



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

SECOND APPEAL NO. 269 OF 1994

1. Dharmaraj S/o Rambhau Chikne
age : 24 years, Occ : agriculture,

2. Dnyandeo S/o Nivrutti Chikne
age : 37 years, Occ : agriculture,

Both r/o Gangawadi, Tahat Talwada,
Georai, Dist. Beed.

..APPELLANTS

-VERSUS-

1. Asaram s/o Kashinath Jadhav
age : 11 years, u/g Rambhau Bapurao
Bhillare, r/o Antarwali, Tal. Ambad,
Dist. Jalna.

2. Motiram s/o Kashinath Jadhav
age : 9 years, u/g of Rambhau S/o Bapurao
Bhillare, age : 60 years, r/o Antarwali,
Tal. Ambad, Dist. Jalna.

3. Kashinath s/o Tukaram Jadhav
age : 40 yeas, Occ : agriculture,
r/o Gangawadi Tahat Talwada,
Tal. Georai, Dist. Beed (died L.Rs.)

Savitrabai d/o Kashinath Jahdav
age : 34 years, occupation and r/o as above.

4. Shantabai w/o Kashinath Jadhav
age : 30 years, occupation and r/o as above
(Deleted as per Court's order dated 01.04.2022)

5. Asraji s/o Abaji Khade, age 35 years,
occ : agriculture, r/o Savargaon Ghat
Tal. Patoda, Dist. Beed, at present Chavanwadi
Tahat Talwada, Tal. Georai, Dist. Beed

6. Mahadeo s/o Shankar Khade, age : 12 years,
u/g of Paternal uncle, defendant no.5/
Asraji Abadi Khade, occ : and r/o as above

(Appeal dismissed against Respondent Nos.5 and 6 as per Additional Registrar order dated 07.10.1998).

..RESPONDENTS

...
 Advocate for appellants : Mr. M.M. Patil Beedkar
 Advocate for Respondent Nos.1, 2 and 3A : Ms.Rekha Chaudhari h/f
 Mr. S. S. Chaudhari

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WITH

SECOND APPEAL NO. 271 OF 1994

1. Asaraji S/o Abaji Khade
 Age : 53 years, Occ : Agri.,
 R/o Savargaonhuti, Tal. Patoda,
 Dist. Beed, at present Chavanwadi,
 Tahat. Talwada, Tq. Georai,
 Dist. beed.
2. Mahadeo S/o Shankar Khade
 Age : 30 years, Occ : Agri.,
 R/o As above.

..APPELLANTS

-VERSUS-

1. Asaram s/o Kashinath Jadhav
 age : 29 years, Occ : Agril,
 R/o Antarwali, Tal. Ambad,
 Dist. Jalna.
 2. Motiram s/o Kashinath Jadhav
 age : 27 years, Occ : Agril.,
 R/o As above.
 3. Kashinath s/o Tukaram Jadhav
 Since died through L.Rs.
- 3A. Savitrabai W/o Kashinath Jadhav
 Age : 52 years, Occ : Household,
 R/o Gangawadi, Tahat Talwada,
 Tal. Georai, District Beed.

4. Shantabai w/o Kashinath Jadhav
age : 48 years, occu : Household
R/o As above.
5. Dharmaraj S/o Kashinath Jadhav
Age : 42 years, Occ : Agri.,
R/o As above
6. Dnyandeo S/o Nivrutti Chikne
age : 52 years, Occ : Household,
R/o As above.

..RESPONDENTS

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Advocate for appellants : Mr. S.S. Thombre

Advocate for Respondent Nos.1, 2, 3A and 4 : Ms.Rekha Chaudhari h/f
Mr. S. S. Chaudhari

Advocate for respondent nos.5 and 6 : Mr. M.M. Patil Beedkar

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CORAM : ROHIT W. JOSHI, J.

RESERVED ON : 18.03.2025

PRONOUNCED ON : 25.06.2025

JUDGMENT :

1. Both these appeals arise out of the same Civil Suit, being Regular Civil Suit No.865/1980, filed by respondent nos.1 and 2. The appellants in Second Appeal No. 269/1994 are original defendant nos.3 and 4 and appellants in Second Appeal No.271/1994 are defendant nos.5 and 6. The parties will be hereinafter referred to as “plaintiffs” and “defendants” in the body of the judgment.

2. The plaintiffs had filed suit for partition and separate possession with respect to suit properties comprising of agricultural

lands and a house property. The plaintiffs were minors when the suit was filed. Defendant Nos.1 and 2 are father and mother respectively of the plaintiffs. The suit was filed by the plaintiffs through one of the relatives, who acted as their guardian. After filing of the suit, maternal grand-father of the plaintiffs acted as their guardian for the purpose of suit.

