstances, in view of the aforesaid, there does not appear to be any substance in the second appeal. Same stands dismissed.

[SUNIL P. DESHMUKH]
JUDGE