



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

SECOND APPEAL NO. 716 OF 1999

1. Balaji S/o. Shivaji Phawade,
Age 22 years, Occ. Agriculture,
2. Ajit S/o. Shivaji Phawade,
Age 20 years, Occ. Agriculture,
3. Sujit S/o. Shivaji Phawade,
Age 18 years, Occ. Agriculture,
4. Sow Rukhminibai w/o. Shivaji Phawade,
Age 38 years, Occ. Household,
All R/o. Nargarsoga, Taluka AUSA,
District Latur.

.. APPELLANTS

VERSUS

1. Shivaji S/o. Bajirao Phawade,
Age 48 years, Occ. Agriculture,
R/o. Nagarsoga, Taluka AUSA,
District Latur.
2. Namdeo Rajiba Phawade,
since deceased through LRs

2A Madhuri wd/o. Namdeo Phawade,
Age 71 years, Occ. Household,

2B Sachin s/o. Namdeo Phawade,
Age 46 years, Occ. Agri. And Service.

2C Navin s/o. Namdeo Phawade,
Age 44 years, Occ. Agri and Service.

2D Nita w/o. Jayandra Pawar,
Age 49 years, Occ. Housewife,

All R/o. Nagarsona, Tq. Ausa,
Dist. Latur.

.. Respondents.

Mr. Yuvraj Kakade, Advocate h/f. Mr. V.V. Patil, Advocate for appellant,
Mr. B.N. Patil, Advocate for respondent No.2.

CORAM : S.G. CHAPALGAONKAR, J.

**RESERVED ON : 11TH MARCH, 2025.
PRONOUNCED ON : 8TH MAY, 2025.**

JUDGMENT:-

1. The appellant (original plaintiffs) impugn the judgment and decree dated 30.09.1998 passed by the District Judge, Latur, in CRA No. 65 of 1994, thereby reversing the judgment and decree dated 24.11.1993 passed by Civil Judge (J.D.), Ausa, in RCS No. 274 of 1987. [For sake of convenience, parties are referred as per their original status in suit.)

2. The plaintiffs instituted a suit seeking a decree of cancellation of sale deed and declaration of ownership. It is their contention that defendant No.1 is father of plaintiff Nos. 1 to 3 and husband of plaintiff No.4. He is addicted to vices. The agricultural land bearing Survey No, 178/3 to the extent of 5 acres was received by defendant No.1 in partion between himself and his mother and sisters. On 4.5.1979, he executed sale deed in favour of defendant No.2 for consideration of Rs. 4,000/-. It was a transaction without legal necessity. Similarly, defendant No.2 had agreed to reconvey the suit land to defendant on payment of Rs. 4,000/-. As such, there was oral agreement of re-conveyance. Therefore, the transaction in question was in the

nature of *Vishwas Bainama*. Plaintiffs, therefore, prayed for cancellation of sale deed and declaration that they are owners and possessors of suit property.

3. The plaintiffs claim was refuted by defendant No.2 i.e. purchaser, contending that suit in present form is not maintainable. Defendant No.1 sold out the property and utilized the consideration also for purchase of another land. The transaction was bonafide and for benefit of family. Plaintiffs are proxy. The defendant No.1, has in fact filed the suit in the name of plaintiffs. The suit is collusive.

4. The trial court framed issues, based on pleadings of the parties, recorded evidence and finally accepted plaintiffs claim and cancelled the sale deed dated 4.5.1999 and plaintiffs were directed to deposit an amount of Rs. 4,000/- in the court within a period of one month.

5. Aggrieved defendant No.2 filed Regular Civil Appeal No. 65 of 1994 before the District Judge at Latur, who, after evaluation of evidence and considering the reasoning adopted by trial court, reversed the decree and dismissed the suit.

6. Present second appeal is instituted by aggrieved plaintiffs. It was placed for admission before this Court on 9.10.2002. Accordingly, it is admitted on following substantial questions of law :-

“1. Whether the lower appellate court, without framing point for determination on the point of legal necessity can decide question of legal necessity and interfered in the decree

passed by the trial court;

2. When the purchaser has not pleaded and proved that there was in fact a legal necessity for defendant No.1 to sell the property, whether the appellate court can record finding in absence of pleadings.

7. The learned advocates appearing for respective parties, advanced their submissions in pursuance to the aforesaid substantial questions of law. Mr. Y.V. Kakade, learned advocate appearing for appellant would submit that the sale deed was challenged by the plaintiffs firstly on the ground that it sans legal necessity, secondly, it was not a transaction of out and out sale and thirdly, there was oral agreement of re-conveyance. The trial court accepted the case of plaintiffs holding that transaction was not legal, as it sans legal necessity. Mr. Kakade would submit that the appellate court reversed the well reasoned judgment and decree without framing necessary point for determination as to legal necessity, on which point trial court had cancelled the sale deed. He would further submit that in absence of point for determination, the appellate court could not have reversed the decree. He would further urge that there is no pleading in written statement filed by defendant no.2 as to existence of legal necessity to defendant No.1. In support of his submissions, Mr. Kakade, relies upon the following judgments :-