3. The contention of the plaintiffs in the civil suit was that their father, defendant no.1 was addicted to vices. He was not doing any work. As regards mother, the allegation is that she was also not doing any work. The plaintiffs alleged that their parents were lazy persons and their expenses were beyond their resources. It is alleged that in such circumstances, the father alienated the suit properties which are Joint Hindu Properties without legal necessity. The plaintiffs, therefore, claimed that the transactions with respect to suit property entered into by their father were not binding on them. The learned trial court dismissed the suit holding that defendant no.1/father of plaintiffs was Karta of the family and that the suit properties were alienated for legal necessity and to discharge unpaid debts. The plaintiffs preferred appeal challenging the said decree passed by the learned trial court dismissing their suit. The learned first appellate court has allowed the appeal holding that defendant nos.3 to 6 have failed to prove legal necessity. Apart from this, it is also held that the alienations were bad in

view of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as "Fragmentation Act") and the Maharashtra Resettlement of Project Displaced Persons Act, 1976 (hereinafter referred to as "Project Displaced Persons Act").

4. As mentioned above, according to the plaintiffs, the suit properties were their ancestral properties. Defendant No.1 has alienated the suit properties in favour of defendant nos.3 to 6, except the house property. The contention of the plaintiffs is that the suit properties are alienated without legal necessity and are therefore not binding on them with respect to their shares. It is alleged that defendant no.1 was addicted to vices and taking advantage of the said situation, defendant nos.3 to 6 have entered into transaction with defendant no.1.

As regards defendant no.4, it is stated that he has purchased the land bearing survey no.95/A admeasuring 9 acres 15 gunthas for a consideration of Rs.9,000/-, vide sale deed dated 04.06.1975. It is alleged that this consideration is not paid.

As regards Survey No.94/A2, it is stated that defendant no.3 has allegedly entered into an oral agreement of sale with respect

to this property with defendant no.1 and on the basis of the said alleged agreement, he had fraudulently obtained a compromise decree with respect to the said property on 08.04.1978 in Regular Civil Suit No.271/1978.

As regards the suit property bearing survey no.267/C-2 admeasuring 3 Acres 37 Gunthas and survey no.270/A-2 admeasuring 3 Acres 30 Gunthas, the plaintiffs have stated that defendant nos.1 and 2 had entered into an agreement of sale with respect to 2 Acres land in survey no.267/C-2 and entire 3 Acres 30 Gunthas in survey no.270/A-2 on 09.05.1980 with defendant nos.5 and 6. It is stated that defendant nos.5 and 6 obtained a compromise decree with respect to the said property against defendant nos.1 and 2 on 29.09.1980 in Regular Civil Suit No.758/1980.

Apart from this, there is one house property with respect to which decree for partition is sought. This house property is not alienated.

5. As regards the compromise decree the plaintiffs have claimed that the compromise decrees are not binding on them.

6. Apart from the above, the plaintiffs also alleged that the

transactions were hit by provisions of Project Displaced Persons Act.

7. Defendant Nos.1 and 2, father and mother respectively of the plaintiffs, filed separate written statements of admission. They did not appear in the suit thereafter. They did not cross-examine any witnesses of the plaintiffs or other defendants and also did not lead evidence in the matter.

8. Defendant Nos.3 and 4 and defendant nos.5 and 6 filed two separate written statements disputing the claim. Defendant Nos.3 and 4 denied the allegations that defendant no.1, father of plaintiffs was addicted to vices. They, however, stated that the suit properties were ancestral properties and defendant no.1 dealt with the same acting as Karta for legal necessity. They stated that defendant no.1 was in need of money for his household expenses and also for improvement over the agricultural lands owned by the family. It is also stated that defendant no.1 was also ill and was in need of money for his treatment. The allegation with respect to sale deed dated 04.06.1975 and agreement dated 08.04.1978 being without consideration is denied in the written statement.

9. Defendant Nos.5 and 6 stated that defendant no.1 had entered into a registered agreement of sale with respect to the aforesaid

two survey numbers with them for consideration of Rs.13,000/-. It is stated that the entire consideration was paid by defendant nos.4 and 5 to defendant no.1. They have averred that defendant no.1 was in need of money to liquidate bank loan, for his treatment and for making improvements of his agricultural lands.

10. Based on rival pleadings, the learned trial court framed issues in the matter. The plaintiffs' maternal grand-father entered the witness box on behalf of the plaintiffs. He is the sole witness examined by the plaintiffs. He has stated that his son-in-law, defendant no.1 was addicted to vices and was not doing any work. He alleged that defendant nos.3 and 4, taking unfair advantage of the situation obtained a sale deed and consent decree with respect to two of the suit properties without parting with consideration. As regards defendant nos.5 and 6, he alleged that they did not pay market value of the suit lands to the deceased defendant no.1. Based on these allegations, he requested that decree for partition be passed in favour of the plaintiffs.

