

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

**SECOND APPEAL NO.88 OF 2015
WITH CA/2988/2015**

1. Prakash s/o Shivajirao Deshmukh
2. Dattatraya s/o Shivajirao Deshmukh
3. Shripad s/o Shivajirao Deshmukh
4. Sow. Shushilabai w/o Shivajirao Deshmukh ..Appellants

Versus

1. Shivajirao s/o Ramchandra Deshmukh
2. Veerappa s/o Kallappa Kore
3. Shankar s/o Rama Kore
4. Appasha s/o Shankar Kore ...Respondents

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Advocate for Appellants : Mr. Godbole R.J.

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CORAM : S.G. MEHARE, J.

DATED : SEPTEMBER 20, 2023

PER COURT:-

1. Heard learned counsel for the appellants.
2. The appellants are the sons of respondent no.1. Respondent no.1 had sold the land for Rs.21,000/- for legal necessities and meeting with the family expenses, to respondent nos.2 to 4. The sons and wife i.e. the appellants had filed a suit for declaration and possession. There were two rounds of litigation by way of remand. However, finally the learned Civil Judge Junior

Division, Tuljapur dismissed the suit of the plaintiffs/appellants. The appellants had preferred the first appeal before the learned Principal District Judge, Osmanabad. The learned Principal District Judge again held that defendant nos.2 and 3, who were the purchasers of the land have proved that defendant no.1 i.e. present respondent no.1 had executed the sale deed dated 09.12.1971 for legal necessities.

3. Learned counsel for the appellants would submit that after the remand, he had filed an additional affidavit. However, there was no cross-examination on their additional affidavit. The Court ought to have drawn an adverse inference against the purchasers/defendants. He would argue that respondent no.1/father was indebted. He was indebted for Rs.8,000/-. However, he sold the land in question for Rs.21,000/-. Therefore, it cannot be said that he had a legal necessity. On the basis of these arguments, he would submit that the substantial questions of law that whether the Karta of the family may sell the property for the amount more than the moral debt and whether the adverse inference should have been drawn against the defendants since they did not controvert the additional evidence filed by him before the trial Court.

4. The First Appellate Court has correctly burdened defendant nos.2 and 3 who were the purchasers of the land in question to prove the legal necessity to sell the land. There is nothing to show on record that the additional evidence led by the appellants

after the remand was not discussed and it has any adverse effect on the burden of defendant nos.2 and 3 to prove the legal necessity.

5 Considering the practicality of the social transaction, it may be difficult to sell the piece of land for only upto the debt. So, it cannot be accepted that respondent no.1/father sold the excess land than that of the legal debt. Both Courts have categorically discussed the evidence on the legal necessity and believed that the father/respondent no.1 had sold the land for legal necessity.

6. Considering the substantial questions of law raised by the appellants' counsel, the Court is not satisfied that those would be the questions to be formulated by this Court. In other words, the Court is of the view that no substantial questions of law are involved in the appeal. Hence, the appeal stands dismissed at the admission stage.

7. Civil Application No.2988 of 2015 stands disposed of.

(S.G. MEHARE, J.)