

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 105 OF 2017

Jayshree Manik Nikam
@Jayshree Bharat Deore
V/s.

....Appellant

Sau. Surekha Rajendra Maind
and Ors.

....Respondents

Mr. Tushar N. Sonawane, Advocate for the appellant.

Mr. Ganesh Bhujbal, Advocate for respondent no.1.

CORAM : SANDEEP K. SHINDE, J.

Tuesday, 2nd April, 2019.

P.C. :

1. Heard learned Counsel for the parties.
2. The appellant-plaintiff's, suit for declaration, partition and perpetual injunction was dismissed by the learned trial Court by judgment and order dated 5th October, 2013. The plaintiff challenged the decree of the trial Court in Regular Civil

Appeal No. 251 of 2013. The Appeal was dismissed by the learned District Judge-I, Nasik vide judgment and order dated 30th August, 2016. It is against the decree in Regular Civil Appeal No. 251 of 2013, the plaintiffs have preferred this Second Appeal.

3. For the sake of convenience, I will refer the parties by their nomenclature in the suit.

4. The brief facts of the case are as follows ;

. The plaintiff sought partition of three properties, namely (i) Gat No.119, (ii) Gat No.78 and (iii) House bearing no.127. The defendant no.2 is father of the plaintiffs no.1 and 2 and husband of plaintiff no.3. It is plaintiffs case that, defendant no.2 sold suit property being Gat No.119 to the defendant no.1 by registered sale-deed dated 18th December, 2007 not for legal necessity or in absence of legal necessity and therefore sought a declaration that, the sale-deed is not binding on them.

5. The learned trial Judge held that, the plaintiffs

could not establish that, Gat No.119 which is sold under the sale-deed dated 18th December, 2007 was ancestral property. Besides, the learned Judge held that, defendant no.1 (purchaser) has proved the factum of legal necessity. The Appellate Court, however, reversed the finding and held that, all the suit properties are ancestral properties including Gat No.119 and the plaintiffs have undivided share therein. The Appellate Court, however, confirmed the finding of the trial Court on the issue of legal necessity and held that the purchaser-defendant no.1 has proved that the defendant no.1 sold Gat No.119 to him for the legal necessity.

6. *Essentially, Appeal is preferred against the finding recorded on the point of “legal necessity”.*

7. *It may be stated that, defendant no.2, father of plaintiff no.1, had filed a written statement and would assert that, though the property was sold by him to the defendant no.1*

for the consideration of Rs.14,00,000/-, he did not receive the entire consideration. He would assert that, though Rs.8,00,000/- were transferred and credited in his bank account, he does not know as to how and when, this Rs.8,00,000/- were withdrawn from his account. It is to be stated that, defendant no.2 did not take steps or initiated legal proceedings against the defendant no.1 for non-receipt of Rs.8,00,000/- till date. The defendant no.2 sold the property in the year 2007 but has chosen to raise this defence in the year 2013 when the subject suit was filed by his married daughter, son and wife. He has not explained in the written statement or in the evidence as to why he did not take steps against defendant no.1 for non-receipt of part consideration of Rs.8,00,000/-, in 2007, itself. This conduct of the defendant no.2 is thus relevant to the fact in issue.

8. *It may also be stated that, plaintiff no.1 is married daughter who got married in the year 1998. It is her evidence that, her father had taken a loan from the Co-operative Bank*

and for the repayment of the said loan, he sold out Gat No.119. Infact, plaintiff no.2 was a witness to the sale-deed executed by the father in favour of the defendant no.1. His evidence also says that, his father had obtained a loan from Hingave Adivasi Society.

9. *The defendant no.1 deposed that, out of the total consideration, he deposited Rs.4,25,000/- in the Loan Account of defendant no.2 which he had taken from Nashik District Central Co-operative Bank, Market Yard branch and transferred the remaining amount of consideration in the Bank Account of defendant no.2.*

10. *Thus, after going through the evidence of plaintiffs no.1, 2 and defendant no.1, fact is proved that, the defendant no.2 was indebted and for the repayment of Loan from the Bank -Hingave Advisai Society and Nashik District Co-operative Bank, he sold the property to defendant no.1.*

11. *Besides, the conduct of the plaintiff and the defendants cannot be overlooked, being relevant to the fact in*

issue. The suit was filed in the year 2009 seeking, to set aside the sale-deed dated 18th December, 2007 to which plaintiff no.2 was one of the witness. It may also be stated that, defendant no.2 who had received the consideration in his Bank Account, would contend that, he had not received part consideration from the defendant no.1, first time in the year 2009, i.e. two years later the sale transaction.

12. Thus, taking into consideration the facts of the case and the evidence on record, in my view, the findings rendered by the Courts below are essentially findings on facts which are consistent with the evidence on record.

13. The Appeal, therefore, does not give rise to any substantial question of law. The Appeal is dismissed.

(SANDEEP K. SHINDE, J)