11. The examination-in-chief of PW-1 is silent with respect to compromise decree dated 29.09.1980 passed in Regular Civil Suit No.758/1980 between defendant nos.5 and 6 as plaintiffs in the said suit and defendant nos.1 and 2 as defendants therein, as also compromise decree dated 26.06.1978 arrived at between defendant

no.4 as plaintiff and defendant no.1 as defendant in Regular Civil Suit No.271/1978.

12. Defendant Nos.3 and 4 examined themselves, one Eknath Borade, who acted as attesting witness in the sale deed dated 04.06.1975 (Exhibit- 93) and one Bajirao Punde, Secretary, Seva Sahakari Society, Gangawadi. Defendant Nos.5 and 6 examined defendant no.5, one Balasaheb Joshi, a clerk in Land Development Bank, Georai and one Bhaginath Sonawane, attesting witness to the agreement of sale dated 04.06.1975 and one Bansilal Bhutada, attesting witness to money receipt issued by defendant no.1.

13. After recording the evidence as aforesaid and hearing arguments in the matter, the learned trial court has dismissed the suit against defendant nos.3 to 6 holding that defendant no.1 had acted bonafide while alienating the suit properties for legal necessity of the family. The learned trial court has, however, passed decree for partition and separate possession in favour of the plaintiffs with respect to residential house. It will be pertinent to mention that defendant no.1 (father) had expired while the civil suit was pending, and therefore, 1/3rd share each is allotted by the learned trial court to the plaintiffs and defendant no.1 in the house property, which was not alienated.

14. Aggrieved by the aforesaid decree dismissing their suit against defendant nos.3 to 6, the plaintiffs preferred appeal, being Regular Civil Appeal No.310/1987. The said appeal is allowed vide judgment and decree dated 08.07.1994 passed by the learned 2nd Additional District Judge, Beed. The learned first appellate court has held that defendant nos.3 to 6 had failed to prove that defendant no.1 had alienated the suit properties for legal necessity. The learned first appellate court has observed that appropriate pleadings with respect to legal necessity were not incorporated in the written statements filed by defendant nos.3 and 4 and defendant nos.5 and 6 and that in absence of any pleadings, the evidence brought on record by defendant nos.3 to 6 with respect to legal necessity was liable to be discarded. Aggrieved by the said judgment passed by the learned first appellate court, defendant nos.3 and 4 and defendant nos.5 and 6 have filed two separate second appeals, being Second Appeal No.269/1994 and 271/1994 respectively.

15. Second Appeal No.269/1994 is admitted on 17.08.1994 on the following substantial questions of law :-

"2. That the lower appellate court has erred in reversing the findings recorded by the trial court with respect to legal necessity for alienating the property by the defendant no.1. That, it ought to have been seen

that the plaintiffs have failed to establish that the defendant no.1 was addicted to liquor and has further alienated the property for his own benefit and not for legal necessity.

3. That it ought to have been seen that the suit filed by the plaintiffs nos.1 and 2 through their grand father is not maintainable at all when their natural guardian i.e. the mother and father are alive and are parties to the suit. That it ought to have been seen that the suit itself filed by the minors through their grand father is not maintainable and, moreover, the representation by grand father is mala fide as the representations of the minors through their natural guardian was not convenient and suitable for the plea raised by the plaintiff.

6. That it ought to have been seen that recitals in the sale deed executed by the defendant no.1 makes it clear that there was legal necessity to alienate the property and as such those recitals ought to be taken into consideration while considering the question of legal necessity."

Second Appeal No.271/1994 is admitted on 17.08.1994 on the following substantial questions of law :-

"II) It ought to have been held that the details of legal necessity not be pleaded. Only substance of legal necessity

is sufficient pleading and the defendants to adduce the evidence, oral or documentary, to substantiate his pleadings in support of his pleadings of legal necessity.

V) Whether it is correct to hold that Section 31 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 envisages the disputed agreement of sale as transfer and the said disputed agreement of sale with delivery of possession is hit by Section 31 of the said Act ?

VI) Whether it is correct to hold that the disputed agreement of sale in favour of Appellants by deceased Kashinath is a transfer within a meaning of Section 12A of the Maharashtra Resettlement of Project Displaced Persons Act, 1976 and possession, if any, given on the basis of such agreement of sale is not lawful ?

16. Thereafter, vide order dated 14th March, 2024, the following two substantial questions of law came to be framed in both the appeals:-

"(a) Whether the learned First Appellate Court has wrongly observed that, the sale transactions executed in favour of the appellants in both the appeals by original defendant No.1 without any legal necessity?

(b) Whether the learned First Appellate Court correctly appreciated the provision under Section 31 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 in respect of transaction between the appellants and original defendant no.1 ?