1. Malluru Mallappa Through LRs vs. Kuruvathappa and others, Civil Appeal No. 1486 of 2020 dated 12th February, 2020.

2. Vinod Kumar vs. Gangadhar, (2015)1 SCC 391.

3. B.V. Nagesh and others vs. H.V. Sreenivasa Murthy. Civil Appeal No. 8259 of 2010 dated 24.09.2010.

8. Per contra, Mr. B.N. Patil, learned advocate for respondent No.2 submits that the present suit is filed seeking relief of cancellation of sale deed. The plaintiffs have not claimed relief of partition and separate possession. The cancellation of sale deed has been sought on the ground that defendant No.1/Karta had no legal necessity to alienate suit land and secondly, transaction was towards security, or at the most, it was a conditional sale. Mr. Patil would submit that the defendant No.2 not only pleaded about existence of legal necessity but also led clear evidence that defendant No.1 utilized sale consideration received under impugned sale transaction for purchase of another land, from one Kashinath Limbaji Raut. According to Mr. Patil, present suit is apparently collusive, instituted by defendant No.1 in the name of plaintiffs. Mr. Patil would further submit that unless it is shown that prejudice caused to plaintiffs because of non framing of a specific point for consideration by appellate court, the well reasoned judgment cannot be disturbed. In support of contentions, Mr. Patil relies upon the following judgments :

1. *Santosh Hazari vs. Purushottam Tiwari 2001(2) Mh.L.J.786.*
2. *Nedunuri Kameshwaramma vs. Sampatil Subba Rao reported in AIR 1963 SC 884.*
3. *Mohd. Ahmed vs. Karamat Hussain and others 2016 SCC on line All 2926.*
4. *Mrugendra Indravadan Mehta and others Vs. Ahmedabad Municipal Corporation 2024 SCC online 849.*
5. *Vasantha through LRs vs. Rajalakshmi @ Rajaram through LRS. (2024) 5 SCC 282.*

9. Having considered the submissions advanced, and the substantial questions of law as framed, the first and foremost issue that requires consideration in this second appeal is, whether the appellate court could have delve into the issue of legal necessity without framing specif point for consideration.

10. It could be observed that, suit is filed for cancellation of sale deed and not for partition and separate possession on the basis of right of plaintiffs in coparcenary property. It is true that plaintiffs have incorporated the plea that sale deed was without legal necessity and therefore, trial court has accordingly rendered its finding; the appellate court found that the suit in such a form would not be maintainable. If plaintiffs wanted to seek relief as regards to their right in ancestral property, it was obligatory for them to seek declaration that sale deed is not binding upon them to the extent of their share. Even alternative plea has been raised by plaintiffs that there was oral agreement of re-conveyance. They could have sought enforcement of such agreement of re-conveyance on refund of consideration amount.

11. In this background, the appellate court framed first point for consideration, as to whether the suit in present form is maintainable and recorded negative finding. Secondly, appellate court has recorded elaborate reasons while declining to accept the plaintiff's case that such transaction was without legal necessity. It is apparent that suit transaction is dated 4.5.1979 and within a period of ten days, i.e. on 15.3.1979, defendant No.1 purchased another land from one Kashinath for a consideration of Rs. 3,000/-. It is apparent that consideration amount received under sale deed dated 4.5.1979 was utilized for

purchasing another land. Defendant No.2 in his deposition explained that defendant No.1 had expressed his wish to purchase land from Kashinath, which was sold to him by his grandfather. Therefore, it is difficult to hold that transaction in question was without legal necessity or it was made by defendant No.1 for satisfying the vices. The appellate court has rightly observed that the defendant No.1 neither stepped into the witness box nor put up his defence. Entire sale transaction is sought to be challenged by plaintiffs without seeking relief of partition and separate possession to the extent of their share. In this background, there is every reason to accept the defence put forth by defendant No.2 that this is a collusive suit instituted in the name of plaintiffs by defendant No.1 for cancellation of sale deed. It can be observed that sale transaction would be binding against share of defendant No.1, even if it is held to be without legal necessity. Hence, relief of cancellation of sale cannot be granted. In this context, reference can be given to the judgment of this Court in the matter of *Shridhar Bajirao Pawar vs. Bajirao Dhondiba Pawar reported in 2016(6) ALL M.R. 280*.

12. In this background, merely because specific point for consideration was not framed, the judgment delivered by the appellate court cannot be vitiated. Learned advocates appearing for respective parties appears to have elaborately advanced their submissions before appellate court on point of legal necessity. The appellate court has also recorded adequate reasons while declining to accept contention of plaintiffs. The reasoning recorded by the appellate court depicts conscious application of mind. The trial court has accepted plaintiffs case observing that evidence as to legal necessity is insufficient. However, important evidence in form of sale deed in respect of purchase of land by

defendant No.1 within ten days after impugned transaction was ignored.

13. So far as another contention of plaintiff as to independent agreement of re-conveyance, apparently, trial court has not specifically framed issue in that regard nor plaintiffs established existence of any oral agreement independent of contents of sale deed. Even they failed to show their readiness or willingness to act upon such oral agreement. The trial court predominantly granted relief of cancellation of sale deed on the ground that transaction in question was without legal necessity and therefore, it is declared as invalid. Therefore, even on second count, plaintiffs failed to establish their case by leading cogent and reliable evidence.

14. The second question of law is framed under the premise that defendant No.1 has not pleaded about legal necessity, however, fact remains that he has specifically denied contention of the plaintiffs that sale deed was without legal necessity in para. 3. In para.6, he has specifically pleaded that sale transaction was for legal necessity and benefit of family. However, suit has been instituted by defendant No.1 in collusion with plaintiffs. It is further pleaded that defendant No.1 is a teacher and pretended that he wanted to pay off certain loans and also deal with some family issues. Therefore, there is no foundation in contention that defendant No.2 failed to plead about legal necessity.

14. As observed above, when evidence on record clearly demonstrates that defendant No.1 utilized the consideration amount received out of transaction in question for purchase of another land, no further evidence was required to establish legal necessity. Plaintiffs'

contention that defendant No.1 addicted to vices and transaction was made by him for immoral purposes does not find support from the evidence on record. In that view of the matter, the judgment of the appellate court need not be disturbed. Hence, second appeal stands dismissed.

[S.G. CHAPALGAONKAR, J]

grt/-