



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
SECOND APPEAL NO.188 OF 2023
WITH
CIVIL APPLICATION NO.9229 OF 2018**

Vijay Suraybhan Lagad,
Age: 45 years, Occu: Agriculture,
R/o: Hiwara, Tq: Ashti,
Dist. Beed.

..Appellant
(Original Defendant)

Versus

1. Vimal Mohan Manmode,
Age: 53 years, Occu: Agriculture,
R/o: Wahali (Chikhali), Tq: Patoda,
Dist. Beed. (Original Plaintiff)

2. Kalinda w/o Dattatraya Chavan
deceased through her legal representative,

2-A. Avinash s/o. Dattatraya Chavan,
Age: 27 years, Occu: Agricultural,
R/o. Khalal Pimpri, Tq. Newasa,
Dist. Ahmednagar.

2-B. Jayshri Hemand Shinde,
Age: 38 years, Occu: Agricultural,
R/o. Bel Pimpalgaon, Tq. Newasa,
Dist. Ahmednagar.

2-C. Usha Santaji Deshmukh,
Age: 34 years, Occu: Agricultural,
R/o. Near Mohniraj Temple, Newasa,
Tq. Newasa, Dist. Ahmednagar.

2-D. Pooja Dipak Pathare,
Age: 30 years, Occu: Agricultural,
R/o. Bab Pimpri, Tq. Shrigonda,
Dist. Ahmednagar.

2-E. Priyanka Dhananjay Magar,
Age: 25 years, Occu: Agricultural,
R/o. Waghunde Kh, Tq. Parner,
Dist. Ahmednagar.

2-F. Dattatraya s/o. Mulidhar Chavan,
Age: 62 years, Occu: Agricultural,
R/o. Khalal Pimpri, Tq. Newasa,
Dist. Ahmednagar

3. Kausabai w/o Dattatraya Lagad (Dead) ..Respondents
(Original Defendants)

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Mr. R. B. Temak, Advocate for Appellant.

Mr. C. V. Dharurkar, Advocate for Respondent Nos.1, 2A to 2F.

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CORAM : S. G. CHAPALGAONKAR, J.
DATED : 13th MARCH, 2025.

ORDER:-

1. The appellant (original defendant no.1) impugns judgment and decree dated 03.08.2016 passed by District Judge, Beed in Regular Civil Appeal No.91/2013, thereby upholding judgment and decree dated 02.05.2013 passed by Civil Judge, Junior Division, Ashti in Regular Civil Suit No.134/2009, by which suit filed by respondent no.1 seeking decree for partition and separate possession of suit property has been decreed. (Hereinafter, parties are referred to by their original status for the sake of convenience and brevity).

2. The respondent no.1/original plaintiff filed Regular Civil Suit No.134/2009 seeking relief of partition and separate possession in respect of agricultural land as described in plaint. She contends that suit property is ancestral property of plaintiff and defendants. The land Survey No.149/A has been purchased by her father under registered sale deed out of income of joint family. Later on, defendant no.1 got sale deed executed in his favour from father without any consideration. Those sale deeds are sham, bogus and

without legal necessity. The plaintiff is having lawful share in property. According to plaintiff, on 15.03.2009, she claimed for share in suit land from defendant no.1, but he refused to effect partition.

3. The defendants refuted plaintiff's claim by filing written statement. The Trial Court framed issues based on pleadings of parties. Finally, decreed suit accepting that plaintiff has 1/4th share in suit property alongwith defendant nos.1 to 3 and declared that sale deed executed by father of plaintiff in favour of defendant no.1 is not binding upon her right. The defendant no.1 assailed decree of Trial Court in Appeal before District Judge, Beed, who concurred with findings recorded by Trial Court and dismissed Appeal.

