

varsha

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 178 OF 2019
WITH
CIVIL APPLICATION NO. 334 OF 2019
IN
SECOND APPEAL NO. 178 OF 2019**

Smt Haribai Ganapati Mali and Ors ... Appellants/Applicants

vs.

Shri Sandeep Pandit Nale and Ors ... Respondents

**WITH
SECOND APPEAL NO. 41 OF 2024
WITH
CIVIL APPLICATION NO. 331 OF 2019
IN
SECOND APPEAL NO. 41 OF 2024**

Smt Sakhubai Ganapati Mali and Anr ... Appellants/Applicants

vs.

Shri Rangrao Parasu Mali and Anr ... Respondents

**WITH
SECOND APPEAL NO. 177 OF 2019
WITH
CIVIL APPLICATION NO. 333 OF 2019
IN
SECOND APPEAL NO. 177 OF 2019**

Smt Sonabai Ganapati Chougule ... Appellants/Applicants

vs.

Shri Bapu Ganapati Mali (deceased
thru Lrs) and Ors ... Respondents

Mr. Sandesh D. Patil a/w. Ms. Divya A. Pawar h/f. Mr. Surel Shah,
for Appellant in all Sas.

Mr. Chetan Patil, for Respondents in SA/41/24 and SA/178/19 and
for Respondent Nos. 12 to 15 in SA/177/19.

CORAM : GAURI GODSE, J.

DATED : 30th JULY 2024

ORDER:

1. Heard Learned counsels for the parties. Second Appeals are admitted on the following substantial questions of law:

SECOND APPEAL NO. 177 OF 2019

I) Whether the issue no. 8A framed by the Trial Court casted burden upon the plaintiff to prove that the sale in favour of defendant nos. 11 to 15 was for legal necessity?

II) Whether the findings recorded on the sale executed by Bapu by way of legal necessity, amounts shifting the burden on the point of legal necessity upon the defendant and not upon plaintiff no.1?

III) Whether the findings recorded by both the courts on the sale deeds executed by Bapu for legal necessity, are sustainable in law,

in view of the legal principles settled by the Apex Court in the case of *Ramdas Vs. Sitabai and Ors*¹ and this court in the case of this Court *Shrikant s/o Timbakrao Begade and Ors Vs. Natthu Maroti Shivarkar (dead) through Lrs Jyoti wd/o Natthu Shivarkar and Ors*².

IV) In the event the sale deeds executed by Bapu are held to be valid documents, whether the same would be binding upon only Bapu's share?

SECOND APPEAL NO. 41 OF 2024

I) In the event the issue on the point of sale deeds executed by Bapu for legal necessity are held in favour of the plaintiffs in Regular Civil Suit No. 53 of 2021, Sakhubai and Hirabai would be entitled to seek injunction as prayed in Regular Civil Suit No. 2035 of 2000?

SECOND APPEAL NO. 178 OF 2019

I) In the event, the issues on the point of sale deeds executed by Bapu are held to be valid only to the extent of Bapu's share, whether the subsequent purchasers would be entitled to seek injunction against the defendants in Regular Civil Suit No. 326 of 2007?

1 (2009) 7 SCC 444

2 [2017(4)Mh.L.J. 590

2. Mr. Patil, waives notice on behalf of respondent nos. 12 to 15, in Second Appeal No. 177 of 2019.

3. Mr. Patil waives notice on behalf of the respondents, in Second Appeal No. 41 of 2024.

4. Mr. Patil waives notice on behalf of the respondents, in Second Appeal No. 178 of 2019.

5. In addition to Court notice, Appellants in all the Second Appeals to serve the remaining respondents, by private notice and file affidavit of service.

6. Call for records and proceedings, in all the Second Appeals.

7. Printing is dispensed with, in all the Second Appeals.

8. Learned counsel for the appellants in Second Appeal No. 178 of 2019 shall file composite private paper-book within a period of one year from today in all the three Appeals.

CIVIL APPLICATION NO. 331 OF 2019 IN SECOND APPEAL NO. 41 OF 2024 AND CIVIL APPLICATION NO. 333 OF 2019 IN SECOND APPEAL NO. 177 OF 2019

9. All the three Second Appeals are admitted on the questions of law as recorded in the order passed in the Second Appeals.

10. Learned counsel for the applicants submits that applicants would press only order of injunction restraining the subsequent

purchasers from creating any third party interest in the property.

11. Learned counsel appearing for respondent nos. 12 to 15 in Second Appeal No. 177 of 2019 and for respondents in Second Appeal No. 41 of 2024 and Second Appeal No. 178 of 2019, submits that the said respondents would not create any third party interest in the suit property during the pendency of the Second Appeals.

12. Issue notice to respondent nos. 1 to 11 in Second Appeal No. 177 of 2019, returnable after ten weeks. In addition to Court notice, Applicants to serve the said respondents, by private notice and file affidavit of service before the next date.

CIVIL APPLICATION NO. 334 OF 2019 IN SECOND APPEAL NO. 178 OF 2019.

13. Learned counsel for the applicants on instructions submits that the applicants do not press for any relief in the Civil Application.

14. Hence, Civil Application is disposed of as not pressed.

(GAURI GODSE, J.)