

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

SECOND APPEAL NO.448 OF 2013

Chitrabai w/o Baburao Wayase,
Age 64 years, Occ. Agri. & Household,
R/o. Adhala, Tq. Kallam, Dist.
Osmanabad.

... **Appellant.**
(Orig. Plaintiff)

VERSUS

- 1) Rajaram s/o Baburao Wayase (died)
- 2) Smt. Kasibai w/o Mukinda Wayase (died).
- 3) Lalasaheb s/o Haridas Wayase,
died his legal representatives :

- 1) Rahibia w/o Lalasaheb Wayase,
Age 75 years, Occ. Household,
R/o. Adhala, Tq. Kallam, Dist.Osmanabad.

- 2) Sow. Arunabai w/o Baban Gawade,
Age 57 years, Occ. Agriculture, R/o. as above.

- 3) Ramesh s/o Lalasaheb Wayase,
Age 55 years, Occ. Agriculture.

- 4) Bapusaheb s/o Lalasaheb Wayase,
Age 53 years, Occ. Agriculture,
R/o. as above.

- 5) Sow. Aashabai w/o Govind Hare,
Age 50 years, Occ. Agriculture,
R/o. Jawalgaon, Tq. Ambajogai, Dist. Beed. ... **Respondents.**

...

Advocate for the Appellant : Mr. Prashant K. Deshmukh.

Advocate for the Respondent Nos. 3-1 to 3-5 : Mr. P. G.
Godhamgaonnkar.

CORAM : MANGESH S. PATIL, J.

DATE : 30.03.2022.

PER COURT :

Heard the learned advocates of both the sides on the point of

admission of this second appeal.

2. The appellant is the original plaintiff. She had filed the suit against her son (defendant No. 1), mother in law (defendant No. 2) and the purchaser of a portion of the suit property (defendant No. 3) for partition and separate possession of the suit property described as a 1-Hectare 69-Are portion out of land Gat No. 25 which admeasures 2-Hectares 69 Are and a share in 15 mango trees and a well situated therein.

3. The appellant averred that her husband Baburao died 20 years prior to the suit. He was survived, apart from her the defendant No. 1-son, defendant No. 2 his mother and three daughters. All of whom were married before 1994. She then averred that at the time of Baburao's death he had left behind 25 acres of land apart from house property and cattle. She then averred that she maintained the defendant Nos. 1 and 2. However, after attaining majority the son/defendant No. 1 sold major portion of the property inherited from Baburao. Now only 2-Hectares 68 Are portion from land Gat No. 25 remained with the family. 80 Are portion out of it was got reconveyed from the purchaser about two years prior to the filing of the suit. The defendants were about to sell the remaining 1-Hectare 69 Are. Hence she claimed partition and separation possession of her share which according to her was half in this 1 Hectare 69 Are portion.

4. It is to be noted that both the defendant Nos. 1 and 2 that is the son and mother of Baburao died during pendency of the suit. However, the son-defendant No. 1 before his death filed a written statement admitting the relation but denying the rest of the allegations. He contended that after demise of Baburao and after attaining majority he became the karta of the family being the sole male adult member. The lands were barren and remained uncultivated as no adult male member was available in the family after demise of Baburao. For maintenance of the family and to perform marriages of the daughters the lands were handed over to private money

lenders for raising money. The loans had piled up. He had no alternative but to sell the lands to pay off his creditors. All such transactions had taken place with the concurrence of the appellant. He was not addicted to any vice. Even 80 Are portion from land Gat No. 25 was got reconveyed in the name of the appellant herself. However, the remaining loan could not be repaid and that is why he had to execute a sale-deed dated 23.06.1999 of western side 1 Hectare 27 Are portion from Gat No. 25 to the defendant No. 3, who was subsequently arrayed as defendant No. 3.

5. The respondent No. 3 also contested the suit by his written statement and claimed that he was a *bona fide* purchaser of the property for value without notice of anybody else's right. He further contended that the sale-deed in his favour was executed by the defendant No. 1 at the instructions of the appellant herself.

6. The trial court dismissed the suit recording a finding that the sale transactions were effected by the defendant No. 1 to meet the legal necessity. There was no illegality. The remaining portion of 1-Hectare 24 Are from Gat No. 25 was sold to the defendant No. 3 to meet the legal necessity and the respondent No. 3/defendant No. 3 was a *bona fide* purchaser for value without notice. The lower appellate court concurred with the conclusions.

7. Bearing in mind the principles laid down by the Supreme Court in the matter of **Narayanan Rajendran and Ors. Vs. Lekshmy Sarojini and Ors.;** (2009) 5 SCC 264, if one examines the matter in hand it is quite apparent that both the courts below have recorded concurrent findings on material facts. They have concurrently held that some of the ancestral properties and even a portion of the suit property was sold by the defendant No. 1 for legal necessity of the family. They have also concurrently held that the defendant No. 3 purchaser is a *bona fide* purchaser of the suit property for value without notice of the plaintiff's right. They have elaborately discussed the

evidence while reaching both these conclusions. With the limited scope of the powers vesting in this court, no substantial question of law arises in this second appeal so as to undertake a further scrutiny of evidence.

8. Besides, even on appellant's own showing, the portion of 80 Are which was subsequently reconveyed in her name has not been included as a suit property and whatever had remained excluding that alone was sought to be partitioned. In view of paragraph No. 332 of Mulla's Hindu Law, irrespective of the aforementioned state of affairs, the suit would fail even for not including all the properties of the family.

9. There is one more defect in the suit. Admittedly, Baburao is survived by three daughters as well and none of them was arrayed as a party to the suit though the appellant has been claiming partition of the suit property which was admittedly an ancestral and joint family property. If some share was to be carved out for the appellant, even these daughters would have been entitled to claim a share irrespective of the fact that they were married before 1994, at least in the notional partition, from the share of their father Baburao. With the passage of time, in view of the decision in the case of **Vineeta Sharma Vs. Rakesh Sharma; (2020) 9 SCC 1**, now they would be entitled to a full fledged and equal share as that of their mother appellant and their brother defendant No. 1.

10. In substance, no substantial question of law arises in this second appeal.

11. The second appeal is dismissed with costs.

(MANGESH S. PATIL, J.)

mkd/-