17. Substantial questions of law (2) and (6) in Second Appeal No.269/1994, substantial questions of (II) in Second Appeal No.271/1994 and substantial questions of law (a) framed vide order dated 14th March, 2024 pertain to legal necessity and as such can be decided together.

18. **Substantial question of law (V) in Second Appeal No.271/1994:-**

Section 36A of the Fragmentation Act provides that civil court will not have jurisdiction to decide the matters, which the competent authority under the said Act is authorized to decide. The competent authority under the said Act has authority to decide the issue as to whether a particular transaction is hit by the provisions of the said Act. In view of the above, jurisdiction of civil court is clearly barred to decide the said issue. The findings by the learned first appellate court that the transaction entered into by defendant no.1 with respect to suit properties are hit by Section 31 of the Fragmentation Act are clearly without jurisdiction, and therefore, are liable to be quashed.

19. Apart from this, perusal of the plaint averments as also deposition of plaintiffs' sole witness will demonstrate that the plaintiffs have not raised any contention with respect to provisions of the

Fragmentation Act. The findings by the learned first appellate court in this regard which are recorded in the absence of pleadings and evidence are completely unsustainable. The question of law, therefore, deserves to be answered in favour of the appellants.

20. **Question of law (VI) in Second Appeal No.271/1994:-**

Although it is averred in the plaint that oral agreement between defendant no.1 and defendant no.4 as also agreement dated 09.05.1980 between defendant no.1 and defendant nos.5 and 6 are bad in view of the Project Displaced Persons Act, perusal of deposition of plaintiffs' sole witness will indicate that examination-in-chief does not speak about the transactions being hit by the said Act. No documentary evidence is produced before the learned trial court to demonstrate that the suit properties were covered by the said Act. During the course of cross-examination of defendant no.5, questions were put to him in this regard. He has denied suggestions that the suit properties were covered by the provisions of the Project Displaced Persons Act. It also needs to be mentioned that the agreement dated 09.05.1980 as also the compromise decrees in favour of defendant nos.4 and defendant nos.5 and 6 speak about some permission for registration of sale deeds with respect to the suit properties, however, there is absolutely no clarity in this regard. The evidence on record does not clarify as to permission

from which authority was required for registration of sale deeds. Likewise, it is also not clear as to permission was required under which law. The findings by the learned first appellate court that the agreement dated 09.05.1980 between defendant no.1 and defendant nos.4 and 5 and 08.04.1978 between defendant nos.1 and 4 are hit by the provisions of the Project Displaced Persons Act and therefore, unsustainable having been recorded in the absence of any evidence in this regard.

21. It will be pertinent to mention that in the appeals filed by the respondents/plaintiffs, a sale deed dated 19.05.1988 with respect to a land at village Gangawadi, Tq. Georai, Dist. Beed is filed on record, vide application Exhibit-16 and list of document at Exhibit-17. Production of this sale deed dated 19.05.1988 is allowed by the learned first appellate court, vide order dated 27.04.1993. Alongwith the sale deed, the order dated 13.05.1988 issued by the Collector is annexed. The certificate indicates that the Collector has granted permission for transfer of same land in village Gangawadi under Section 12(4) of the Project Displaced Persons Act. The said document is filed for the first time before the learned first appellate court. Permission for leading additional evidence as per Order XLI Rule 27 is neither sought nor granted. Even otherwise, the order granting permission does not state that the village is covered under the provisions of the Act from which

particular date. Undisputedly, the first transaction i.e. sale deed with respect to survey no.95/A is dated 04.06.1975, which is prior to the commencement of the said Act. The other two transactions are dated 08.04.1978 and 09.05.1980 i.e. around 10 years and 8 years prior to date of the said order granting permission. It cannot be said on the basis of the said document dated 13.05.1988 that the suit properties forming subject matter of agreements dated 08.04.1978 and 09.05.1980 were covered by the provisions of the Project Displaced Persons Act as on the date of the said agreements.

22. **Questions of law pertaining to legal necessity:-**

It will be appropriate to decide all questions pertaining to legal necessity together. The learned first appellate court while reversing the decree passed by the learned trial court has held that the burden of proving legal necessity was on defendant nos.3 to 6. It is held by the learned first appellate court that the written statements of defendant nos.3 to 6 were lacking any pleadings with respect to legal necessity. The evidence that is brought on record by defendant nos.3 to 6 is discarded on the legal principle that evidence without pleadings is inadmissible.

