



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

**SECOND APPEAL NO.1 OF 2024
WITH
CIVIL APPLICATION NO.334 OF 2024**

Sharanjeetsingh s/o Mahendrasingh Jassar,
Age : 46 years, Occu.: Business,
R/o.: Padampura, Taluka & District :
Aurangabad

.... **APPELLANT**
(Orig. Defendant No.2)

VERSUS

1. Meerabai w/o Sanjay Pachlore,
Age : 41 years, Occu.: Agriculture,
R/o.: Ladsawangi, Taluka and
Distric : Aurangabad
2. Mangalbai w/o Nilesh Phule,
Age : 33 years, Occu.: Agriculture,
R/o.: Dategaon, Taluka : Phulambri,
District : Aurangabad
3. Parvatabai w/o Ramlal Brahmkar,
Age : 66 years, Occu.: Agriculture,
R/o.: Ganesh Nagar, Behind Power House,
Padegaon, Aurangabad

.... **RESPONDENTS**
(Respondent No.1 & 2
-Orig. Plaintiffs Nos.1
&2 & Respondent No.3
-Orig. Defendant No.1)

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Mr. Anand P. Bhandari, Advocate for the Appellant
Mr. S. V. Dixit h/f Mr. S. S. Kulkarni, Advocate for Respondent
Nos.1 & 2

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CORAM : SANDIPKUMAR C. MORE, J.

DATED : 24/09/2024.

ORDER :

1. Heard rival submissions at admission stage.
2. The appellant, who is original defendant No.2 in Regular Civil Suit No. 503 of 2012, has challenged the judgment and decree dated 29/11/2023 passed by the learned District Judge-3, Aurangabad i.e. the learned first appellate court in Regular Civil Appeal No.208 of 2022, whereby the judgment and decree dated 17/10/2022 passed by the learned trial court i.e. 13th Joint Civil Judge (Junior Division), Aurangabad in the aforesaid suit, has been confirmed. Thus, the present second appeal appears to be filed against the concurrent findings of both the learned courts below.

3. The background facts are as under :

Respondent Nos.1 & 2 being the original plaintiffs, have filed Regular Civil Suit No.503 of 2012 against the present appellant i.e. defendant No.2 and respondent No.3 i.e. defendant No.1 for partition, declaration that sale deed executed by defendant No.1 Parvatabai in favour of present appellant, being void and illegal and

not binding upon them. Respondent Nos.1 & 2 are the daughters of original defendant No.1- Parvatabai, whereas the appellant is a person, who had purchased one of the ancestral properties of present respondents i.e. land Gat No.60, admeasuring 56 R, situated at village Padegaon, Taluka and District : Aurangabad. The original plaintiffs have contended that the suit property was originally owned by their father – Ramlal Sonaji Brahmkar. The suit property after death of Ramlal, devolved upon the respondents, but only the name of defendant No.1 was recorded in 7/12 extract of the suit property vide Mutation Entry No.637 certified on 23/08/1996. The plaintiffs were minor at that time and thereafter they got married on 26/08/2000 and in the year 2008 respectively. However, the plaintiffs got knowledge that their mother i.e. defendant No.1 had sold the suit property to the present appellant – defendant No.2 vide a registered sale deed dated 10/11/2008 for the consideration of Rs.4,11,000/- without their consent. Therefore, to get their respective shares in the suit property, the plaintiffs have filed the aforesaid suit, which has been decreed by the learned trial court. The appeal filed by the appellant before the learned first appellate court also got dismissed and hence, this appeal.

4. The learned counsel for the appellant submits that both the learned courts below did not consider the fact that the plaintiffs had not joined all the ancestral properties for effecting partition and therefore, the suit for partial partition was not maintainable. According to him, the learned courts below also did not consider the concept of legal necessity properly specially when respondent No.1 herself had admitted in her cross-examination that their marriages were solemnized in the years 2000 and 2008 and there was no source of income available to their mother i.e. present respondent No.3. As such, he has raised following substantial questions of law.

- I) *Whether the suit is bad for non-inclusion of the ancestral properties of the respondents ?*
- II) *Whether both the learned courts below have erred in holding that there was no legal necessity for respondent No.3 to sell the suit property ?*

5. On the contrary, the learned counsel for respondent Nos.1 & 2 strongly opposed the submissions made on behalf of the appellant and supported the impugned judgment. According to him, both the learned courts below have already appreciated the evidence in proper perspective and answered the substantial

questions of law effectively and therefore the present second appeal is not having any substance and accordingly it be dismissed at admission stage.

