



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
SECOND APPEAL NO.222 OF 2014
WITH
CIVIL APPLICATION NO.3335 OF 2014
WITH
CIVIL APPLICATION NO.4194 OF 2023**

1. Sanjay S/o. Vijaykumar Kulkarni,
Age. 42 Yrs., Occ. Agri,
R/o. Sanja, Tal. & Dist. Osmanabad.
2. Dhananjay S/o. Vijaykumar Kulkarni,
Age. 40 Yrs., Occ. Agri, R/o. as above.
3. Uday S/o. Vijaykumar Kulkarni,
Age. 38 Yrs., Occ. Agri, R/o. as above.

..Appellants
(Orig. Plaintiffs)

Versus

1. Latika W/o. Angadrao Bhosale,
Age. 57 Yrs., Occ. Agri & Household,
R/o. Raulgaon, Post. Gaudgaon,
Tal. Barshi, Dist. Solapur.
2. Dhananjay S/o. Bhaskar Suryawanshi,
Age. 37 Yrs., Occ. Agri,
R/o. Kapsi, Post. Savargaon,
Tal. Barshi, Dist. Solapur.
3. Nanasaheb S/o. Trimbak Kadam,
Age. 61 Yrs., Occ. Service,
R/o. Sanja, Tal. & Dist. Osmanabad.
4. Smt. Aasha W/o. Vijaykumar Kulkarni,
Age. 64 Yrs., Occ. Household,
R/o. as above.
5. Rajendra @ Rajesh S/o. Vijaykumar Kulkarni,
Died through Lrs.
- 5-A) Smt. Manjusha Rajendra @ Rajesh Kulkarni,
Age. 41 Yrs, Occ. Household,
R/o. Sanja, Tal. Osmanabad, Dist. Osmanabad.
- 5-B) Indrajit s/o Rajendra @ Rajesh Kulkarni,
Age. 22 Yrs, Occ. Education,
R/o. As above.

5-C) Virakshi D/o Rajendra @ Rajesh Kulkarni,
Age. 18 years, Occ. Education,
R/o. As above.

..Respondents
(Orig. Defendants)

Mr. S. Y. Mahajan, Advocate for the Appellants.

Mr. P. S. Chavan, Advocate for Respondent Nos.1 to 3.

Mr. D. A. Madake, Advocate for Respondent Nos.4 and 5A to 5C.

CORAM : S. G. CHAPALGAONKAR, J.
DATED : 16th DECEMBER, 2024.

JUDGMENT:-

1. The appellants/original plaintiffs impugn judgment and decree dated 09.10.2023 passed by Ad-hoc District Judge-1, Osmanabad in Regular Civil Appeal No.88/2009, thereby confirming judgment and decree dated 20.03.2009 passed by Civil Judge Junior Division, Osmanabad in Regular Civil Suit No.145/2005. (Hereinafter, parties are referred as per their original status for the purpose of convenience and brevity).

2. The plaintiffs filed suit for partition and separate possession alongwith relief of declaration that sale deeds executed by Vijaykumar in respect of land Gut No.451 are invalid. According to plaintiffs, suit property was ancestral property of their father i.e. Vijaykumar. The plaintiffs alongwith defendant no.5 are sons of Vijaykumar. The defendant no.4 is their mother. Vijaykumar died on 06.05.2001. He was addicted to vices and to satisfy his lust, he sold portions of land Gut No.451 under different sale deeds executed in favour of defendant nos.1 and 2. The defendant no.5 has also executed a sale deed in favour of defendant no.3 on

instigation of Vijaykumar. According to plaintiffs, Vijaykumar was in employment. His salaried income was sufficient to maintain family. There was no legal necessity to alienate any portion of the suit property.

3. Per contra, it is case of defendant nos.1 to 3 that Vijaykumar was indebted. He had borrowed crop loan from Co-operative and employees Societies. He had large family to maintain and incurred huge expenses toward education of Sons. Considering his need, he offered to sell property and after making necessary inquiry as regard to existence of legal necessity, defendants purchased suit property. The plaintiffs have executed consent deed on Stamp Paper of Rs.20/- in favour of defendants and approved that sell transaction was for legal necessity.

4. The Trial Court framed issues considering controversy arising out of pleadings. The plaintiff no.3 recorded her evidence and relied upon documentary evidence, whereas Dhananjay-defendant no.2 and Nansaheb-defendant no.3 recorded their own evidence and further relied upon evidence of Hanumant Raut, Secretary of Sanja Vikas Seva Society and Rajendra Patil, a witness on consent deed at Exhibit-73. The Trial Court after evaluation of evidence, concluded that suit property was ancestral joint family property and Vijaykumar and his wife sold out portions of suit land Gut No.451 in favour of defendants towards legal

necessity. Consequently, dismissed the suit. The plaintiffs filed Regular Civil Appeal No.88/2009 assailing judgment and decree passed by the Trial Court. However, Appellate Court concurred with findings recorded by Trial Court and dismissed Appeal.

5. Mr. Mahajan, learned Advocate appearing for the appellants submits that Trial Court failed to frame necessary issues, so also Appellate Court failed to adhere with the procedure of Order XLI Rule 31 while deciding appeal without framing appropriate points for consideration. The procedural lacuna on the part of Courts below caused serious prejudice to rights of plaintiffs. He submits that although Trial Court rightly held that suit property is ancestral but failed to appreciate that Vijaykumar had no authority to sell undivided share of other coparceners to satisfy his vices. Copy of liquor license of Vijaykumar is placed on record. Similarly, there is evidence depicting Vijaykumar's income from his employment. There were no compelling circumstances by which he could have taken drastic steps to alienate joint family property. It was burden of the purchasers/defendants to bring on record sufficient evidence depicting instances of legal necessity. Mr. Mahajan would further submit that there is no evidence to show that sale proceeds were utilized to clear debts. However, Courts below have recorded perverse findings validating sale transactions to be for legal necessity of joint family. To buttress his

submissions, he relies upon judgment of Division Bench of this Court in case of ***Shrikant S/o. Trimbakrao Begade and Others Vs. Natthu Maroti Shivarkar (Dead) Through L.R. S. Jyoti Wd/o. Natthu Shivarkar and Others***¹.