23. It will, therefore, be necessary to recapitulate the pleadings of defendant nos.3 to 6 as regards legal necessity. As stated above,

defendant nos.3 and 4 and defendant nos.5 and 6 have filed two separate written statements. Defendant Nos.3 and 4 have stated that defendant no.1 was ill and was, therefore, in need of money for treatment and also for household expenses. It is also stated that defendant no.1 needed money for making improvements over his agricultural land. As mentioned above, defendant no.3 has purchased the suit property from defendant no.1 vide sale deed dated 04.06.1975 for consideration of Rs.9,000/- and defendant no.4 has entered into agreement of sale dated 08.04.1978 with respect to another property for consideration of Rs.13,000/-.

24. As regards defendant nos.5 and 6, they have entered into a registered agreement of sale dated 09.05.1980 with respect to two suit properties for consideration of Rs.15,000/-. They have stated that defendant no.1 was in need of money for discharging bank loan and for his treatment and also for making improvements of his agricultural land.

25. As regards written statement of defendant nos.5 and 6, they have specifically stated that defendant no.1 needed money for liquidating bank loan. It will be pertinent to mention here that defendant nos.5 and 6 have examined witness from the bank, who has deposed that a loan of Rs.9,000/- was sanctioned in favour of

defendant no.1 against mortgage of immovable property on 23.03.1973. The witness has stated that sum of Rs.6,000/- was sanctioned for digging well and amount of Rs.3,000/- was sanctioned for installation of motor. The witness states that sum of Rs.9,000/- was outstanding against defendant no.1 in the year 1980. In this regard, it needs to be considered that according to defendant nos.5 and 6, they had entered into registered agreement of sale dated 09.05.1980 with defendant no.1 for purchase of two suit properties for an amount of Rs.15,000/-. According to their case, a sum of Rs.7,000/- was paid on the date of execution and registration of agreement i.e. on 09.05.1980 and a further sum of Rs.3,000/- was paid on 26.06.1980. Defendant No.1 has issued receipt accepting payment of the said amount. Defendant Nos.5 and 6 have also examined a witness to prove the said receipt. Defendant Nos.5 and 6 have contended that balance amount of Rs.5,000/- was paid on 29.09.1980 before the learned Civil Court when compromise decree was recorded in Regular Civil Suit No.758/1980. This compromise decree is recorded between defendant no.5 and 6 and defendant nos.1 and 2, parents of plaintiffs. Perusal of the deposition of bank witness examined by defendant nos.5 and 6 will reveal that upto year 1979, sum of Rs.650/- only was paid towards the loan amount. The witness has further stated that amount of Rs.9,000/- including interest was outstanding against defendant no.1 in the year 1980. The witness had brought original register along with him in the Court on

the date on which his deposition was recorded and has expressed readiness to file extract of the same on record. In his cross-examination, the statement in the examination-in-chief that loan amount of Rs.9,000/- was claimed against mortgage of property and further that amount of Rs.9,000/- was outstanding in the year 1980 is not disputed. Questions were put to this witness as regards reasons for which defendant no.1 – Kashinath could not repay the loan. Apart from this, a suggestion was given to the witness that Kashinath was addicted to liquor. The witness has obviously claimed ignorance with respect to the same. It will be pertinent to mention that in his cross-examination, the witness has stated that the suit properties bearing survey nos.270/A and 267/C-1 were mortgaged by defendant no.1 on 23.03.1973 with the bank.

26. In this backdrop, it needs to be mentioned that the learned first appellate court has recorded a finding that the evidence on record does not suggest that defendant no.1 – Kashinath had not received the consideration mentioned under the transactions. It is also necessary to state that the learned first appellate court has also recorded a finding that the plaintiffs had failed to establish that Kashinath was addicted to vices. Having arrived at such findings, the learned first appellate court has held that pleadings with respect to legal necessity were not proper, and therefore, evidence brought on record by defendant nos.5 and 6

could not be looked into. On this count, the transaction between defendant no.1 and defendant nos.5 and 6 is held by the learned first appellate court to be without legal necessity. The relevant observations of the learned first appellate court recorded in paragraph nos.23 and 24 are reproduced hereinbelow :-

"23. A number of witnesses are examined by the respondents to prove that the consideration was passed to deceased Kashinath. At the relevant time deceased Kashinath, his wife/respondent no.2 and appellants were living together. The respondent no.2 has denied to have received the amount of consideration by deceased Kashinath. It can be said that the respondent no.2 has colluded with deceased Kashinath. Be that as it may, there are certain other witnesses examined by the respondents namely Dharmaraj Exh.80, Dnyandeo Exh.81, Bhagirath Exh. 111 and Bansilal Exh.114. They have adduced specific evidence that deceased Kashinath had actually received the amount of consideration as mentioned in the documents. The respondent no.2/wife of deceased Kashinath did not enter into the witness box. The appellants and their guardian were not present at the time of said transaction. Therefore, this evidence does not lead me to draw the only conclusion that the consideration was not passed to deceased Kashinath.

