

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.294 OF 2017
ALONG WITH
CIVIL APPLICATION NO.368 OF 2017

Jalindar Narayan Chavan and Anr.	 Appellants-Applicants
V/s.	
Koushalya Ashok Kadam and Ors.	 Respondents

Mr. Nikhil Patil, I/by Mr. Prabhakar M. Jadhav, for the Appellants-Applicants.

Mr. Pankaj D. Purway for Respondent Nos.1 and 3 to 5.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 1ST AUGUST, 2018.

P.C. :

1. Heard Mr. Patil, learned counsel for the Appellants, and Mr. Purway, learned counsel for Respondent Nos.1 and 3 to 5.

2. The Appellants are the Original Defendant Nos.5 and 6-the purchasers of the suit property. The Suit was filed by Respondent No.1-Original Plaintiff for partition and separate possession, which came to be decreed. The Appeal preferred against the said 'Judgment and Decree' passed by the Trial Court, is also dismissed.

3. The only contention raised is that, initially, the issue was framed as

to whether the suit properties were ancestral joint family properties and the said issue was subsequently deleted on the count that, it was not disputed. It is urged that, both the Courts below have, thus, proceeded on the presumption that, the suit properties are the ancestral joint family properties and on this aspect, the interference is warranted.

4. However, the very contention raised by the present Appellants in their written statement is that, Original Defendant No.1 has sold the suit properties out of his legal necessities and Appellants are the bonafide purchasers. Thus, indirectly, the Appellants had admitted that, the suit properties were the ancestral joint family properties of Defendant No.1 and that was the reason why the Appellants have raised the plea of legal necessity and bonafide purchasers.

5. Hence, no fault can be found in the impugned 'Judgment and Order' of both the Courts below holding that, the suit properties were the ancestral joint family properties. No other point is argued in this Second Appeal and hence, the same stands dismissed.

6. In view of dismissal of the Second Appeal, Civil Application No.368 of 2017 pending therein does not survive and the same stands disposed off as infructuous.

[DR. SHALINI PHANSALKAR-JOSHI, J.]