



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 136 OF 2024
WITH
CIVIL APPLICATION NO. 6068 OF 2024 IN SA/136/2024

1. Vinod Tukaram Gaikwad,
2. Mangesh Tukaram Gaikwad

... APPELLANTS
(Ori. Defendant Nos.7 & 8)

VERSUS

1. Rukminibai Tukaram Jadhav,
2. Shalubai Shivaji Kirwale,
3. Sheshabai Venkat Kale,
4. Mangalbai Dnyanoba Survase,
5. Kewalbai Tukaram Shindale,
6. Raubai @ Subhadra Balaji Kale,
7. Nirmalabai Pandurang Bhosale,
8. Kantabai Ankush Shinde

... RESPONDENTS
(Resp. Nos.1 & 2 – Ori. Plaintiffs & Resp.
Nos.3 to 8 – Ori. Resp. Nos.1 to 6)

...
Mr. Satyajit S. Bora – Advocate for Appellants

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CORAM : SANDIPKUMAR C. MORE, J.
DATE : 21st August, 2024

ORDER :

1. Heard learned Counsel for the appellants on admission.
2. The appellants who are original defendant Nos.7 and 8 in

Regular Civil Suit No. 506 of 2011, have challenged the dismissal of Regular Civil Appeal No. 189 of 2016 alongwith their Cross Objections (Exhibit-15) therein vide judgment and order dated 07.11.2023 passed by the learned District Judge-5, Latur, Dist. Latur (*hereinafter referred to as “the learned First Appellate Court”*), under appeal. Vide impugned judgment and order the learned First Appellate Court has confirmed the judgment and decree dated 07.11.2015 passed in the aforesaid suit by the Joint Civil Judge Junior Division, Ausa, Tq. Ausa & Dist. Latur (*hereinafter referred to as “the learned Trial Court”*) of partition in the suit property i.e. land Gat No.207 admeasuring 03 H 16 R situated at village Kininaware, Tq. Ausa, Dist. Latur. Under the said judgment and decree the learned Trial Court has granted $1/8^{\text{th}}$ share each to present respondent Nos.1 and 2, who are original plaintiffs by declaring that the sale-deeds dated 02.11.2011 at Exhibit 82 and 83 were not binding on their share. The present appellants are the purchasers in the aforesaid sale-deeds.

3. Brief facts giving rise to the present Second Appeal are as under :

The plaintiffs filed the suit for partition contending that, they

are having share in the suit property being the legal heirs of one Venkat. The plaintiffs are daughters of Kadubai who was first wife of Venkat. Defendant No.1 – Sheshabai is the second wife of Venkat and defendant Nos.2 to 6 are her daughters. The appellants/defendant Nos.7 and 8 are the subsequent purchasers of the suit property. Since defendant Nos.1 to 6 was trying to sale out the suit property, the plaintiffs told them on 27.10.2011 for not to sell the property and defendant Nos.1 to 6 at the relevant time had assured them that they would not sell the suit property. However, on 02.11.2011 the defendant Nos.1 to 6 executed the sale-deeds in favour of defendant Nos.7 and 8 and hence the plaintiffs were constrained to file the suit for their 1/8th share each.

4. The appellants who are defendant Nos.7 and 8 only the contested the suit vide their written statement (Exhibit-33). They came with the case that, the Sheshabai with consent of the plaintiffs and other defendants sold the suit property to them out of legal necessity i.e. for meeting the expenses of medical treatment as well as visits to pilgrimages. They also came with the case that, the suit property had already given to the share of defendant Nos.1 to 6 by way of previous partition. As such, they claimed that, they

are *bona-fide* purchasers. The learned Trial Court after conducting the trial allowed the said suit as mentioned above and thereafter, the learned First Appellate Court also dismissed the appeal filed by defendant No.1 therein alongwith Cross Objections of the present appellants. Hence, this Second Appeal is filed against the concurrent findings of both the learned Courts below.