24. The appellants have submitted that deceased Kashinath was addicted to liquor and gambling. They have adduced the evidence of their guardian Rambhau. On this point there is evidence of appellants and respondents. It is oath against oath. Therefore, for the time being it can be said that the fact

of deceased Kashinath failing pray to lust of drinking and gambling is not proved."

27. The finding by the learned first appellate court with respect to pleadings in the written statement of defendant nos.5 and 6 is obviously incorrect. Defendant Nos.5 and 6 have specifically stated that the transaction was entered into by defendant no.1 in order to liquidate the bank loan. Although, the name of the bank is not mentioned in the written statement, defendant nos.4 and 5 have examined witness from bank, which will clearly indicate that they were aware about the bank from which defendant no.1 had taken loan. This will also further indicate that they had made enquiry from defendant no.1 about the bank loan. Pleadings by defendant no.5 with respect to legal necessity as regards outstanding bank loan are sufficient and adequate.

28. Defendant Nos.3 to 6 have also pleaded in their respective written statements that defendant no.1 was ill, and therefore, in need of money for his treatment and also for his household expenses. The defendants have placed death certificate of defendant no.1 on record in which reasons for death is mentioned as suffering from tuberculosis. It needs to be mentioned that the name of ailment is not mentioned in the written statement, however, it is stated that defendant no.1 was

indisposed, and therefore, was in need of money for his treatment and household expenses. Defendant no.3 has stated in his examination-in-chief that defendant no.1 was suffering from tuberculosis. He has filed death certificate on record indicating the cause of death as tuberculosis. In the cross-examination, a suggestion is given to defendant no.3 stating that his contention in this regard was incorrect and that the death certificate produced on record was false. Defendant No.5 has also stated in the witness box that defendant no.1 was suffering from tuberculosis. The statement made by him was also challenged in the cross-examination. As regards the witness PW-1, he did not state anything about ailment of defendant no.1. In his cross-examination when questions were put to him in this regard, he denied the same and stated that defendant no.1 was ill for a short period of one or two days prior to his demise. Both the written statements also recite that defendant no.1 was in need of money for his family expenses. In this regard, it also needs to be mentioned that even according to the plaintiffs, defendant nos.1 and 2 were not doing any work. They have alleged that defendant no.1 was addicted to vices and defendant no.2 was a lazy woman who did not do any work.

29. Reference needs to be had to Order VI Rule 2 of the Code of Civil Procedure. The Order VI Rule 2 provides that pleadings shall contain statement in concise form of the material facts on which the

party may place reliance for its claim or defence. The said provision also clarifies that evidence by which material facts are required to be proved need not be pleaded. The pleading by defendant nos.5 and 6 are clear and precise with respect to bank loan. The pleading of defendant nos.3 to 6 are also adequate with respect to their claim that defendant no.1 was unwell, and therefore, was in need of money for his treatment and household expenses. Defendants have led evidence in the light of these pleadings. The pleadings in the written statements are sufficient and adequate with respect to bank loan and need of money for treatment and household expenses.

30. Purpose of pleadings is only to enable the other side to understand the case that is set up by the rival party, which he is required to meet during trial. It is well settled pleadings of parties should be always be interpreted with flexibility and not rigidity. All that is required is parties should be aware about the case set up by each other and they should not be taken by surprise during the course of trial of the suit. The pleadings in the written statements are sufficient to put the plaintiffs to notice about the case with which the defendant nos.3 to 6 were defending their respective transactions.

31. As regards the ailment of defendant no.1, it needs to be mentioned that defendant nos.3 to 6 are not family members of

plaintiffs and defendant nos.1 and 2. They had, however, produced documentary evidence on record showing the cause of death as tuberculosis. In this regard, it also needs to be mentioned that defendant nos.1 and 2, parents of plaintiffs, who were supporting the plaintiffs did not enter the witness box. The maternal grand-father of the plaintiffs did not examine any witness to lead evidence to the contrary to counter the evidence of defendant nos.3 to 6 regarding the ailment of defendant no.1. It also needs to be mentioned that it is the case of the plaintiffs that defendant no.1 was not doing any work. They, however, contend that he was not doing any work because he was addicted to vices. However, the plaintiffs did not examine any independent witness to prove the said allegations. The learned first appellate court has also recorded a finding that the plaintiffs have failed to prove that defendant no.1 was addicted to vices. Although, it cannot be expected of the plaintiffs to lead negative evidence to bring home the point that defendant no.1 was not suffering from tuberculosis, they could have certainly examined independent witnesses to throw light on general health condition of defendant no.1. Likewise, strong adverse inference also was required to be drawn against the plaintiffs and defendant nos.1 and 2 for not examining defendant no.2, who is mother of plaintiffs and was supporting the cause of plaintiffs. The same cannot be said about defendant no.1 because he had died before the evidence of plaintiffs commenced. The fact that defendant

no.1 was undisputedly not doing any work coupled with the fact that the plaintiffs have failed to prove that he was addicted to vices and the fact that his death certificate indicates that he was suffering from tuberculosis is enough to indicate that defendant no.1 was not working because he was indisposed. The findings by the learned trial court in this regard are just and proper. The learned first appellate court should not have reversed the said findings. The finding by the learned first appellate court that the pleadings are insufficient is also incorrect.

