

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**SECOND APPEAL NO.248 OF 1993  
WITH  
CIVIL APPLICATION NO.2312 OF 1993  
IN SA/248/1993**

Vikrant s/o Vilasrao Patil (Died)  
Through Legal Heirs (Orig.Deft.No.4)

- 1) Vidyulata w/o Vikrant Patil,  
Age 37 years, Occupation Household  
and Agri., R/o 353/2, Waykule Plot,  
Uplai Road, Ganesh Temple  
Tq. Barshi Dist.Solapur.
- 2) Sai d/o Vikrant Patil,  
Age 16 years, Occupation Education,  
Minor Through Under Guardian  
Vidyulata w/o Vikrant Patil,  
Age 37 years, Occupation Household  
and Agri., R/o 353/2, Waykule Plot,  
Uplai Road, Ganesh Temple  
Tq. Barshi Dist.Solapur. **...Appellants**

**VERSUS**

- 1) Uttam s/o Nivrati Langade,  
Age 37 years, Occupation Agriculture,  
R/o Gour Tq. Kallam Dist.Osmanabad.  
(Original Plaintiff)
- 2) Nivrati s/o Genba Langade,  
Age 75 years, Occupation Agriculture,  
R/o Gour Tq. Kallam Dist.Osmanabad.  
(Original defendant No.1)
- 3) Subabai w/o Nivarti Langade,  
Age 70 years, Occupation Labourer,  
R/o Gour Tq. Kallam Dist.Osmanabad.  
(Original defendant No.2)

- 4) Govind s/o Nivrati Langade,  
Age 50 years, Occupation Service,  
No.8364525 Wo II G.No.Langade  
2 Central base Post of C/o 99 A.P.O.  
(Original defendant No.3) **...Respondents**

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Advocate for Appellant : Mr. V. D. Salunke i/b  
Mr. R. A. Deshmukh

Advocate for Respondent No.1 : Mr. S. S. Choudhary

Advocate for Respondent No.4 : Mr. P. D. Suryawanshi

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**CORAM : SMT.VIBHA KANKANWADI, J.**

**Date of Reserving the Judgment :  
08-09-2021**

**Date of Pronouncing the Judgment :  
04-12-2021**

**JUDGMENT :**

1. Present appeal has been filed by the original defendant No.4 challenging the concurrent Judgment and decree. Present respondent No.1 is the original plaintiff who had filed Regular Civil Suit No.106 of 1077 before Civil Judge, Junior Division, Kallam District Osmanabad, for declaration, partition and possession. The said suit came to be decreed on 31-01-1983. It was declared that the plaintiff has 1/4th share in the suit lands and the mango trees. It was the further decree that the sale deed effected by defendant

No.1 on 11-05-1976 in favour of defendant No.4 stood cancelled to the extent of 1/4th share of the plaintiff. The separation of the share was directed to be effected through Collector. The said Judgment and decree passed by the Trial Court was challenged by defendant No.4/present appellant by filing Regular Civil Appeal No.105 of 1983 and the said appeal came to be dismissed on 28-04-1993 by learned Additional District Judge, Osmanabad. Hence, this second appeal.

2. This Court admitted the second appeal on 11-09-2006 by framing following substantial question of law :-

“Whether the present appellant has proved that the property was sold to him for legal necessity.”

3. Heard learned Advocate Mr. V. D. Salunke instructed by Mr. R. A. Deshmukh for appellants, learned Advocate Mr. S. S. Choudhary for respondent No.1 and learned Advocate Mr. P. D. Suryawanshi for respondent No.4.

