

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

SECOND APPEAL NO.77 OF 1995

1. Narayan Sunderrao Dapkar
Age 29 years, Occu. Agri.,
R/o. Sangam, Tq. Majalgaon,
Dist. Beed.
2. Uttam s/o Sunderrao Dapkar
Age 24 years, Occu. Agri.,
R/o. as above.
3. Sou. Prayagbai w/o Sunderrao Dapkar
Age 45 years, Occu. Agri.,
R/o. as above. ..Appellants

Versus

1. Sunderrao Raghoba Dapkar
Age 58 yrs, Occ. agri.,
R/o. Sangam, Tq. Majalgaon.
2. Sarjerao Sahebrao Dapkar
Age 24 years, Occu. Agri.,
R/o. as above.
3. Sahebrao Bajirao Dapkar
Age 59 years, Occ. & r/o as above. ..Respondents

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Advocate for Appellants : Mr. V.V. Bhavthankar
Advocate for Respondent No.2 : Mr. S.B. Solanke

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CORAM : S.G. MEHARE, J.

DATED : NOVEMBER 06, 2023

ORAL JUDGMENT :-

1. Heard learned counsel for the appellants and learned counsel for the respondent.

2. The plaintiffs have filed this second appeal believing the case of the defendant that he was the bonafide purchaser and the suit property was sold for the family need by the Karta. This Court admitted the appeal and held that the ground (I) involves the substantial question of law. The said ground is reproduced as follows.:

“(I) The trial court failed to frame the issue of legal necessity and therefore it caused injustice to the plaintiffs.”

3. Learned counsel for the appellants would submit that framing of the issue of legal necessity was essential. In the absence of such issue, it was difficult for the parties to lead the evidence and produce the material, but this did not happen. He would submit that this question goes to the root of the case. The learned Trial Court as well the First Appellate Court incorrectly held that the respondent/purchaser is a bonafide purchaser.

4. Learned counsel for the respondent/purchaser would submit that it was a collusive suit. The plaintiffs and the respondent's father were residing under one roof. The plaintiffs were knowing well the legal necessities of their father. He sold the suit land for his family requirements. However, after four years of execution of the sale deed, one day the plaintiffs, who were minor that time, woke up through the mother and filed the suit for declaration that the suit

transaction is bad for no legal necessity. He would submit that the seller father who was residing together with the plaintiffs did not appear in the Court and filed the written statement. He was the best source to explain under what circumstances, he had sold the part of the entire land. At no point of time, the issue was raised that the issue has not been framed. He would submit that while discussing the issue as regards the bonafide, both Courts have considered the factum of the legal necessity. The First Appellate Court also affirmed the said facts. Therefore, it cannot be said that the appellants have suffered serious injuries for not framing the issues.

5. This case is an another example of deception or ill-motive of the litigants in society. The father had sold the land to the present respondent/purchaser and after four years, one fine morning, both sons who were minor woke up through the mother, who was residing with the seller/father, filed the present suit. It's a matter of concern that such suits are entertained. When the children were minor, not capable to take appropriate decisions, suddenly woke up through the mother that too by residing with the father and filed the said suit. In such situation, it is apparent that the seller had changed his mind and from behind the curtains, put forward the minor children and wife to defeat the right of the bonafide purchaser. The transaction was of the year 1976 and the suit was filed in the year 1980. Admittedly, the plaintiffs were minor. The question is how did they know that their

father has deprived them from their legal rights to get a share in joint family property. One could understand, after attaining the majority, the children who have interest in the joint family property may learnt about their defeated rights. In this case, the suit was filed by the minors through the mother and the father/seller did not enter the witness box, nor, contest the suit. This fact is sufficient to draw the adverse inference against the parties and the sole inference that could be drawn is the plaintiffs and the seller/father were in collusion.

6. It is also surprising that the lawyers appearing for the parties never raised any objection after framing the issues. They goes on with the matters and if the judgments and pronouncements goes successively against the parties, then they find out the reasons for admission of the appeal and raise the ground that no issues were framed.

7. Be that as it may, the observations of the Trial Court reveals that the issue as regards the legal necessity was discussed while deciding the issue of the bonafide purchaser. Both parties went ahead. They never disputed about it. They had led their evidence on legal necessity. In such circumstances, it would be difficult to accept that non-framing of the issues affected the rights of the parties and the judgments and decrees of the Trial Court and the First Appellate Court were defective and injurious to the interest of the parties. The Bombay High Court in the case of Sk. Ibrahim s/o Sk. Mohammad

and others Vs. Sk. Mehmood s/o Sk. Vazir, AIR 2003 Bombay 357 has held when the parties fully aware of their respective cases, lead all the necessary evidence not only in support of their case, but in refutation of the claim of the other side, non-framing of the issues and if no objections were raised in trial Court, is not fatal to the interest of parties.

8. On the above discussion, the substantial question framed is answered that since the parties lead the evidence of legal necessity and the Courts have appreciated their evidence, non-framing of the specific issue did not affect their rights.

9. No substantial questions of law are involved in the appeal. Hence, the appeal stands dismissed. No order as to costs.

10. Record and proceeding be returned to the learned Trial Court.

11. Rule stands discharged.

(S.G. MEHARE, J.)