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

**SECOND APPEAL NO.493 OF 2017
WITH
CIVIL APPLICATION NO. 9647 OF 2017
WITH
CIVIL APPLICATION NO. 9650 OF 2017**

1. Manoj s/o Dinanath Bhalkar,
Age: 29 years, Occu: Agril.,
R/o. Ohar, Tq. & Dist. Aurangabad
 2. Ajay s/o Dinanath Bhalkar,
Age: 22 years, Occu: Agril.,
R/o. Ohar, Tq. & Dist. Aurangabad
- ..APPELLANTS
(Orig.Plaintiffs)

VERSUS

1. Vishwas s/o Asaram Shinde,
Age: 60 years, Occu: Agril.,
R/o. Plot No. 397, CIDCO,
Aurangabad
(died, in view of Exh.12, his daughter
is brought on record as respondent
No.2A, as respondent No.2- his wife
is on record already)
2. Sow. Aruna w/o Vishwas Shinde,
Age: 55 years, Occu: Agril.,
R/o. Plot No. 397, CIDCO,
Aurangabad
- 2A. Ketki w/o Nilesh Kadam,
Age: 31 years, Occu: Household,
R/o. Plot No. 394, N3, CIDCO,
Aurangabad
3. Dinanath s/o Dada Bhalkar,
died, appellants & resp. Nos.4 to 8
are already on record as legal heirs
4. Sow. Mangalabai w/o Dinanath Shinde,
Age: 50 years, Occu: Agri.,
R/o. Ohar, Tq. & Dist. Aurangabad
5. Sow. Ranjana w/o Prabhakar Pawar,
Age: 50 years, Occu: Agril.,
R/o. Aslod, Tq. Shahada,
Dist. Nandurbar

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6. Sow. Sonali w/o Bhanudas Mhaske,
Age: 28 years, Occu: Agril.,
R/o. Hatnoor, Tq. Kannad,
Dist. Aurangabad
7. Kum. Asha d/o Dinanath Bhalkar,
Age: 26 years, Occu: Household,
R/o. Ohar, Tq. & Dist. Aurangabad
8. Kum Rekha d/o Dinanath Bhalkar,
Age: 20 years, Occu: Student,
R/o. Ohar, Tq. & Dist. Aurangabad
9. Shankar s/o Dada Bhalkar,
Age: 72 years, Occu: Agril.,
R/o. Ohar, Tq. & Dist. Aurangabad ..RESPONDENTS

Mr S. K. Rahane, Advocate for appellants;

Mr Sangvikar, Advocate for respondent Nos.

Mr P. V. Barde, Advocate for respondent Nos. 2 and 2A

CORAM : N.W. SAMBRE, J.

DATE : 21st July, 2017

ORAL ORDER

The plaintiffs filed suit for partition and separate possession in relation to ancestral property land bearing Gat Nos.232 and 194. The said suit came to be decreed to the extent of property Gat No.232, whereas prayer for partition and separate possession in relation to land Gat No.194 came to be turned down, which has been confirmed in appeal. As such, this second appeal by plaintiffs.

2. The family tree as is reflected from the factual matrix is, one Dada was blessed with son Dinanath i.e. defendant No.3 to the suit. Dinanath was married to Mangala – defendant No.4, who were blessed with two sons i.e. plaintiffs and four daughters who are defendants to the suit.

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3. It is claimed in the suit that Dinanath was addicted to bad vices, viz. alcohol and gambling and as such, the sale of ancestral property reflected in the suit is sale without legal necessity.

4. The claim was resisted by the respondents-purchasers who have come out with a case that sale was of legal necessity as Dinanath's two daughters were required to be married and further domestic liabilities prompted him to sale the property. He would then urge that the sale deed executed in relation to land Gat No.194 was also signed by wife of Dinanath i.e. defendant No.4.

5. In the aforesaid background, learned Counsel appearing on behalf of the appellants while questioning the findings recorded by the Courts below that the sale in relation to land Gat No.194 was a sale of necessity, would invite attention of this Court to the judgment of Karnataka High Court, in the matter of **Bhutaleppa Morteppa and ors. vs. Morteppa Bhimappa and ors.**, reported in **1999 AIHC 51**. According to him, plaitum (C) and observations made in paragraph 8 takes care of the issue as regards discharge of burden by the purchaser so as to establish a case of legal necessity.

6. Per contra, Mr Barde, learned Counsel appearing on behalf of respondent Nos.2 and 2A i.e. purchasers of the suit property would invite attention of this Court to the judgment of Apex Court in the matter of **Rangammal vs. Kuppuswami & anr.** reported in **AIR 2011 Supreme**

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Court 2344. According to him, it is settled law that to prove a sale of legal necessity, burden is always on the purchaser who purchase the ancestral property, however, there are exceptions to such presumption and shifting of burden. He would then urge that in paragraph 20 of the said judgment, the Apex Court while carving out such exception has noted that in any case, if the plaintiff while seeking relief of partition and possession comes out with a plea of legal necessity and if it is noticed that such plea is not moved with a *bona fide* intention, the burden always lies on the plaintiff.

7. Considered rival submissions. It is required to be noted that the sale deed in relation to the suit property bearing Gat No. 194 was admittedly executed by defendant No. 3 -Dinanath, father of appellants for valuable consideration. It is brought on record in the evidence of Dinanath who is blessed with four daughters. Two of his daughters were of marriageable age and it is this responsibility which prompted him to carry out sale, as such, sale was of legal necessity. In my opinion, the burden in relation to the sale of an ancestral property being of legal necessity was rightly discharged by the present respondents-defendants, as sufficient evidence is brought on record justifying the same.

8. Now it has to be evaluated whether the circumstances prompt that the burden shifts on the appellants-plaintiffs to prove that the sale in question was not a sale of legal necessity. The sale deed in question is endorsed i.e. signed by defendant No.4-mother of the present appellants-plaintiffs. The plaintiffs have kept mum over the said issue and are not

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giving any explanation as to what prompted mother to countersign the sale deed in favour of the purchasers. Apart from above, this being the fact, the plaintiffs, in my opinion, were duty bound to explain the same by leading cogent evidence that the sale in question, particularly the deed and recitals thereof were signed by defendant No.4 – their mother under duress or under any pressure. Such does not appear to be the case of the present appellants.

9. In my opinion, the very conduct of the appellants of seeking partition of such property which was duly sold in the circumstances as are demonstrated by the defendants-purchasers is the cause for shifting burden on the appellants. Paragraph 20 of the judgment in the matter of Rangammal (*supra*) is worth appreciating.

10. The law cited by the appellants is also not of much help to the appellants on the factual so also legal proposition.

11. In the aforesaid backdrop, in my opinion, no case for interference is made out. Second Appeal does not involve any substantial question of law. Second Appeal, therefore, stands dismissed. In view of dismissal of second appeal, pending civil applications do not survive and stand disposed of.

(N.W. SAMBRE, J.)

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