4. It has been vehemently submitted on behalf of the appellants that both the Courts below have not appreciated the evidence property and failed to consider the contents of the documents which itself indicate the legal necessity. It is not in dispute that defendant

No.1 who is the father of plaintiff executed sale deed on 11-05-1976 in respect of land Gut Nos.714 and 719 in favour of defendant No.4. Though there are other two suit lands, but we are not concerned with the same as defendant No.4/present appellant was concerned only with the above said two lands which were sold to him. As per the plaintiff, defendant No.1 was addicted to vices and he had unauthorizedly and illegally sold above said two suit lands without any legal necessity to defendant No.4 and, therefore, the said sale deed is not binding on him. It was stated that the family neither was indebted to anybody nor loan was raised requiring any amount for mitigating the said loan. It was also pleaded that the actual value of the suit lands are more than it has been shown in the sale deed, but the plaintiff had not adduced any proper evidence to show that what was the real value of the suit land. Some statement made by the witnesses that irrigated land in their village would fetch a certain amount, will not amount to evidence in respect of inadequacy of consideration. In fact, the suit was filed in collusion between the plaintiff and defendants No.1 to 3 to give a go bye to rights derived by defendant No.4. This can be seen from the fact that intentionally defendants No.1 to 3 remained absent and the suit proceeded ex-parte against them. This shows that they had the collusive interest

with plaintiff as against defendant No.4. When it was contended by the plaintiff that the suit lands were not sold to defendant No.4 for real necessity; defendant No.4 has led evidence to support the contention that there was in fact legal necessity. Payment of consideration has not been challenged by the father defendant No.1. Plaintiff cannot say that father has not received consideration because at this stage he is the rival to his father. Even the sale deeds have not been challenged on the ground of fraud etc. by the executant i.e. the father defendant No.1. Defendant No.4 examined two more witnesses out of which one was the attesting witness and another is the person who had given hand loan to defendant No.1. Both of them have supported the story put forward by defendant No.4. Further, in his cross-examination, plaintiff himself and plaintiff's witnesses have admitted that a certain amount of the loan was taken by defendant No.1 from land mortgaged by. It was for the plaintiff to prove then that the said amount was repaid by defendant No.1. Both the Courts below have wrongly held that consideration that was paid was inadequate and defendant No.4 has not produced any evidence on record to prove that the loan was taken by defendant No.1 and he wanted to repay the said amount. It was not at all necessary for defendant No.4 to prove that the

consideration was utilized by defendant No.1 in mitigating loan. Reliance has been laced on the decision in *Marotirao and others vs. Tulsidas and others* WITH *Marotirao and others vs. Tulsidas and others*, [1992 MCR – 216], wherein this Court has held thus :-

*"It is now fairly established that an alienation of the family property at the hands of the Karta of the Hindu joint family on the ground of want of legal necessity, the alienee is required to establish the legal necessity for the transaction, it is not necessary for him to show every bit of the consideration which he advanced was actually applied for meeting the family necessity, on the ground that the alienee can nearly have the means of controlling and directing the actual application."*

Therefore, it can be said that sufficient evidence was led by defendant No.4 to prove that there was legal necessity for the defendant No.1 to sell the land and the said evidence has not been discarded by defendant No.1. Then plaintiff who is his son cannot challenge the transaction as the said transaction was made by defendant No.1 in the capacity as Karta of the joint family. The Judgment and decree passed by both the Courts below deserve to be set aside.

5. Per contra, the learned Advocate appearing for respondent

No.1 submitted that both the Courts below have correctly appreciated the evidence. Both the lands i.e. near about 6 Acres land was purchased by plaintiff for a consideration of Rs.7000/- only. DW.1 Shantabai had claimed ignorance as to whether the rate that was then prevalent in the village was Rs.15000/- to Rs.20000/- per Acres. She admitted that the suit land is irrigated and falls in the catchment area of Terna Sugar factory. The evidence of the witness of the defendant DW Ramling would show that irrigated land in their village could have fetched amount of Rs.10000/- to Rs.20000/- per Acre. The inadequacy of the consideration has been taken as one of the circumstances to show that the circumstances which were going against defendant No.1, were encashed by the plaintiff. Evidence of witness No.3 for defendant No.4 cannot be considered at all who alleges that he had extended amount to defendant No.1. In his cross-examination he has admitted that he used to give money to various persons on various dates and certain was due from defendant No.1 to him, however, except his bare statement there is nothing on record to show that any such amount was due from defendant No.1 to him. When the burden to prove that there was legal necessity for defendant No.1 to sell the land was on the shoulders of defendant No.4-the purchaser; he cannot insist that

there should be evidence in a particular direction. When both the Courts have taken consistent view, this Court need not reappreciate the evidence in deep.

