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

**SECOND APPEAL NO. 135 OF 2014
WITH
CIVIL APPLICATION NO.1691 OF 2014
IN
SECOND APPEAL NO. 135 OF 2014**

Balasaheb s/o Bapurao Dhamale,
Age: 50 years, Occu: Agril.,
R/o Mahapur, Tq. & Dist. Latur ..APPELLANT

VERSUS

Ganesh s/o Achyutrao Dhamale,
Age: 20 years, Occu: Education,
R/o Mahapur, Tq. & Dist. Latur ..RESPONDENT

Mr S. S. Choudhary, Advocate for appellant;
Mr S. V. Gundre, Advocate for respondent

**WITH
SECOND APPEAL NO. 37 OF 2015
WITH
CIVIL APPLICATION NO.1313 OF 2015
IN
SECOND APPEAL NO. 37 OF 2015**

1. Deepak s/o Balasaheb Dhamale,
Age: 25 years, Occu: Agril.,
R/o Mahapur, Tq. & Dist. Latur
2. Sandeep s/o Balasaheb Dhamale,
Age: 22 years, Occu: Agril.,
R/o Mahapur, Tq. & Dist. Latur
3. Kum Jyoti d/o Balasaheb Dhamale,
Age: 20 years, Occu: Household,
R/o Mahapur, Tq. & Dist. Latur

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4. Sow. Wanmala w/o Balasaheb Dhamale,
Age: 43 years, Occu: Agril. & Household,,
R/o Mahapur, Tq. & Dist. Latur

5. Prayagbai died through her L.Rs.

5/A. Sunanada w/o Sandipan Sherkar,
Age: 45 years, Occu: Household,
R/o Garsuli, Tq. Renapur,
Dist. Latur

5/B. Gangabai w/o Nanasaheb Mane,
Age: 45 years, Occu: Household,
R/o Bhusani, Tq. Ausa,
Dist. Latur

..APPELLANTS

VERSUS

1. Ganesh s/o Achyutrao Dhamale,
Age: 20 years, Occu: Education,
R/o Mahapur, Tq. & Dist. Latur

2. Balasaheb s/o Bapurao Dhamale,
Age: 49 years, Occu: Agril.
R/o Mahapur, Tq. & Dist. Latur ..RESPONDENTS

Mr Y. P. Pawar, Advocate for appellants;
Mr S. V. Gundre, Advocate for respondent No.1

CORAM : N.W. SAMBRE, J.

DATE : 14th JUNE, 2017

ORAL ORDER :

Since both the appeals are arising out of
same judgment and order, same are taken up and
heard together with consent.

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2. Special Civil Suit No. 51 of 2005 came to be filed by the appellants-plaintiffs seeking cancellation of agreement of sale dated 13th February, 2004. Amongst other, plaintiff No.4 Vanmala and for natural guardian of plaintiff Nos. 1 to 3 and wife of defendant No.2 represented in the suit. Plaintiff No. 5 Prayagbai, mother of original defendant No.2, mother in law of plaintiff No.4 and grand mother of plaintiff Nos. 1 to 3 expired on 18th January, 2008, as such, through her legal representatives.

2. The suit property consist of land Block No. 319 situated at Village Mahapur, Taluka and District Latur to the extent of 71 Are, which was agreed to be sold by agreement of sale dated 13th February, 2004 to defendant No.1 by defendant No.2.

3. It is the case of appellants-plaintiffs that the aforesaid land being ancestral, defendant No. 2 is not entitled to sell the same without any

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legal necessity. The sale by defendant No. 2 is with an intention to satisfy his illegal needs and bad vices. It is then claimed that forceful possession was obtained by original defendant No.1.

4. The suit came to be resisted by the person who has agreed to purchase the suit property by filing written statement at Exhibit-14 denying the suit claim. He has admitted the fact of amputation of leg of defendant No.2, however, he stated that the consideration of Rs.1,42,000/- was paid to defendant No. 2 in presence of panchas after having satisfied that the sale was for legal necessity and possession of the suit land was obtained as per law. He would rely upon the recitals of agreement so as to substantiate his case and examined witness Achyut at Exhibit-42.