5. Learned Counsel for the appellants submits that, both the learned Courts have erred in granting share to the plaintiffs by ignoring the defence of the appellants in respect of prior partition and the aspect of legal necessity. According to him, no proper issues were framed on that aspect and the learned Trial Court proceeded to pass cryptic judgment and order. He raised following substantial questions of law being involved in this appeal :

- (a) *Whether Sheshabai had right to sale the suit property to the present appellants being Karta of the family for her legal necessity ?*
- (b) *Whether both the Courts below have failed to frame the issue of legal necessity thereby failing to decide the suit in its proper perspective ?*
- (c) *Whether a cryptic order passed by the learned Trial Court which is the first fact finding court is legal, just and proper ?*

(d) *Whether the interpretation of the documents in the nature of sale-deeds dated 02.11.2011, which goes to root of the controversy ?*

(e) *Whether consent for execution of the sale-deed by one of the co-sharer can be oral or it is required to be in writing alone ?*

6. It is extremely important to note that, relationship between the plaintiffs and defendant Nos.1 to 6 is not at all in dispute. Further the fact that, they are legal heirs of Venkat, is also not disputed. The nature of suit property being an ancestral land of Venkat is also accepted. It is significant to note that, the appellants have challenged the impugned judgment and order mainly on the ground that, there was prior partition and in that partition the suit property came to the share of defendant Nos.1 to 6. However, the appellants who had come with the said case did not adduce any satisfactory evidence in respect of such theory of prior partition.

7. Secondly, the appellants have also claimed that, the plaintiffs as well as defendant Nos.1 to 6 consented for execution of sale-deeds in dispute. However, there is no evidence on record that the plaintiffs or defendant Nos.2 to 6 had given consent for execution of the sale-deeds. It appears that, defendant No.1 had only

executed those sale-deeds. As such, the consent theory is also not established. Thereafter the appellants are claiming that the defendant No.1 – Sheshabai i.e. second wife of Venkat had sold the suit property to them under the said dispute for legal necessity. They claimed that defendant No.1 sold the suit property for repaying the debt and for her medical treatment as well as expenses for her visits to pilgrimages. However, the witness of the appellants/defendants i.e. D.W. 1 – Tukaram Gaikwad has clearly admitted in his cross-examination that, he got that the disputed sale-deeds executed without consent of defendant Nos.1 to 6 and by playing fraud with them. He also admitted defendant No.1 was never in need of money for payment of debt and for pilgrimages. He also admitted that, the possession of suit property not handed over to the present appellants at the time of execution of the sale-deeds. Thus, there is no satisfactory evidence supporting to contention of the appellants that, they were *bona-fide* purchasers of the suit property and that the same was sold for legal necessity by defendant No.1.

8. Thus, all the contentions of the appellants are properly discarded by both the learned Courts below by considering the evidence on record in proper perspective. Learned Counsel for the

appellants by raising the aforesaid substantial questions of law claimed that, no proper issue on the aspect of legal necessity was framed by the learned Trial Court and the learned First Appellate Court also did not frame a point in respect of the same. However, even if such issue or point is not framed on the point of legal necessity both the learned Courts below have discussed the said aspect on the basis of evidence and negated the same. Moreover, both the learned Courts below have properly appreciated the evidence on record and therefore, when the aspect of legal necessity is not established by the appellants, both the learned Courts below have properly granted shares to the plaintiffs as there was no dispute in respect of nature of suit property being an ancestral land of Venkat and the relationship among deceased Venkat, plaintiffs and defendant Nos.1 to 6 being undisputed.

9. Thus, it appears that no substantial questions of law as raised by the appellants are involved in this matter and therefore, the Second Appeal stands dismissed at admission stage.

10. The Second Appeal is accordingly disposed of alongwith pending Civil Application No. 6068 of 2024.

[SANDIPKUMAR C. MORE, J.]