6. At the outset, it is to be noted that there is no dispute that defendant No.1 was the original owner of in all four lands which he had received from his ancestors. In other words, the jointness of the plaintiff with defendants No.1 to 3 is not denied by defendant No.4, however, that itself is not sufficient to infer that the plaintiff had knowledge about the same transaction between defendant No.1 and defendant No.4. When defendant No.1 was the Karta of the family, he had authority to dispose of the said property legally and validly. Defendant No.4 had come with a case that there was legal necessity for defendant No.1 and, therefore, he had sold two suit properties to defendant No.4. A specific contention has been raised in the written statement that defendant No.1 was in need of money to mitigate the loan taken from bank and private persons. Amount of consideration of Rs.7000/- has been paid in all and prior to that there was an agreement to sell and at that time amount of Rs.2500/- has been given as earnest amount. At the time of executing the agreement to sell itself, possession over the suit

properties was parted with by defendant No.1 in favour of defendant No.4 and, therefore, after the execution of the sale deed; the same possession has been confirmed as that of ownership. The said transaction was never challenged by defendant No.4 on any count, however, the fact remains is that when defendant No.4 had come with a case that the sale transaction was for legal necessity, executed by defendant No.1 in his capacity as Karta of the Joint Hindu Family, then the burden is on defendant No.4 to prove the same. Perusal of the sale deed Exhibit 91 would show that the decision to sale the land has been taken by defendant No.1 to raise amount for domestic expenses, to mitigate the loan of people and to repay the loan amount taken from Governments. There was no specific mention that any loan was taken from land mortgaged bank and amount was still due. Even if we give the vital meaning to word "Sarkari Karj" used in the sale deed Exhibit 91 as being referred to the bank transaction, yet the 7/12 extracts which have been produced on record of the suit land do not bear endorsement in the other rights column that any such loan was taken and it was due either at the time of agreement to sell or the sale deed dated 11-05-1976. In her cross-examination DW.1 Shantabai has stated that she was not having knowledge as to how much was the loan of land

mortgaged bank due from defendant No.1. She admitted that she has not produced any documentary evidence showing loan amount against defendant No.1 or any repayment of loan to land mortgaged bank. She examined PW.2 Ramsing who has reiterated the said fact once again. But it appears that he was also present when the talks regarding purchase of the property and agreement to sell were discussed. According to him, defendant No.1 wanted to sell the land for Rs.10000/-, however the defendant No.4 was asking for Rs.5000/-, but then he says that ultimately the amount was fixed at Rs.7000/-. According to him, defendant No.1 wanted to payoff the loan. In his cross-examination he has admitted that the irrigated land in his village may fetch price between Rs.10000/- to Rs.20000/- per Acre. Further, he says that he was not having exact idea as to whether defendant No.1 was indebted to any bank. He has no personal knowledge about the same, but then he says that he came to know about it through Nivarti i.e. defendant No.1. Therefore, it can be taken that he relied on the statement of defendant No.1 and, therefore, he is deposing that there was loan. Loan of a bank cannot be accepted as proved without documents as it contemplates documentary evidence. When there is availability of documentary evidence, oral evidence cannot be considered at all. Reason has to

be then given as to why documentary evidence is not possible to be brought on record.

