



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 444 OF 2012
WITH
CIVIL APPLICATION NO. 7541 OF 2012 IN SA/444/2012

1. Shahaji Rama Bhosle
2. Datta Rama Subugde,
3. Sau. Alkabai Datta Subugde

... APPELLANTS

(Ori. Defendants)

VERSUS

1. Digambar Dnyanoba Yadav
(Died) Through LRs'
2. Meerabai Digambar Yadav,
3. Sindhu Bapu Shinde,
4. Balaji Digambar Yadav,
5. Audumbar Digambar Yadav,
6. Vaishali Digambar Yadav,
7. Rajendra Pandurang Patole,
(Deleted)

... RESPONDENTS

(Ori. Plaintiffs)

...
Mr. K.R. Doke – Advocate for Appellants
Mr. S.Y. Mahajan – Advocate for Respondent Nos. 2 to 6

....
WITH
SECOND APPEAL NO. 746 OF 2012
WITH

**CIVIL APPLICATION NO. 12902 OF 2012 IN SA/746/2012
WITH
CIVIL APPLICATION NO. 12833 OF 2016 IN CA/12902/2012**

1. Rajendra Pandurang Patole,

... APPELLANT

(Ori. Defendant No. 4)

VERSUS

1. Balaji Digambar Yadav,
2. Audumbar Digambar Yadav,
3. Vaishali Digambar Yadav,
4. Sindhu Bapu Shinde,
5. Mirabai Digambar Yadav,
6. Digambar Dnyanoba Yadav
(Died)
7. Datta Rama Subugade,
8. Shahaji Rama Bhosale,
9. Alkabai Datta Subugade

... RESPONDENTS

(Resp Nos. 1 to 5 – Ori. defendant Nos. 1 to 5,
Resp No. 6 – Ori. defendant No. 1, Resp Nos. 7
– Ori. defendant No. 2, Resp Nos. 8 – Ori. defendant
No.3, Resp Nos. 9 – Ori. Defendant No. 5)

...

Mr. S.M. Vibhute – Advocate for Appellant

Mr. S.Y. Mahajan – Advocate for Respondent Nos. 1 to 5

....

CORAM : SANDIPKUMAR C. MORE, J.

DATE : 18th March, 2024

ORDER :

1. Both these appeals are filed against the concurrent findings

of learned Trial Court as well as the learned First Appellate Court.

2. Background facts of the case are as under :

The present respondent Nos.1 to 5 in Second Appeal No.746 of 2012 who are respondent Nos.2 to 6 in Second Appeal No.444 of 2012 had filed Regular Civil Suit No.143 of 2004 before the learned Trial Court i.e. Civil Judge Junior Division, Bhoom, Dist. Osmanabad against the present appellants in both the appeals and their predecessors in title – Digambar Dnyanoba Yadav for partition of the suit properties. The said suit was decreed by the learned Trial Court on 21.12.2006 and therefore the present appellants had filed Regular Civil Appeal No.26 of 2007 before the learned First Appellate Court i.e. District Judge at Osmanabad. However, the said appeal has also been dismissed by the learned First Appellate Court on 04.01.2012. As such, the Second Appeal No.746 of 2012 is filed by the original defendant No.4 whereas Second Appeal No.444 of 2012 is filed by original defendant Nos.2, 3 and 5. It is significant to note that, the appellants in both the appeals are the purchasers of the suit properties who had purchased the same from Digambar Dnyanoba Yadav i.e. Karta of joint family of the original plaintiffs. During the pendency of these

appeals Digambar Dnyanoba Yadav has died and, therefore, his name is deleted.

3. It is the case of the appellants that, original defendant No.1 – Digambar Dnyanoba Yadav had sold the suit properties to them out of legal necessity and specifically for the marriage of original plaintiff No.4 – Sindhu Bapu Shinde.

4. Heard rival submissions on admission. According to the learned Counsel for the appellants in both these appeals the present appeals involve following substantial questions of law :

(a) The learned Trial Court erroneously held that, the appellants failed to established the fact that original defendant No.1 – Digambar Dnyanoba Yadav had sold the suit properties out of legal necessity.

(b) The learned Trial Court failed to consider that defendant No.1 sold the suit land in the year 1996 and in the same year the marriage of his daughter was in fact solemnized, i.e. on 20.05.1996.

(c) Both the learned Courts below failed to consider the aspect that the plaintiffs despite there being other joint family properties filed suit only in some of the properties.

(d) The learned First Appellate Court has failed to comply the requirements of Order 41 Rule 31 of the Civil Procedure

Code and in fact delivered a cryptic judgment without discussing evidence in detail.

5. On the contrary, learned Counsel for the respondents/original plaintiffs pointed out that, both the learned Courts below has given concurrent findings about selling of land by original defendant No.1 – Digambar Dnyanoba Yadav not for legal necessity but for his bad habits. He pointed out that, the present appellants miserably failed in bringing the evidence on record that, the suit lands were sold out of legal necessity. According to him, even in the sale-deed there is no mention of any reason for selling suit land as specifically for marriage of plaintiff No.4. He pointed out that, one of the appellant No.2 – Datta Rama Subugade who had given evidence on behalf of rest of the appellants has given certain vital admissions indicating that, deceased Digambar Dnyanoba Yadav i.e. defendant No.1 had sold the suit properties not for legal necessity but for his bad habits. As such, he prayed for dismissal of both the appeals.

