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

**SECOND APPEAL NO. 189 OF 2014
WITH
CIVIL APPLICATION NO.2761 OF 2014**

1. SHOBHA BHASKARRAO VAYKOS
Age: 62 years, Occ: Agri.,
R/o. Ward no.2, Near Lokmanya
Tilak Statue, Chikhali,
Tal. Chikhali, Dist. Buldhana.
2. SANDHYA VIJAYKUMAR GOSAVI
Age: 37 years, Occ: Household,
R/o. As above.
3. PRASHANT BHASKAR VAYKOS
Age: 34 years, Occ: Service,
R/o. As above.
4. SANTOSH BHASKAR VAYKOS
Age: 30 years, Occ: Agri.,
R/o. As above. ..APPELLANTS

VERSUS

1. BANSILAL JAGANNATH VAYKOS
(Bhendale)
Age: 69 years, Occ: Agri.,
R/o. Ward No.1 (New) Mahaveer
Nagar, in front of Chambhar
Wada, Chikhali, Tal. Chikhali,
Dist. Buldhana.
2. AMOL BANSILAL VAYKOS (Bhendale)
Age: 33 years, Occ: Agri.,
R/o. As above.
3. SAKHARAM RAJARAM SHELKE
Age: 50 years, Occ: Agri.,
R/o. Konad, Tal. Jafrabad,
Dist. Jalna.

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4. BHASKAR JAGNNATH VAYKOS
Age: 64 years, Occ: Agri.,
R/o. Ward No.2, Near Lokmanya
Tilak Statue, Chikhali,
Tal. Chikhali, Dist. Buldhana. ..RESPONDENTS

Mr Satyajit S. Bora, Advocate for appellants;
Mr V.B. Garud, Advocate for respondent Nos. 1 & 2
Mr P.P. Kothari, Advocate for respondent No.4

CORAM : N.W. SAMBRE, J.

DATE : 14th JUNE, 2017

ORAL ORDER :

Land Gat No.405 admeasuring 5 acre situated at village Konad (Bk) Taluka Jafrabad, District Jalna is the subject matter of the present appeal. The said land was owned by defendant No.4, who by registered sale deed dated 24th November, 1987 transferred in favour of defendant No.1 and 2, who subsequently part of it transferred to defendant No.3.

2. Plaintiffs-appellants claimed that the aforesaid sale was out of shock that defendant No.4 suffered because of his imbalance in view of fire

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to his business place is not binding on the plaintiffs and as such, initiated Regular Civil Suit No. 15 of 2008. The suit came to be dismissed by judgment and decree dated 4th December, 2008, which was later on confirmed in Regular Civil Appeal No. 1 of 2009. As such, present second appeal.

3. Mr. Bora, learned Counsel for the appellants, in the aforesaid background, while carving exception to the concurrent findings of the Courts below, would urge that defendant Nos. 1 and 4 are real brothers, who have already partitioned their property in 1973. According to him, defendant No. 4 used to respect defendant No.1 being elder brother and it is only upon directions, executed sale deed. According to him, sale was neither of necessity nor any compulsion. He would harp upon this Court to frame substantial question of law on the said issue so as to upset findings recorded by both the Courts below.

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4. Per contra, Mr. Gangakhedkar, learned Counsel for the respondents-defendants would urge that both the Courts below have concurrently held against the appellants that the sale deed in question is not liable to be set aside being not binding on the plaintiffs. According to him, this Court should not reappreciate the evidence and sought dismissal of the appeal.

5. With the assistance of the respective Counsel, I have perused the contents of the plaint and written statement so as to appreciate the case of the appellants-plaintiffs.

6. The plaintiffs in a categorical terms in the plaint stated that defendant No. 4, who is husband of plaintiff No.1 and father of plaintiff Nos. 2 to 4, lost his mental balance, as pan shop, which he was running was destroyed in fire. According to him, under the said circumstances, he upon directions of defendant No.1, who is real brother, executed sale deed.

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7. So far as story of loss of mental balance of defendant No. 4 is concerned, but for bare statement in the plaint, I hardly noticed any evidence brought on record to prove the same. Since the plaintiffs have come out with case of loss of mental balance of defendant No.4, it was incumbent on them to prove the said fact by leading cogent evidence. Neither any documentary evidence or oral evidence brought on record to substantiate the said story.

8. Though the plea of sale for not legal necessity is sought to be canvassed by Mr. Bora, learned Counsel for the appellants, however, such burden, in my opinion, would not shift on the defendants, particularly when it was never case of the appellants-plaintiffs.

9. The trial Court has framed issues in the backdrop of rival contentions of the parties, as to whether sale deed in question was nominal one and

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whether the sale deed is not binding on the plaintiffs and answered the same in the negative. While doing so, the case of the appellants-plaintiffs was appreciated by both the Courts below in the backdrop of evidence led and suit came to be dismissed, which was confirmed in the appeal. Lower appellate Court, while endorsing the findings of the trial Court, has considered and reappreciated the evidence in the backdrop of pleadings and noticed that the appellants-plaintiffs have failed to establish and prove their case. As such, appeal, in my opinion, lacks merit and stands dismissed.

10. Consequently, civil application for stay stands dismissed.

(N.W. SAMBRE, J.)

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