32. The learned first appellate court has also not dealt with the reasons recorded by the learned trial court while dismissing the suit and particularly while recording that defendant no.1 had alienated the properties in view of the legal necessity.

33. It needs to be mentioned that the transactions from the year 1975 till the year 1980 are challenged on the ground that the same were entered into without legal necessity. It is alleged that defendant no.1, father was addicted to vices leading into alienation of the properties. As against this, the case of defendant nos.3 to 6 - purchasers is that the alienations were for legal necessity because the father was indisposed and could not do any work as such was unable to arrange for the day today household expenses and was in also debt. Both the courts have concurrently held that the plaintiffs had failed to

establish that the father was addicted to vices. Both the Courts have also concurrently held that the plaintiffs had failed to prove that transactions were without consideration. The learned first appellate court has held that the family had agricultural lands which were yielding income, and therefore, there was no pressure on the estate for alienation of the properties. The finding by the learned first appellate court that agricultural income was sufficient to sustain the family is not supported by any evidence or even pleading. It is rather contrary to the evidence of the plaintiffs' witness, who is their maternal grandfather, who states that he was taking care of expenses of the children. Outstanding bank loan and outstanding dues of the Co-operative Society are duly established by documentary evidence. The finding by the learned first appellate court is thus completely contrary to the evidence on record since the evidence on record is not taken into consideration while recording such finding, the said finding warrants interference even though scope of interference in the second appeal with finding of facts is limited.

34. For the reasons aforesaid, it needs to be held that defendant nos.3 to 6 have proved that the transactions were for legal necessity.

35. The learned counsel for the respondents has placed reliance on following judgments :-

- (i) ***Smt. Rani and another Vs. Smt. Santa Bala Debnath and others***
(AIR 1971 SC 1028)
- (ii) ***Vidyulata w/o Vikrant Patil and another Vs. Uttam s/o Nivrati Langade and others*** (2022(3) All MR 101)
- (iii) ***Haridas Hanmant Kadam Vs. Shankar Shripati Kadam and others***
(2024 DGLS (Bom) 1811)
- (iv) ***Shankarlal Ramprasad Laddha died L.Rs. Chandrabhaga Shankarlal Laddha and others*** (2009(3) Mh.L.J. 959)
- (v) ***Shankarlal Ramprasad Ladha (Died by L.Rs.) Vs. Vasant Chandidasrao Deshmukh and ors*** (2009(2) All MR 93)

Referring to the above cases, she contends that the burden of proving legal necessity is on the purchaser. There cannot be any dispute with respect to the said well settled legal proposition of law. It, however, needs to be mentioned that the learned trial court has held that defendant nos.3 to 6/purchasers have proved that transactions were for legal necessity. The learned first appellate court has reversed the findings by the trial court on this aspect. However, learned first appellate court does not hold that the evidence on record is insufficient to prove legal necessity. The learned first appellate court has rather held that the evidence with respect to legal necessity is inadmissible for want of pleadings in the written statement. As is held above, the pleadings are sufficient with respect to legal necessity for discharge of

bank loan and also with respect to need for day today expenses and expenses for treatment. The contentions of the plaintiffs that pleadings are not appropriate with respect to alleged need for improvement on the land appear to be correct. However, having regard to the totality of the circumstances, as emerging from the pleadings and evidence, it must be held that the respondents/purchasers have proved that the transactions were for legal necessity. In this regard, it needs to be reiterated that there is no dispute about the fact that respondent no.1, who was the Karta and his wife, were not working and that the plaintiffs were aged 11 years and 9 years at the time of filing of suit. Whereas, the case of plaintiffs is that respondent no.1, father was not working as he was addicted to vices, the case of respondent nos.3 to 6 is that he was not working since he was suffering from tuberculosis. Both the courts have concurrently held that the plaintiffs failed to prove that defendant no.1 - Karta was addicted to vices.