4. The defendant no.1 filed present Appeal assailing concurrent judgment and decree. During pendency of this Appeal, defendant no.2-Kalinda Chavan expired. Her legal representatives are brought on record as respondent nos.2A to 2F. On 13.03.2024, parties personally appeared before this Court and expressed willingness to settle dispute through Mediation. Eventually, this Court referred parties to Mediator. Mr. S. K. Kadam, learned Mediator forwarded his report of mediation dated 31.01.2025 alongwith terms of compromise entered between appellant (original defendant no.1) and legal representatives of respondent no.2 i.e.

Kalinda Chavan, which is taken on record and marked as 'A' for identification. The legal representatives of respondent no.2 relinquished their rights in suit property in favour of appellant/defendant no.1 by accepting amount of Rs.22,00,000/-, parted to them by way of Demand Drafts. In result, appellant/defendant no.1 acquired interest of late Kalinda in ancestral property. A separate pursis is passed on record confirming receipt of amount by legal representatives of respondent no.2 (respondent nos.2A to 2F), which is taken on record and marked as 'X' for identification. The original defendant no.3- Kausabai, who is mother of plaintiff and defendant nos.1 and 2 also expired during pendency of this Appeal. The plaintiff and defendant nos.1 and 2 are her legal representatives. Therefore, her interest would devolve in equal proportion upon them.

5. Mr. Temak, learned Advocate appearing for the appellant (original defendant no.1) endeavours to contend that sale deeds bearing Nos.2481 and 2482 of 2006 executed by deceased- Dattatraya for legal necessity. Further, those sale deeds are not expressly challenged or no prayer for setting aside those sale deeds have been employed in plaint. Therefore, Courts below have committed patent illegality while decreeing suit in respect of land, which were subject matter of sale deeds.

6. Per contra, Mr. Dharurkar, learned Advocate appearing for respondents submits that defendant no.1 has miserably failed to prove existence of legal necessity.

7. The Trial Court on appreciation of evidence observed that defendants could not bring on record any evidence to show that Dattatraya had legal necessity to sell out joint family property. The defendant no.1 cannot be said to be bonafide purchaser for value. Even, defendant no.1 could not bring on record circumstances depicting medical expenses borne for treatment of Dattatraya. The contents of sale deeds shows that land has been sold for household expenses and for maintenance during old age. It is, therefore, clear that no specific instance as regards to existence of legal necessity as on date of execution of sale deed is brought on record. The findings recorded by Trial Court on aspect of legal necessity are endorsed in Appeal by learned District Judge.

8. It cannot be disputed that suit property was ancestral property of Dattatraya. The plaintiff and defendants being legal heirs were having equal shares. In absence of evidence as to legal necessity, sell of property by Dattatraya in favour of defendant no.1 would not be binding on rights of other coparcener. Such sale deed can be ignored by them while claiming partition and separate possession of their shares. In such cases, it is not necessary to seek

relief for setting aside sale deeds. The disposition by Karta, being without legal necessity can be ignored. In that view of the matter, no substantial questions of law arises for consideration in this Second Appeal. However, decree passed by Trial Court and confirmed by Appellate Court needs modification taking note of compromise terms recorded between appellant (defendant no.1) and legal representatives of respondent no.2 (original defendant no.2) and death of Kausabai. Hence, following order:

ORDER

- a. Second Appeal is partly allowed.
- b. The impugned judgment and decree is modified in tune with compromise terms appended to Mediation report dated 31.01.2025, which is marked as 'A' for identification.
- c. The plaintiff, defendant no.1 and legal representatives of defendant no.2 are held entitled for 1/3rd share in suit property.
- d. In light of amicable settlement recorded between appellant (defendant no.1) and respondent nos.2A to 2F (legal representatives of defendant no.2), defendant no.1 shall be entitled to get his own share and share of late Kalinda during partition. Rest of decree as passed by Trial Court is maintained as it is.
- e. Decree be modified accordingly.

f. In view of disposal of Second Appeal, pending Civil Application stands disposed of accordingly.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/March-2025