

SPChauhan

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

SECOND APPEAL NO. 312 OF 1992

Yeshwant Namdeo Patil,
Age : 36 years, Occupation. Labourer,
R/o : Kusumbe, Taluka Chopda,
District. Jalgaon. ... Appellant

Versus

1. Namdeo Nago Patil,
Age : 65 years, Occupation : Agriculture,
R/o : Kusumbe, Taluka : Chopda,
District : Jalgaon.
2. Yuvraj Namdeo Patil,
Age. 21 years, Occupation : Service,
R/o : Nagardevla,
Taluka : Chalisgaon, District : Jalgaon.
3. Pratap Namdeo Patil,
Age. 19 years, Occupation : Service,
R/o : Nagardevla,
Taluka : Chalisgaon, District : Jalgaon.
4. Babulal Punjulal Patil,
Age : 45 years, Occupation : Agriculture,
R/o : Kusumbe, Taluka Chopda,
District : Jalgaon.
5. Namdeo Tukaram Zope,
Age : 62 years, Occupation : Agriculture,
R/o : Nhavi, Taluka : Yawal,
District : Jalgaon.

6. Hemlal Punjulal Gujar,
Age : 34 years, Occupation : Agriculture,
R/o : Nhavi, Taluka : Yawal,
District : Jalgaon.
7. Prabhakar Namdeo Patil,
Age : 34 years, Occupation : Agriculture,
R/o : Kusumbe, Taluka : Chopda,
District : Jalgaon.
8. Madhukar Namdeo Patil,
Age : 30 years, Occupation : Agriculture,
R/o : Kusumbe, Taluka : Chopda,
District : Jalgaon. ... Respondents

....
Mr. Sanket Kulkarni h/f Mr. V.T. Choudhary – Advocate for
Appellant

....
CORAM: GAURI GODSE, J.

DATE: 09th February 2023

PER COURT:

1. This Second Appeal is preferred by the original plaintiff for challenging the judgment and decree dated 03rd September 1991, passed by learned District Judge, Amalner, in Civil Appeal No. 28 of 1989. By the said decree, the appeal preferred by

the original plaintiff – the present appellant, is dismissed, and the judgment and decree passed by the Trial Court is confirmed. By judgment and decree dated 28th January 1983, the learned Civil Judge Junior Division, Chopda, had partially decreed the Regular Civil Suit No. 12 of 1979 filed by the present appellant for partition and separate possession.

2. The appellant had filed suit for partition and separate possession in respect of various landed property and house property. The trial Court partly decreed the plaintiff's suit and declared that the plaintiff had 1/5th share in Survey No. 2/2 Gat No. 29 situated at Mouje Anvarde, Survey No. 2/1 Gat No. 2 situated at Anvarde, House No. 91, House No. 8. Since the decree was not granted with respect to two suit properties being Gat No. 60 and

House Nos. 9 and 10 of village Kusumbe, the present appellant had preferred the Civil Appeal.

3. The learned Additional District Judge dismissed the Appeal so far as the claim of the plaintiff against defendants nos. 4 to 6 is concerned, and the judgment and decree passed by the trial Court with respect to the claim of the plaintiff against other defendants was set aside, and it was directed that the compromise decree be recorded as per pursis at exhibit 37 which was produced on the record of the Appeal.

4. Being aggrieved and dissatisfied by the dismissal of the appellant's claim as stated above, the present Second Appeal is filed. By order dated 29th July 1992, the Second Appeal was admitted on the following substantial question of law:

“There involves a substantial question of law regarding the nature of property when acquired

after partition of the ancestral lands and that too without any other independent source of income.”

5. The learned counsel appearing for the appellant submitted that with respect to the dismissal of the claim of the plaintiff, as regards Gat No. 60 was concerned, the same was not granted on the ground that defendant no. 1 had sold the said property to defendant no. 5 for legal necessities.
6. Learned counsel for the appellant submitted that there was no evidence produced with respect to the land being sold for legal necessity. He submitted that admittedly the suit property was ancestral joint family property and defendant no. 1 was addicted to vices; hence, for safeguarding the interest of the joint family property, the plaintiff, as well as defendant no. 9, had issued a public notice in the local newspaper on 29th July 1977, thereby, informing the public at large that the suit property

including Gat No. 60 was a joint family property and nobody should enter into any transaction with respect to the same with defendant no. 1. The learned counsel further submitted that after issuance of the said public notice defendant no. 1 executed sale deed on 02nd August 1977 and sold the Gat No. 60 to defendant no. 5 for the amount of Rs. 29,000/-. Hence, the notice was issued to defendants nos. 1 to 4 on 10th December 1977 and thereafter, the suit was filed.

