

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.648 OF 2018

WANMALA DHANRAJ JADHAV AND OTHERS
VERSUS
SAHEBRAO KUNDLIKRAO BACHATE AND OTHERS

...
Advocate for Appellants : Mr. M. L. Dharashive
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CORAM : R.M. JOSHI, J

DATE : APRIL 21, 2023

PER COURT :

1. This appeal takes exception to the judgment and decree dated 31.12.2015 passed in R.C.S. No. 41/2012, which was confirmed in R.C.A. No. 104/2016 by judgment and decree dated 22.03.2018.

2. Plaintiffs are daughters of Defendant No. 1 and sisters of Defendant Nos. 2 and 3. It is their case that suit properties i.e., Gut No. 165, 176, 209 are ancestral properties and there was a partition of the said properties in the year 1973. As per the said partition, Defendant No. 1 received 3 acre land from Gut No. 176, 8 acre 16 R land from Gut No. 165 and 6 acre 30R land from Gut No. 209. It is the claim of the Plaintiffs that there was no further partition of the properties which came to the share of their father. It

is further contended that the sale deed executed by Defendant No. 1 in favour of Defendant Nos. 4 to 6 are not executed for the legal necessity of the family and therefore, the said transactions are not binding on them. It is also averred by the Plaintiffs that Defendant No. 1 has sold the properties in order to satisfy his addiction to liquor. On these amongst other averments, the suit for partition and declaration is filed.

3. Defendants appeared in the suit and opposed the contention of the Plaintiffs. It is denied that Defendant No. 1 was having vices and the sale is not for legal necessity.

4. There is no dispute about the fact that the Defendant No. 1 had initiated legal proceedings against the purchasers challenging the transaction and for getting back the properties sold to Defendant No. 4. The said suit however was dismissed. The evidence on record clearly indicates that since earlier suit against Defendant no. 4 is dismissed, present suit is filed by them after deliberation. Trial Court has also observed that said transaction was within the knowledge

of the Plaintiffs. As regards the contention of Plaintiffs that Defendant No. 1 was addicted to vices and therefore, properties were sold there is absolutely no evidence on record to hold so. The Trial Court as well as First Appellate Court have recorded the finding that the suit filed by the Plaintiff is collusive in nature. No fault can be fault with the same having regard to evidence on record.

5. In such circumstances, this Court find no perversity in findings recorded by both Courts below. For want of involvement of any substantial question law, appeal stands dismissed.

(R.M. JOSHI, J.)

Malani