

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

**SECOND APPEAL NO.34 OF 2020
WITH
CIVIL APPLICATION NO. 778 OF 2020**

1. Shrirang Krishna Shelke (Expired) .. Appellant

1. Kashibai wd/o. Shrirang Shelke
Age. 84 years, Occ. Agri.,
R/o. Bhoom, Tq. Bhoom,
Dist. Osmanabad.
(Expired through LRs. 1/1 to 1/8)

1/1. Kamal w/o. Sambhaji Jagdale
Age. 59 years, Occ. Agri.,
R/o. Bhoom, Tq. Bhoom,
Dist. Osmanabad.

1/2. Vimal w/o. Shridhar Rasal
Age. 56 years, Occ. Agri.,
R/o. Kanheri, Tq. Washi,
Dist. Osmanabad.

1/3. Kusum w/o. Ishwar Darekar
Age. 54 years, Occ. Agri.,
R/o. Barhanpur, Tq. Washi,
Dist. Osmanabad.

1/4. Vijaymala w/o. Bibhishan Gaikwad
Age. 49 years, Occ. Agri.,
R/o. Saramkundi, Tq. Washi,
Dist. Osmanabad.

1/5. Chandrakala w/o. Arjun Kadam
Age. 44 years, Occ. Agri.,
R/o. Bhoom, Tq. Bhoom,

Dist. Osmanabad.

1/6. Pratibha Nanasaheb Hurkude
Age. 41 years, Occ. Agri.,
R/o. Bhoom, Tq. Bhoom,
Dist. Osmanabad

1/7. Mira w/o. Ramdas Gaikwad,
Age. 39 years, Occ. Agri.,
R/o. Washi, Tq. Washi,
Dist. Osmanabad.

Versus

Daulatrao Ganpatrao Khanwilkar
Age. 50 years, Occ. Agri.,
R/o. Bhoom, Tq. Bhoom,
Dist. Osmanabad.

.. Respondent

Mr.A.S. Shelke, Advocate for the appellants.
Mr.K.R. Doke, Advocate for the respondent.

CORAM : KISHORE C. SANT, J.
DATED : 23.08.2023

PC :-

01. Heard learned Advocates for the parties. This appeal is by the original plaintiffs, who lost suit in the Trial Court as well as appeal in the First Appellate Court. The plaintiff lodged a suit. It is a case that the sale deed dated 03.05.1989 executed by him in favour of the defendant was only for security and not for any other purpose and prayed for declaration that he is owner of the property and for injunction not to disturb his possession. It is

pleaded that the sale-deed was executed on taking amount of Rs.2000/- from the defendant as hand loan and for security of the same a sham sale-deed was executed showing consideration of Rs.8000/-. The amount of hand-loan is already repaid. However, the defendant did not cancel the sale-deed or reconveyed the the property as orally decided between the parties. There was no any intention of the parties to sale the land. The defendant, however, later on in the year 1996 for the first time got entries done in his name in the revenue record.

02. The defendant filed his say denying the allegations. It is specific case of the defendant that on 03.05.1989 the sale-deed was executed between the parties. The plaintiff was in need of the amount for the marriage of his daughter and for that reason an amount of Rs.8000/- was paid towards consideration. The revenue record also now shows name of the defendant as owner. It was never decided to reconvey the property or to cancel the sale-deed and prayed for dismissal of the suit.

03. The learned Trial Court considered the evidence and the documents on record. The plaintiff examined his witness who was allegedly

aware of the transaction. This witness stated that no amount of Rs.8000/- was paid in his presence. The Court disbelieved this witness, since in the sale-deed it was clearly recited about receipt of the amount. The Court also accepted defence that the sale-deed was executed for legal necessity, since there was recital in the sale-deed that the land is being sold for arranging funds for marriage of daughter of the plaintiff.

04. In the appeal, the learned First Appellate Court also confirmed the finding of the Trial Court and dismissed the appeal.

05. The main ground of the appellant in this case is that there was no legal necessity, still the land was sold. It was necessary for the Court to frame the issue as to legal necessity. He submits that there is no evidence to show that there was a proposal by the plaintiff and said proposal is accepted by the defendant. Thus, on both the counts, he submits that the suit ought to have been allowed. The appellant submits that at the time of sale-deed the defendant/purchaser was not present and this also shows that the proposal was not accepted by the defendant.

06. This Court finds that both the Courts below have considered the case of the plaintiff and defendant and refused to entertain suit and dismissed the suit. To see as to whether there is legal necessity and as to whether consideration was passed on to the plaintiff, this Court has considered the recitals of the sale-deeds. The recital in the sale-deed states that the sale-deed is being executed by the plaintiff, as the plaintiff was in need of the amount for marriage of his daughter. It is also recited in the same paragraph that he has no complaint of receipt of Rs.8000/-. In view of this, this Court finds that when there is clear recital in the sale-deed about legal necessity and also about receipt of amount, no other evidence is required. As a matter of fact, there is no sufficient evidence produced on record to negate these recitals.

07. The next contention that the defendant/purchaser was not present would show that the proposal of the plaintiff was not accepted. This Court finds that even that is not required to be considered as the plaintiff himself in the sale-deed has made recital that he has received the amount and has no complaint of receipt of the amount. Though it is tried to be argued that the sale-deed was of 1989 and stayed till 1996, the defendant did not try to get his name mutated in the revenue record. This Court finds that by itself

cannot be taken to be circumstance against the defendant.

08. During the course of arguments, the learned Advocate for the appellant relied upon judgment reported in 2010(6) Mh.L.J. 40 in the case of Designer Co.Op.Housing Society, Ahmednagar Vs. Udhav s/o. Murlidhar Rasane died LRs. This Court in said judgment has held that when dispute is raised about legal necessity, it is necessary for the Court to frame the issue. This Court finds that in the present case, even no such issue would arise in view of the recital of the plaintiff himself in the sale-deed. In the said judgment, in the sale-deed there was no specific recital to show existence of legal necessity or family need and it is in that view it was observed that the suit was rightly decreed.

09. The learned Advocate for the appellant has placed reliance on judgment reported in AIRONLINE 2023 SC 470 in the case of Damodar Narayan Narayan Shewale (D) Thr. LRs. Vs. Tejrao Bajirao Mhaske. It is held that recitals in the document if are indecisive and ambiguous then oral evidence would be necessary. In that case the Court held that the intention of the parties was when reflected in the sale-deed therefore no other evidence

was required. In this case also, this Court finds that since intention of the parties is well reflected in the sale-deed, there is no need of any other evidence to prove circumstances stated in the sale-deed.

10. The learned Advocate for the respondent further place reliance on judgment reported in 2020(13) SCC 125 in the case of H.P. Puttaswamy Vs. Thimmamma & Ors., it is held that this is not mandatory for the purchaser to be present at the time of registration of the sale-deed.

11. This Court finds that in view of these judgments, it was not necessary to prove legal necessity by giving any other evidence and consequently there was no need to frame specific issue on this aspect. Merely because the purchaser was absent can never give rise to any suspicion about voluntariness of the transaction. As once plaintiff admits receipt of the amount in the sale-deed and also about legal necessity, he cannot further challenge the same and expect to decide the same in the proceeding. This Court finds that no any ground much less substantial ground is raised in the appeal. The appeal, therefore, deserves to be dismissed and same is dismissed with costs.

12. In view of dismissal of the Second Appeal, pending Civil Application stands disposed off.

[KISHORE C. SANT, J.]