6. It is significant to note that both the learned courts below, have discussed the evidence on record and observed that the burden of proving legal necessity was upon the present appellant, but he could not discharge the same. It is significant to note that the appellant had contended that respondent No.3 – Parvatabai had sold the suit property for repayment of loan availed by her from one Sakharam for marriage of her daughter. However, the appellant did not examine the said Sakharam, who could have thrown more light on the aspect of legal necessity. Moreover, even though there are recitals to that effect in the sale deed in favour of the appellant, but respondent No.3 – Parvatabai in her written statement had come with a case that she did not execute any sale deed to the appellant but the same was got executed fraudulently from her by taking disadvantage of her illiteracy. Therefore, mere admission on the part of respondent No.1 that her mother was not having any source of income at the time of her marriage is not sufficient to infer that the said property was sold out of legal necessity. Even otherwise also it was required for the appellant to

bring positive evidence of the alleged legal necessity by examining the attesting witnesses of the said sale deed. Therefore, no perversity is found in the findings recorded by both the courts below on the aspect of legal necessity.

7. The other substantial question of law raised by the appellant is that respondent Nos.1 and 2 – plaintiffs did not include all the joint family or ancestral properties in the plaint and therefore, the suit was definitely bad for such non-inclusion. Admittedly, the evidence on record shows that besides the suit property, there were two other ancestral properties namely land Gat No.31 of village Sharnapur and house property at Padegaon, but the same are not included. The learned counsel for the appellant has relied upon following citations:

- A) *Kenchegowda (since deceased) by Leal Representatives vs. Siddegowada Allas Motegowda, reported in (1994)4 SCC 294;***
- B) *Govindrao s/o Gangaramji Ajmire vs. Dadarao alias Shrawan s/o Gangaramji Ajmire (dead), reported in 2004(3) ALL MR 660;***
- C) *R. Mahalakshmi vs. A. V. Anantharaman and others, reported in 2009 AIR (SCW) 4963 and***

D) Smt. Nanibai wd/o Laxmanrao Navkhare and others vs. Vitthalrao Marotirao Navkhare and another, reported in 2015(6) ALL MR 113.

On going through the aforesaid citations, it is evident that unless all the properties succeeded from common ancestor are not brought in common hotchpot, the suit for partial partition is not maintainable. The learned counsel for the appellant contended that under para 333 of Mullah's Hindu Law suit for partial partition is not maintainable. Admittedly, the reference of other ancestral properties namely Gat No.31 of village Sharnapur and house property at Padegaon has come on record. However, it is contended by the plaintiffs that there was no dispute in respect of Gat No.31 between the respondents. As such, it cannot be said that the plaintiffs had suppressed the fact of existence of other joint family properties. Further, during the course of argument, the learned counsel for the respondents / plaintiffs fairly submitted that respondent No.3 i.e. mother of the respondent Nos.1 & 2, is residing in the house at Padegaon and the land Gat No.31 has been sold by respondent Nos.1 to 3.

8. Even if it is found that the other joint family property Gat No.31 has been sold by the respondents even after filing the

present suit but the main question is that whether the appellant was entitled to raise issue of partial partition at the relevant time. The learned counsel for respondent Nos.1 & 2 by relying on the observation of Hon'ble Apex Court in the case of ***Karuppiah and another vs. C. Muniyappan and others, reported in 2014 SCC OnLine Mad 660***, claimed that though it is necessity for joining all the ancestral properties in a suit for partition, but ordinary rule that suit for partial partition is not maintainable, does not apply to the present case as the right of raising such contention that the suit is not maintainable for want of inclusion of all joint family properties, is available to the co-owner, who is entitled to recover his share from the ancestral properties. It is held by the Hon'ble Apex Court in the aforesaid case that an alienee cannot contend that the suit is bad for partial partition. Here in this case, the appellant is subsequent purchaser or can be said as an alienee of the suit property and not a member of joint family of respondents. Thus, as per the observation of the Hon'ble Apex Court as aforesaid, he cannot claim the suit being not maintainable on the ground that all the joint family properties are not included. Thus, in the light of such observation of the Hon'ble Apex Court and the finding recorded by both the learned courts below, it appears that both the substantial questions of law have been substantially

answered on the basis of evidence and at this juncture no such substantial questions of law are there. Therefore, in view of the concurrent findings in respect of the aforesaid substantial questions of law, no substance is found in the present second appeal and the same stands dismissed and disposed of at admission stage alongwith Civil Application No.334 of 2024.

(SANDIPKUMAR C. MORE, J.)