7. The learned counsel for the appellant submitted that since the sale deed executed in favour of defendant no. 1 was after the issuance of a public notice, the same shows that the suit property Gat No. 60 was not sold for any legal necessity. He, therefore, submitted that the evidence and documents on the record show that the suit property was an ancestral joint family property;

defendant no. 1 had no right to sell the suit property. He submitted that the nature of the suit property continued to be ancestral joint family property and hence, only on the basis of the sale deed that was executed in favour of defendant no. 1 partition decree with respect to Gut no. 60 could not have been refused in favour of the plaintiff.

8. None appeared on behalf of respondents though served.
9. I have considered the submissions made. I have perused the record of the Second Appeal, including the copy of the sale deed that was produced on record at exhibit 87, as well as the payment receipt, which was produced on record at exhibit 142, on behalf of defendant no. 5.
10. Defendant No. 1 is the father of the plaintiff. Defendant no. 1 had disputed the suit claim on the ground that Gat No. 60 was sold to defendant no. 5

for the purpose of legal necessity as defendant no. 1 was required to repay the loan of Rs. 10,000/- which was executed by mortgaging the suit land Gat No. 60, and he had spent an amount of Rs. 4,000/- for construction of a Well, and he was required to make payments towards the purchase of fertilizers and bunding charges and bank dues.

11. Defendant no. 5, who was the purchaser of Gat No. 60, had contended that he was a bonafide purchaser without notice and for value and that he had made payments on behalf of defendant no. 1 for the purpose of repayment of the loan as the suit land Gat No. 60 was to be auctioned as well as he had paid the society dues on behalf of defendant No. 1. Thus, it was the contention of defendant no. 1 as well as defendant no. 5 that Gat No. 60 was sold for the purpose of legal necessity. Both the courts have accepted the case of defendant no. 1

and 5 that Gut No. 60 was sold for the purpose of legal necessity.

12. The payment receipt shows that defendant no. 5 had made payment to the bank for the purpose of repayment of a loan that was taken by defendant no. 1 by mortgaging the Gat No. 60. The sale deed for Gat No. 60 was executed by defendant no. 1 in favour of defendant no. 5 on 20th November 1977. Though, as contended by the appellant, the sale deed was executed after the notice was published in local newspapers on 29th July 1977, the fact cannot be ignored that defendant no. 5 had made a payment of Rs. 15,292.69/- to Bank on 30th April 1975, which is much prior to the public notice.
13. Perusal of the sale deed shows that the payments were made by defendant no. 5 to the bank as per exhibit 142 as, well as payments that were made towards bunding charges, as well as society dues,

are reflected as part of the consideration amount paid to the defendant no. 1 and the same is specifically recorded in the sale deed.

14. The reasoning given by the Trial Court as well as the first appellate Court are consistent with the evidence on record, which was produced by defendants nos. 1 and 5 in support of the case that the sale with respect to Gat No. 60 was entered into for the purpose of legal necessity. The Trial Court, as well as the first appellate Court, has minutely examined all the documents as well as oral evidence with respect to the same and had arrived at the conclusion that the same was for the purpose of legal necessity.
15. The question of law, therefore, as framed in the Second Appeal, would not arise in view of the specific findings that were recorded with respect to the sale of Gat No. 60 for the purpose of legal

necessity. There would be no question of law with respect to the nature of the suit property in view of the findings that are recorded. I do not find any reason to interfere with the reasons recorded by both the Courts that the sale of Gut No. 60 was for the purpose of legal necessity.

16. Except for the relief that was refused in respect of Gat No. 60, there is no other challenge in the present Second Appeal. Hence, for the reasons recorded above, I do not find any ground to interfere with the impugned judgments. The Second Appeal is dismissed. There will be no order as to costs.

[GAURI GODSE]
JUDGE