5. Defendant No. 2 wholeheartedly supported the claim of the plaintiffs and prayed for decreeing the suit, as according to him, agreement was not out of legal necessity.

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6. The trial Court, as such, dismissed the suit, which was confirmed in the appeal. As such, present second appeal.

7. Heard Mr. S.S. Choudhari, learned Counsel for appellant in Second Appeal No. 135 of 2014 and Mr. Pawar, learned Counsel for appellants in Second Appeal No. 37 of 2015.

8. According to both learned Counsel, it is required to be appreciated that defendant No. 2 originally signs in Marathi being his mother tongue and on the disputed document, signature was in English, which speaks of an intention of the defendant No. 2 to execute agreement of sale. An issue of agreement of sale for legal necessity is pressed in service and it is then claimed that plaintiff No. 5 Prayagabai never consented for agreement of sale. In addition, it is urged that consideration agreed is meager and far away from the market value, which would substantiate the

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claim that agreement of sale was only for naming sale and never to be acted upon.

9. With the assistance of both learned Counsel, I have perused both the judgments of the Courts below.

10. The trial Court framed issues at Exhibit-22 and recorded findings that the original defendant No. 2 executed agreement in favour of defendant No.1 for legal necessity, as defendant No.1 has discharged the said burden. The trial Court then proceeded to record finding that though the suit land is ancestral land, the agreement was for legal necessity.

11. While doing so, learned trial Court considered rival submissions and analyzed the evidence on record. The amputation of leg of defendant No.2 is not disputed fact. As such, out of total land held by plaintiffs and defendant No.2, land to the extent of 71 Are out of new Gat

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No.319 claimed to have been subject matter of transfer. It is brought on record by defendants that the amount was required for fixing artificial leg to defendant No.2 and as such, said amount was arranged by entering into agreement of sale with defendant No.1. As such, the Court upon appreciation of evidence, noticed that the agreement was out of legal necessity was proved by defendant No.1. There is also admission by plaintiff No. 4 Vanmala about amputation of leg and fixing of artificial leg.

12. It is also brought on record that after defendant No. 2 suffered injury, there was no earning member and out of amount received towards consideration, expenses for legal necessity was made. As such, issue of legal necessity was rightly answered by both the Courts below in favour of defendant No.1 as agreement of sale was for legal necessity is proved.

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13. So far as the issue of signature in Marathi and English is concerned, the Courts below compared admitted signatures at Exhibits-39 and 56 i.e., signature on Exhibit-39 in Regular Civil Suit No. 634 of 2004 and disputed agreement Exhibit-56. Taking recourse to the provisions of Section 73 of the Indian Evidence Act, the Court compared signature with naked eyes and recording findings in absence of any objection to that effect by original defendant No. 2 whose signatures were verified.

14. As regards the consent by Prayagabai, mother of defendant No.2 being co-parcener to the agreement is concerned, nothing is brought on record to demonstrate that co-parcener never consented, rather agreement of sale was for legal necessity is observed to be proved in favour of defendant No.1.

15. Apart from above, it is to be noted that Special Civil Suit No. 149 of 2006 was filed by

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present defendant No.1 i.e. respondent No.1 against respondent No.2 i.e. defendant No.2 based on disputed agreement dated 13th February, 2004. The decree for specific performance in favour of defendant No.1 is already confirmed in Regular Civil Appeal No. 36 of 2009, which decree is not challenged by present respondent No.2 or appellant though it is within their knowledge as could be inferred from the proceedings of both the Courts below.

16. In the aforesaid background, the issue as regards inadequate consideration will be of hardly any consequences.

17. The lower appellate Court and trial Court have dealt with relevant issue in detail.

18. As such, against concurrent findings of Courts below, I hardly notice any substantial question of law. Both the appeals lacks merit, as such stand dismissed.

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19. In view of dismissal of the second appeals, civil applications for stay stand dismissed.

(N.W. SAMBRE, J.)

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