6. Per contra, Mr. Chavan, learned Advocate appearing for respondent nos.1 to 3 supports concurrent findings recorded by Trial and First Appellate Court. According to him, Courts below rightly recorded findings of fact on appreciation of evidence, which need not be disturbed in second appeal, in absence of perversity in the approach of the Courts below. Mr. Chavan in support of his contentions relies upon judgment of Supreme Court of India in case of ***Girijanandini Devi and others Vs. Bijendra Narin Choudhary***², and judgment in case of ***Pushpalata Parshuram Borukar Vs. Madhavlal N. Pittie Esquire***³.

7. Having considered submissions advanced, it can be observed that dispute in present litigation operates in limited sphere and only issue that germane for consideration is as to whether impugned sale deed of suit property executed in favour of defendant nos.1 to 3 were for legal necessity. The Trial Court framed the issues and rightly put burden of issue nos.2 and 3 upon defendants to prove that deceased Vijaykumar and his wife sold

¹ (2017) 4 Mh.L.J. 591.

² 1967 AIR (SC) 1124.

³ 2005 (2) ALL MR 43.

suit property for legal necessity. The defendants specifically pleaded in the written statement that sale deeds executed by Vijaykumar were for legal necessity and they had satisfied themselves as regards to the existence of legal necessity before entering into sale transactions. In support of such contentions, defendant nos.2 and 3 entered into witness box and faced cross-examination. Apart from their own evidence, defendants examined Secretary, Sanja Vikas Seva Society, who testified about existence of recoverable dues of loan against Vijaykumar. The defendants also produced consent deed dated 04.04.1998 at Exhibit-73, wherein plaintiffs ratified aforesaid transaction. The Trial Court observed that defendants had recorded satisfaction as regards to existence of legal necessity and then only entered into transaction of sale. Pertinently, sale deeds stipulates about liability towards existing loans against Vijaykumar. Two sale deeds are executed by Vijaykumar and his wife. The third sale deed dated 12.10.1995 is executed by defendant No.5 / brother of plaintiffs in favour of defendant no.2. Apparently, family members supported alienation by Vijaykumar. Such transaction cannot be attributed towards bad vices of Vijaykumar. The thrust of contention of plaintiffs that Vijaykumar was addicted to bad vices is only on liquor license possessed by him. However, only on the basis of possession of liquor license, it is difficult to hold that Vijaykumar was drunker man and alienation was made for satisfying his lust.

8. One more glaring feature observed by Courts below is that on 02.07.1996 plaintiffs and defendant no.5 sold 6H 65R land of family, which is double than land alienated under three impugned sale deeds executed by Vijaykumar, his wife and a son. It is apparent that family was under economic duress and decisions to alienate joint property were by consensus. The Trial Court as well as First Appellate Court also relied upon consent deed dated 04.04.1998 at Exhibit-73. Although such consent deed is executed after transaction, it would definitely operate as estoppel against plaintiffs' claim in present suit. The corollary of aforesaid factual aspect lead Courts to conclusion that sale transactions were for legal necessity. The defendants have discharged their burden by leading adequate evidence. Therefore, although Courts below approved status of the suit property as joint Hindu family property, its dispensation by Vijaykumar/Karta of the family for legal necessity would validate transaction. Therefore, law laid down by Division Bench of this Court in case of ***Shrikant S/o. Trimbakrao Begade*** (supra) would not be of much assistance to the case of plaintiffs. In that case Division Bench held that burden to prove existence of legal necessity is always on the purchasers. There can be no dissent to aforementioned salutary preposition of law of Hindu law. However, once purchaser discharged his burden, plaintiffs' claim to invalidate or ignore transaction cannot be accepted.

9. The second limb of argument advanced by Mr. Mahajan is that Appellate Court failed to adhere with the provisions of Order XLI Rule 31 and Section 107 of the Code of Civil Procedure and frame necessary points for consideration. It is true that Appellate Court framed only point for consideration that “whether judgment and decree passed by Trial Court is liable to be quashed and set aside”. Technically there is force in the submission of Mr. Mahajan. The Appellate Court being last fact finding Court could have appropriately deduced points for consideration and recorded finding thereon. However, fact remains that Appellate Court has dealt upon each and every aspect of the matter and rendered elaborate finding on all the relevant points arising for consideration in the Appeal. In this background, reliance of Mr. Chavan on observation of this Court in case of ***Pushpalata Parshuram Borukar*** (supra) would be relevant. This Court observed that requirement of provision of Order XLI Rule 31 of the Code of Civil Procedure shall stand substantially complied, when Appellate Court has considered all the relevant issues in elaborate judgment. In such cases, non-framing of specific question cannot be ground for interference in well reasoned judgment passed by appellate courts.

10. Applying aforesaid principle of law, no infirmity can be found in the judgment of First Appellate Court. Further, no prejudice is

caused to appellants/plaintiffs only because points of consideration were not framed in accordance with Order XLI Rule 31 of the Code of Civil Procedure. In that view of the matter, no substantial question of law arises for consideration in this second appeal.

11. Consequently, Second Appeal stands dismissed.

12. In view of dismissal of Second Appeal, Civil Applications do not survive and accordingly stand disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/December-2024