

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

4 SECOND APPEAL NO.488 OF 2019
WITH CA/13738/2016 IN SA/488/2019

NANDU KISAN DUSUNGE AND ORS
VERSUS
SMT. THAKUBAI NAMDEO DUSUNGE AND ANR

...
Advocate for Appellants : Mr. Nangare Prashant R.
Advocate for Respondent No.1 : Mr. V. S. Bedre.
...

CORAM : S. G. MEHARE, J.
DATE : 25.10.2023

PER COURT :-

1. Heard the learned counsels for the respective parties.
2. It is an interesting case that the plaintiffs father had sold 20 R. of land to respondent Smt. Thakubai in the year 1994. After the son became major, the plaintiffs filed a suit for cancellation of sale deed on the ground that the father was addicted to liquor and there was no legal necessity to sell that suit land. The father was arrayed as defendant and he admitted plaintiffs claim.
3. The suit was decreed. However, the First Appellate Court remitted the case to Trial Court. Then, the learned Trial Court dismissed the suit. The appeal against the said judgment and

decree was also dismissed. Against two concurrent judgments, the appellants are before this Court.

4. The case of the appellants was that the suit land was not sold for legal necessity. Both Courts did not accepted their case.

5. The Court asked the learned counsel for the appellants how much was the land of the joint family. He made a statement that the total joint family property was 2 H. 73 R.

6. Learned counsel for the plaintiffs submits that the legal necessity and the burden was on the purchaser to prove that there was no legal necessity and it was out and out sale transactions are the substantial questions of law involved in the appeal.

7. Learned counsel for the appellants/plaintiffs would submits that the defence of legal necessity was false and concocted. The primary case of the appellants was that it was a sale transaction under the influence of liquor. The appellants took those contradictory stands. The appellants admitted in cross-examination that his father/defendant No.2 was possessing 30 to 40 R. of land. If the respective share of each of the plaintiffs and defendant No.6, out of 2 Hectors 73 R. is concerned, in a broad sense, each successor would get around

50 to 54 R. of land. The defendants father has sold only 20 R. of land. Hence, the sale deed is not liable to be cancelled.

8. Admittedly, there was 2 Hectors and 73 R. joint family land. If it is divided amongst the plaintiffs and the father, who tactfully admitted the claim of the plaintiff, every share holder will get 54 R. of land. If the property sold is considered, it is definitely less than, the share the father could get. Section 44 of the Transfer of Property Act and Section 4 of the Partition Act allow the co-sharer to sale or transfer share from the joint family property. If the other legal heirs are, the grievance about the boundary, they may file a suit for partition. But, here instead of filing a suit for partition, the son came up with the case that the said sale deed is not legal and valid and it was not executed for legal necessity. This seems to be a clever pleading to defeat the rights of the purchaser for valuable consideration. Considering the peculiar facts of the case, there appears substance in the argument of the learned counsel for the contesting respondent No.1 that no substantial questions of law have been involved in this case.

9. Hence, the second appeal stands dismissed at admission stage.

10. Civil Application is disposed of accordingly.

(S. G. MEHARE, J.)

...

vmk/-