6. It is significant to note that, the appellants are claiming that, the Karta of joint family of plaintiffs namely Digambar Dnyanoba Yadav i.e. original defendant No.1 had sold the suit properties out

of legal necessity and as per the judgment of Hon'ble Apex Court in the case of **Beereddy Dasaratharami Reddy Vs. V. Manjunath and Another** in Civil Appeal No.7037 of 2021 reported in ***AIROnline 2021 SC 1183*** relied upon by the learned Counsel for the appellants, a Karta of joint Hindu family has the privilege to sale out the joint family property for legal necessity which according to Article 240 of Hindu Law includes the marriage expenses of daughters of coparceners. Though it is claimed by the appellants before the learned Trial Court that, original defendant No.1 sold the suit land for marriage expenses of plaintiff No.4 but the witnesses examined by the appellants failed to establish the said fact by adducing reliable evidence to that effect. Only it has been brought on record that, the marriage of plaintiff No.4 took place in the year 1996 in which the sale-deed of the suit properties were executed. However, the evidence of witnesses examined on behalf of the appellants indicates that, they were not at all knowing anything about the details of expenses of the marriage of plaintiff No.4.

7. On the contrary, the plaintiffs had examined husband of plaintiff No.4, who specifically deposed before the Court that, his

father in fact incurred expenses of marriage of plaintiff No.4 as she was daughter of his maternal uncle. He also stated that, father of plaintiff No.4 was addicted to liquor and except the amount of Rs.5000/- all the marriage expenses were born by his father. There is nothing in his cross-examination which can lead to the adverse inference. Not only this but Datta Rama Subugde who is one of the appellants/purchasers in the chief itself has stated that, marriage expenses of plaintiff No.4 were not done from the sale price of disputed land. Even if it is presumed that, it might be recorded wrongly but in the cross-examination also he has stated that, he could not tell the date of said marriage and he had not attended the same. Most important to note that, this witness surprisingly admitted in his cross-examination that, husband of plaintiff No.4 had incurred all the marriage expenses. Moreover, he has also admitted in the cross-examination that, at the time of purchase of suit land the defendant No.1 – Digambar Dnyanoba Yadav was addicted to liquor. He has also admitted that, no reason as to why defendant No.1 sold the land, had been mentioned in the sale-deeds. Thus, such admissions on the part of appellants, clearly indicate that, they could not establish the fact that, the suit lands were sold by defendant No.1 out of legal necessity.

8. The appellants had also taken stance that, they were bonafide purchasers of the suit land. However on the said ground also they could not adduce reliable evidence. On the contrary, the evidence on record indicates that, they did not make any enquiry in respect of suit lands and this fact has already been discussed by the learned Trial Court in the judgment by quoting paragraph No.240 of Hindu Law by Mulla. The learned Trial Court had also relied on the judgment of Andhra Pradesh High Court as mentioned in the judgment itself. As such, it can be seen that, the appellants had also failed in establishing the fact that they had in fact enquired about legal necessity of defendant No.1 as alleged by them.

9. Learned Counsel for the appellants also tried to argue that, all the lands of Hindu family were not included in the suit for partition and therefore on the issue of common *hotch-potch* the suit should have been dismissed. However, the learned Trial Court as per paragraph No.332 of principles of Hindu Law by Mulla has discussed this issue properly and observed the common *hotch-potch* rule is not applicable in this case since, the family members had filed suit not against the other family members but third party

who had purchased the said lands. Learned Counsel for the appellants also pointed out that, the learned First Appellate Court has written the cryptic judgment of only three pages and did not follow the principles under Order 41 Rule 31 of the Civil Procedure Code, according to which detail discussion on the evidence is required. However, on going through the judgment of learned First Appellate Court it appears that, though it is a short judgment but the learned First Appellate Court has already framed the vital points involved in this matter and by touching every aspect on disputed points concurred with the findings of the learned Trial Court. Therefore it cannot be said that, the learned First Appellate Court did not consider the evidence in detail.

10. Thus, considering all these aspects both the learned Courts below have appreciated the evidence on record in proper perspective and with the help of evidence on record observed that, the appellants could not establish the fact that defendant No.1 had sold the suit land out of legal necessity and that the suit was bad for non-joinder for other joint family property. On contrary, there own evidence is showing that, defendant No.1 might have sold the suit land for his bad habits without there being any legal

necessity. As such, in view of the concurrent findings on the vital issues involved in the present case no substantial questions of law appear to be involved as alleged. In view of the same, both the appeals stand dismissed at admission stage alongwith pending Civil Applications.

11. The Second Appeals are accordingly disposed of alongwith Civil Application No. 7541 of 2012, Civil Application No. 12902 of 2012 and Civil Application No. 12833 of 2016.

[SANDIPKUMAR C. MORE]
JUDGE

LATER ON :

12. Learned Counsel for the appellants in both these appeals, after pronouncement of judgment, requested to continue the interim relief which was in force during the pendency of these appeals.

13. Learned Counsel for the respondents pointed out that, such relief was in existence only to the extent of handing over of possession of the suit land by the concerned Revenue Officers.

14. In view of the same, the interim relief which was in force

during pendency of these appeals, is extended by further period of eight weeks.

[SANDIPKUMAR C. MORE]
JUDGE