7. Defendant No.4 has then examined DW.3 Baliram Mali who has stated that he had given amount of Rs.2000/- as defendant No.1 wanted to go to Delhi for some work. According to him, he had advanced amount of Rs.2000/- to defendant No.1 and then defendant No.1 told him that he want to sell his land and from the sale consideration his amount would be returned. This witness says that PW.1 Shantabai give amount of Rs.2500/- to defendant No.1 and defendant No.1 returned his amount of Rs.2000/- to him. At the outset, it is to be noted that in spite of having full opportunity, it has not been extracted by defendant No.4 as to exactly when DW.3 Baliram had extended that amount of Rs.2000/- to defendant No.1. No doubt his name was not disclosed in the written statement by defendant No.4 and it was simply stated that since defendant No.1 was indebted to provide persons, it can be said that non mentioning of name of DW.3 Baliram is not a lacuna in the evidence of DW.4. Except bare words of DW.3 Baliram there is nothing. Thus, it can be seen that there was no supporting evidence led by defendant No.4 to prove that the legal necessity was on account of mitigating to

private as well as Government/Bank loan. No doubt we are required to consider the evidence on the preponderance of probabilities but the person who is purchasing the land of a joint family should at least consider as to whether the reason and/or the necessity stated by the vendor is existing as well as legal. Mere statement in the sale deed to that effect without any evidence, will not be sufficient.

8. Another ground which tried to be contended by the plaintiff was the inadequacy of consideration which has been scantily pleaded in paragraph No.5 of the plaint, and it was then submitted that, paragraph No.15 of the Judgment of the learned Trial Judge was beyond pleadings. In this respect it can be only stated that inadequacy of consideration cannot be the point to assess legal necessity. When there is dire need of money, then a person may agree to accept less than the market price.

9. Much stress has been given on the admissions given by witness PW.1 Uttam Langade in his cross-examination who had stated that his father did not enjoy the suit land since last 15 years. He has stated that his father was residing separately since about 30 years; then he corrected it to 15 years. He has stated that the suit land was left uncultivated and his father had no bulls and

agricultural equipment. It was contended that taking into consideration these admissions it can be said that the father was in need of a money. However, this submission cannot be accepted for the reason that DW.1 Shantabai who was examined first in time than the plaintiff's evidence has admitted in her cross-examination that the suit land is irrigated. In her own sale deed Exhibit 91, it is stated that there is well which is having water (it is addressed as 'Budkhi' in the sale deed) and she has also purchased 1/4th share in the water. When water is available in the land, it could not have been left uncultivated. Therefore, we cannot interpret the admissions in the cross-examination of PW.1 Uttam in the way the learned Advocate appearing for the appellants intend to convey.

10. The ratio laid down *Marotirao and others (Supra)* is not applicable to the facts of the case because in this case the purchaser has failed to prove the legal necessity. In *Marotirao and others (Supra)* it was established that the alienation of the family property by the Karta was for legal necessity and then further ratio is that it is not necessary for the purchaser to prove that the amount so raised by way of consideration has been utilized for mitigating the loan or the legal necessity.

11. Thus, after scanning the evidence on the point of legal necessity, it can be said that the conclusions drawn by both the Courts below does not suffer from any kind of perversity and, therefore, the substantial question of law as formulated will have to be answered in the negative. No interference is required in the concurrent Judgment and decree passed by the Courts below, consequently the second appeal stands dismissed with costs. Decree be drawn up accordingly. Pending Civil Application stands dismissed.

**(SMT. VIBHA KANKANWADI)**  
**JUDGE**

**LATER ON :**

1. Learned Advocate appearing for appellant, after pronouncement of the Judgment, seeks extension of the interim relief, which was earlier granted by this Court as it is in operation since 28-07-1993 till today.

2. Since the appellant-applicant intends to approach the higher Court and the stay was earlier granted by this Court, the interim stay to continue for a period of six weeks from today.

**(SMT. VIBHA KANKANWADI)**  
**JUDGE**

