

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO. 98 OF 2016

Shantabai Ramchandra Pardhi and others ... Appellants
Versus
Balu Bhoru Pardhi and others ... Respondents

.....
Mr. Samir Suryawanshi for the appellants.
.....

CORAM : SANDEEP K. SHINDE, J.
DATE : 17th JANUARY, 2019.

P. C.:

1. Heard learned Counsel for the appellants.
2. The appellant-plaintiff who is daughter-in-law of the defendant No.1 had filed suit for partition. She also sought declaration that the sale-deed executed by defendant No.1 (her father-in-law) dated 24th February, 1982 is not binding on her to the extent of her share in the suit properties.
3. The learned trial Court decreed the suit and held that the plaintiff has 1/4th share in the suit properties. The decree was carried in appeal by the defendant No.2, who is brother-in-law of the plaintiff. The appellate Court modified the decree to the extent that the suit properties i.e. Gat Nos.304, 466, 313, 310,

302 and 467 were excluded from the partition, being self acquired properties of defendant No.2.

4. Aggrieved by the said decree passed by the appellate Court this Second Appeal is preferred by the original plaintiffs.

5. The plaintiffs had filed the suit seeking partition of land Gat Nos. 304, 466, 313, 310, 302 and 467 (six pieces of land). She had claimed $1/4^{\text{th}}$ undivided share in the suit properties. The suit was filed in October, 1987. The suit was resisted by defendant No.2 (son of the defendant No.1) contending that suit properties were purchased by him from his father vide registered sale-deed dated 24th February, 1982 for consideration.

6. The learned trial Court, held that the suit properties are the joint family properties and that the evidence on record does not indicate that alienation of the said properties by defendant No.1 to defendant No.2 was for the legal necessity. Thus, the decree of partition was passed in favour of the plaintiff holding that she has $1/4^{\text{th}}$ undivided share in the suit properties and also granted declaration that the sale-deed executed by defendant No.1 in favour of defendant No.2 is not binding on the plaintiff to the extent of her share in the suit properties.

7. The appellate Court excluded the six properties from the partition by holding that the six properties namely Gat Nos. 304, 466, 313, 310, 302 and 467 are the self acquired properties of defendant No.2.

8. I have gone through the judgment of the Appellate Court. There is nothing on record to indicate that the alienation of the suit properties by defendant No.1 to the defendant No.2 was for the legal necessity. No reasons were recorded by the Appellate Court to hold that these pieces of land were the self acquired property of defendant No.2. In fact, the defendant No.2 has not led any evidence to substantiate that these properties were acquired by him from his independent source of income. It may be stated that the defendant No.1 in his evidence has stated that subject sale deed was without consideration sale.

9. Thus, considering the facts and the case, following order;

Admit.

Following are the substantial questions of law.

- (i) In absence of any evidence whether the Appellate Court was justified in excluding the suit properties Gat Nos. 304, 466, 313, 310, 302 and 467 from the partition by holding those were self acquired properties of Defendant No.2?

- (ii) Whether the Appellate Court was justified in holding that the sale-deed dated 24th February, 1982 executed by the defendant No.1 in favour of defendant No.2 was valid without recording that finding that the said alienation was for the legal necessity?

10. Call for the Record and Proceedings.

(SANDEEP K. SHINDE, J.)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 1796 OF 2008
IN
SECOND APPEAL NO. 98 OF 2016**

Shantabai Ramchandra Pardhi and others ... Applicants
Versus

Balu Bhoru Pardhi and others ... Respondents

.....
Mr. Samir Suryawanshi for the applicants.

.....

CORAM : SANDEEP K. SHINDE, J.

DATE : 17th JANUARY, 2019.

P. C.:

1. The appeal is admitted on the substantial questions of law.
2. In the interest of justice, the execution of decree passed by the 3rd Extra Joint District Judge in C.A. No. 373 of 1998 is stayed.
3. The civil application is allowed in terms of prayer clause (a) and disposed of.

(SANDEEP K. SHINDE, J.)