



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

SECOND APPEAL NO. 20 OF 2014

Digambar Kisanrao Rautrao .. Appellant

Versus

Kisanrao Baban Rautrao and others .. Respondents

Shri Prakash G. Gunale, Advocate for the Appellant.

CORAM : SHAILESH P. BRAHME, J.

DATE : 04TH OCTOBER, 2025.

FINAL ORDER :

. Heard learned counsel for the appellant.

2. Plaintiff has preferred this second appeal, though he is successful before the Trial Court in his suit for partition and possession. His suit to the extent of land gut No. 478 was dismissed by the Trial Court, which is said to have been alienated by the respondent No. 1 - Kishanrao Baban Rautrao in favour of the respondent No. 5 - Shankarrao Jadhav on 28.04.1994 for the legal necessity of performing marriage of the respondent No. 4 - Dhondabai. Being aggrieved by exclusion of land gut No. 478, R.C.A. No. 75 of 2009 was preferred, which was dismissed on 18.02.2012. Hence present second appeal is filed.

3. Application for adducing additional evidence has also been filed thereby appellant is seeking production of additional

evidence of extract of registration of marriage of the respondent No. 4 with Sheshrao. Learned counsel Mr. P. G. Gunale for the appellant submits that substantial question of law pertains to the so called fictitious legal necessity shown by the defendant No. 1 and defendant No. 5 for purchasing land gut No. 478. It is contended that both the Courts below committed error of jurisdiction in holding that there was legal necessity and gut No. 478 was required to be sold. The marriage of the respondent No. 4 - Dhondabai was performed on 15.05.1995, whereas alienation took place prior to one year, which is not properly appreciated by the Courts below.

4. Appellant is successful before the Trial Court in respect of land gut Nos. 469 and 546. The respondent No. 1 did not participate in the proceeding and suit proceeded ex-parte against him. The respondent Nos. 2 to 4 supported claim of the appellant. The respondent No. 5 contested the suit being bonafide purchaser. He adduced his oral evidence.

5. The sale deed Exhibit No. 51 recites that suit land was sold for marriage of the daughter. The Trial Court dealt with the issue and held that the marriage was performed from the sale proceeds. The findings are confirmed by the lower Appellate Court. Both the Courts below concurrently decided against the appellant.

6. The variance in respect of year of marriage has also been

dealt with by the lower Appellate Court. I have taken into account the extract of marriage register showing that date of marriage of Dhondabi with Sheshrao was 15.05.1995. The defendant No. 5 purchased the land on 28.05.1994. Merely because the marriage was not performed immediately after the sale or preceding the sale, it cannot be inferred that there is no legal necessity. It is of the common knowledge that funds would be required to be mustered for the marriage. The process of the marriage might take some time. The findings of facts recorded by both the Courts below cannot be interfered with.

7. I find no substantial question of law involved in the second appeal. The second appeal is dismissed.

[SHAILESH P. BRAHME J.]

bsb/Oct. 25