36. Having held so it needs to be considered that there is only one complete transaction of transfer of property i.e. sale deed in favour of defendant no.3. As regards defendant no.4, he claims right over the suit property on the basis of an oral agreement coupled with compromise decree, which records that defendant no.4 was placed in possession and that plaintiffs' father defendant no.1 had agreed not to disturb his possession over the same forcibly. As regards defendant

nos.4 and 5, they had entered into a registered agreement of sale with defendant no.1. They have received possession of the property under a separate document titled as "possession receipt". There is a compromise decree in their favour in suit filed by them against defendant nos.1 and 2. The learned trial court has held that defendant nos.4 to 6 are entitled to protection under Section 53A of the Transfer of Property Act. The finding by the learned trial court is correct with respect to defendant nos.5 and 6, however, since the agreement in favour of defendant no.4 is an oral agreement, Section 53A of the Transfer of Property Act could not have been invoked. In that view of the matter, the suit will have to be decreed against defendant no.4. It will also be pertinent to mention that defendant no.4 had filed a suit for specific performance of contract, which is dismissed by the learned trial court as well as learned first appellate court and in the said suit, counter claim filed by the plaintiffs for possession is decreed. Defendant no.4 has challenged the said concurrent decrees by separate second appeal, which is decided simultaneously by separate judgment. The said second appeal is also dismissed on the ground of limitation.

37. The original defendant no.1-Kashinath (father of plaintiffs) had died while the civil suit was pending. His daughter Savitrabai was brought on record as his legal representative and class-I legal heir. His other class-I legal heirs are already on record as plaintiffs (sons) and

defendant no.2 (wife). During pendency of present second appeal, Savitrabai (mother of plaintiffs) also expired and her name was ordered to be deleted vide order dated 01.04.2022 since all her legal representatives i.e. sons and daughter were on record.

38. The suit filed by the plaintiffs is liable to be dismissed with respect to suit property bearing survey no.95/A, 2 acres land in survey no.267/C-2 and survey no.270-A-2. On death of Kashinath, his share will have to be considered to be separated by notional partition as per unamended Section 6 of the Hindu Succession Act. Kashinath was survived by two sons, a daughter and widow, therefore, on his demise his share in the suit properties, will be worked out to $\frac{1}{4}$ th. This $\frac{1}{4}$ th share will be inherited in equal proportion by his four class-I legal heirs meaning thereby each one will get $\frac{1}{16}$ th share from $\frac{1}{4}$ th share of Kashinath. The share of plaintiffs (sons) and defendant no.2 (mother) will be $\frac{5}{16}$ th each on death of Kashinath. On death of mother, her three legal heirs will get $\frac{1}{3}$ rd share each i.e. $\frac{5}{48}$ th share from her $\frac{5}{16}$ th share. Accordingly, share of plaintiffs will come to $\frac{5}{12}$ th each and that of respondent no.3A(daughter) will be $\frac{2}{12}$ th i.e. $\frac{1}{6}$ th.

39. In the result, the following order :-

ORDER

(i) The second appeals are partly allowed.

(ii) The judgment and decree dated 08.07.1994 passed by the learned 2nd Additional District Judge, Beed in Regular Civil Appeal No.310/1987 is quashed and set aside.

(iii) Regular Civil Suit No.865/1980 decided by the learned Civil Judge, Junior Division, Georai vide judgment and decree dated 06.10.1987 is dismissed with respect to :-

(a) land bearing survey no.95/A admeasuring 9 acres 15 gunthas of village Gangawadi That Talwada, Tq. Georai, Dist. Beed.

(b) 2 acres land out of total 6 acres 37 guntha land in survey no.267/C-2 and 3 acres 31 gunthas land of survey no.270/A-2 of village Gangawadi That Talwada, Tq. Georai, Dist. Beed.

(iv) Regular Civil Suit No.865/1980 decided by the learned Civil Judge, Junior Division, Georai vide judgment and decree dated 06.10.1987 is partly decreed as under :-

(a) Dharmaraj Rambhau Chikne-appellant no.1 in Second Appeal No.269/1994 i.e. original defendant no.3 does not have any right, title or interest over the suit property bearing survey no.94/A-2 admeasuring 5 acres 7 gunthas situated at village Gangawadi That Talwada, Tq. Georai, Dist. Beed and shall also not be entitled to possession of the same.

(b) It is declared that respondent no.1/plaintiff no.1 (Asaram Kashinath Jadhav) and respondent no.2 / plaintiff no.2 (Motiram Kashinath Jadhav) and Respondent No.3A / original defendant no.1A (Savitrabai Kashinath Jadhav) are entitled to 5/12th, 5/12th and 1/6th share each respectively in suit property bearing survey no.94/A-2 admeasuring 5 acres 7 guntha , 4 acres 37 guntha land in survey no.267/C-2 and house property situated at village Gangawadi That Talwada, Tq. Georai, Dist. Beed and it is directed that partition be effected and they be placed in separate possession of their respective shares. Precept be sent to Collector for partition of agricultural lands.

(v) The parties to bear their own costs.

40. Civil Application, if any, stands disposed of.

[ROHIT W. JOSHI]
JUDGE

sga/