

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

SECOND APPEAL NO.565 OF 2016

Nilawati W/o. Prabhu Gound and Another
Versus
Sakhubai W/o. Vishwanath Jawale and Others.

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Mr. Rajeev Deshmukh h/f Mr. Mukul Kulkarni, Advocate for appellants.
Mr. P.K. Deshmukh, Advocate for respondent Nos.5 and 6.
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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 25th JULY, 2019.

ORDER :

. Present appeal has been filed by the original plaintiffs challenging the concurrent findings and decree passed in Regular Civil Appeal No.248 of 2012 by learned District Judge, Osmanabad dated 18.03.2016 thereby confirming the dismissal of their suit i.e. R.C.S. No.150 of 1996 passed by learned Joint Civil Judge, Junior Division, Kallam on 31.07.2010. The present appellants had filed suit for partition and separate possession.

2. Heard learned Advocate Mr. Rajeev Deshmukh holding for Mr. Mukul Kulkarni for appellants and learned Advocate Mr. P.K. Deshmukh representing respondent Nos.5 and 6. Other advocates and other served

parties remained absent.

3. The original plaintiffs had claimed that they, being daughters of one Vishvanath Jawale, who left behind him agricultural land bearing Gut No.25 admeasuring 3 Hectare 37 R situated at Mouje Saundane Dhoki, Tq. Kallam as ancestral property have share in the same. It is stated that Vishwanath Jawale expired in the year 1981 leaving behind two widows, namely, Rajubai i.e. original defendant No.1 (lateron deleted) and Sakhubai i.e. defendant No.2. Defendant Nos.1 and 2 became Karta-cum-manager of the joint family. It was the contention of the plaintiffs that the income derived from the agricultural land was sufficient to satisfy the legal needs and demands of the joint family. It is stated that those defendants have sold 1 Hectare portion from the suit land to defendant Nos. 4 and 5, 1 Hectare 21 R land sold to defendant No.6 and 80 R land sold to defendant No.7 by different sale deeds and it is further stated that defendant Nos.1 and 7 have further sold 1 Hectare land to father of defendant No.8 by another different sale deed. According to the plaintiffs, all these sale deeds are void and not binding on their share. It is stated that it was without legal necessity. The plaintiffs claimed that they have 2/3rd share in the property and therefore, they prayed for partition and

separate possession.

4. Defendant Nos.2, 6 to 8 filed combined written statement. Defendant Nos.4 and 5 filed their written statement separately. They all have stated that after the demise of Vishwanath, both the widows started looking after the joint family. There was no male member in the family. All the daughters were minor. When there was no other source of income from agricultural land, the widows who were supposed to maintain the family, had sold the suit property in pieces for the legal necessity to satisfy the loan, which was obtained for the marriage of the daughters. It is stated that all the transactions are valid and legal and it is binding on the plaintiffs.

5. It appears that initially, defendant No.9 was minor and incorporated as plaintiff No.1, however, after she attained the majority, she had got herself transposed as defendant No.9, but then she has admitted the claim of the plaintiffs by filing written statement.

6. Taking into consideration the rival contentions, issues were framed. Parties have laid oral as well as documentary evidence. After hearing both sides and perusing the evidence on record, the learned trial

Court has held that the suit property was the joint family property of the plaintiffs and defendant Nos.1, 2 and 9. However, it was held that the defendant Nos.4 to 8 have proved that defendant Nos.1 to 3 sold the suit property for valid and legal necessity and it is binding on the share of the plaintiffs. Therefore, the suit was dismissed and thereafter, the first appellate Court, after hearing both sides, dismissed the appeal. Hence, present Second Appeal.

7. Learned Advocate appearing for the appellants submitted that both the Courts below have not considered the facts properly and the point of legal necessity has not been taken into consideration properly. There was no evidence adduced to prove that the income derived from the agricultural land was insufficient and therefore, the widows had no option but to sale the land. The said defendants have also not produced any evidence to show that in order to mitigate the expenses of marriage of the daughters, they had incurred loan. Under the said circumstance, the substantial questions of law are arising in this case requiring admission of the Second Appeal.

8. Per contra, learned Advocate appearing for respondent Nos.5 and 6 supported the reasons given by both the Courts below and submitted

that the said transactions were for the benefit of the family in order to mitigate the legal necessity.

9. Perusal of the impugned judgments would show that the sale deeds have been produced at Exhibit-68, 89 to 92. In fact, when the plaintiffs themselves had come with the said case of sale of the properties, there was no hurdle for the Courts below to consider those sale deeds including the contents thereof. In the sale deeds, specific mention has been made regarding the purpose for which the lands are sold. It is to mitigate the loan. It was not necessary for the defendants to produce on record as to what was the loan that was obtained. Another fact to be noted is that both the Courts below have minutely considered the evidence to see, as to whether after the demise of Vishwanath, the income derived from the land was sufficient to mitigate the expenditure of the family or not. Admittedly, there was no other source of income for the widows. Oral evidence has been specifically laid by the defendants to prove the legal necessity and thereby they had discharged the burden cast on them. On the contrary, the plaintiffs have not adduced any evidence in rebuttal. It is to be noted that defendant Nos.1 and 2 had sold 1 Hectare land to defendant Nos.4 and 5 on 27.05.1982 for consideration of Rs.15,000/- and it has come on record

that Vishwanath had expired in 1981. That means, immediately after his death need was felt to mitigate the day to day expenditure and then, the said sale transaction has been made. Thereafter, further sale deeds have been executed on 25.09.1985, 19.12.1985, 07.08.1986 and 05.12.1995. The plaintiffs have not stated as to when they attended majority. They have not given their age at the time of death of their father though it is stated that they were minors. Age of plaintiff Nos.1 and 2 on the date of the suit is 30 and 23 respectively. The question arises, as to why they had not taken any objection especially plaintiff No.1 Nilawati when at the time of sale deed dated 25.09.1985, 19.12.1985 and 07.08.1986, she was major. Therefore, from every angle, if we consider the evidence on record and the contentions raised by the plaintiff, it can be seen that no fault can be found with the reasons given by both the Courts below while coming to the conclusion that the defendant Nos. 1 to 3 had sold the suit properties for legal necessity. Under such circumstance, no substantial questions of law is arising in this case as contemplated under Section 100 of C.P.C., which is the *sine qua non* for taking cognizance of a Second Appeal. and therefore, Second appeal is disposed of as **not admitted**. No order as to costs.

(SMT. VIBHA KANKANWADI, J.)

SCM