



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 222 OF 2015

1. VINAYAK NARAYANRAO GADEKAR
2. BALKRISHNA NARAYAN GADEKAR
3. BHASKAR NARAYAN GADEKAR
4. DINKAR NARAYAN GADEKAR

APPELLANTS
(Original Plaintiffs)

VERSUS

1. NARAYANRAO SAKHARAM GADEKAR
2. SAU RATNAPRABHA NARAYAN GADEKAR
3. LATIF KONDAJI ATTAR DIED THROUGH L.RS.
- 3A. RAJJIYA LATIF SHAIKH
- 3B. FIROZ LATIF SHAIKH
- 3C. SADDAM LATIF SHAIKH
- 3D. NASHIM HAYYUM SHAIKH
4. HAMID KONDAJI ATTAR
5. AJIM KONDAJI ATTAR

RESPONDENTS
(Original Defendants)

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- *Shri. S. S. Jadhavar, Advocate for Appellants*
 - *Shri. Dhananjay P. Deshpande, Advocate for Respondent Nos.3A to 5*
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CORAM**: SHAILESH P. BRAHME, J.****DATE****: 25.11.2025****ORDER :-**

1. Heard both sides.

2. Appeal is preferred against concurrent findings of fact recorded in decreeing the suit for partition and possession and denying the relief of declaration. Appellants are original plaintiffs and respondents are original defendants in Special Civil Suit No.4 of 2006. Learned counsel for the appellants has pressed into service substantial question of law in respect of the nature of land Survey No.197/54/B and the validity of the sale deed dated 06.01.1999. To make out the substantial question, it is submitted that the lower Appellate Court dismissed the appeal based on conjuncture and surmise of having utilized part of consideration for legal necessity. It is submitted that both the Courts below committed patent illegality in holding that the alienation of Survey No.197/54/B was for legal necessity. It is submitted that respondent no.1 was addicted to gambling and he had no sufficient source to purchase 58R of Survey No. 197/54/B in his own name. Due to contribution of the appellants, sale deed was executed in his name. It is further submitted that 58R of Survey

No.197/54/B was allotted to respondent no.1 in a partition and it was a joint family property. No case has been made out that there was ever any legal necessity because the plaintiffs were earning independently.

3. Learned counsel Mr. Jadhavar has adverted my attention to the deposition of PW-1 to buttress that there was no legal necessity and on the contrary, respondent no.1 was addicted to gambling.

4. Per contra, learned counsel Mr. Dhananjay P. Deshpande would support the impugned judgments. He has adverted my attention to the findings recorded by the Trial Court to show that it's a collusive suit. The suit had proceeded ex parte as against respondent nos.1 and 2. It is further submitted that no reason is forthcoming as to why suit land was purchased on 21.04.1992 in the name of respondent no.1 when he was addicted to gambling and was not a contributor for the consideration. It is submitted that both the Courts below have considered the admissions of the plaintiffs indicating that respondent no.1 had discharged his obligation towards his sons and helped them out in their business. It is submitted that concurrent findings of facts cannot be disturbed.

5. I have considered rival submissions of the parties. A copy of paper book is placed on record. I have considered the pleadings and the deposition of witnesses.

6. The relationship between the parties is undisputed. The suit was filed for partition, possession and declaration in respect of Survey No.181/65/B, Survey No.197/54/B and House No.234. The parties are ad idem so far as the nature of Survey No.181/65/B and House No.234. The suit was partly decreed vide judgment dated 13.08.2007. The decree of partition of 1/6th share is granted in the undisputed properties whereas decree of partition of Survey No.197/54/B is denied, which is the focus of controversy.

7. Respondent no.1 Narayanrao was Assistant Teacher who was superannuated in 1987. Survey No.197/54/B is of 2 Hectar and 35R. Out of that, respondent no.1 Narayanrao and his brother Bhagwan had joined interest to the extent of 1 Hectar 16 R. There was partition and both brothers received half share in it. The heirs of Bhagwan sold their half share by registered sale deed exclusively to the respondent no.1 on 21.04.1992. The respondent no.1 sold entire Survey No.197/54/B to the respondent nos.3 to 5 on 06.01.1999.

8. The suit proceeded ex parte against the respondent nos.1 and 2, though they tried to seek indulgence against ex parte decree by preferring application before the lower Appellate Court, which was rejected and no appeal/application was preferred by them. The plaintiffs are their sons, who are doing business at Pune. They have come up with a theory that their father-respondent no.1 was addicted to gambling and had alienated the suit land to third person to satisfy his vices.

9. Respondent no.1 exclusively purchased 58R of Survey No.197/56/B on 21.04.1992. He had retired in the year 1987. The possibility of having with him the retiral benefits cannot be ruled out. He is alleged to have been indulging in gambling and faced criminal prosecution also. Then the plaintiffs are stated to have contributed for purchasing the suit land. If that is so it is incomprehensible as to why the plaintiffs permitted to purchase the land in the name of their father who was unfaithful and unworthy.

10. The Trial Court has referred to admissions secured in the cross-examination of the PW-1. It can be inferred that respondent no.1 discharged his duties as a father and his evidence is shattered by cross-examination. Respondent nos.1 and 2 did not appear in the Trial

Court. There is every reason to infer that it was a collusive suit.

11. The lower Appellate Court has rightly observed that plaintiffs were unable to produce any material to show that they had contributed for purchasing land vide sale deed dated 21.04.1992 and it was not exclusively purchased by their father. The findings recorded by lower Appellate Court cannot be said to be founded on conjuncture and surmise, considering the material on record and on the preponderance of probabilities. It is recorded that stray incident of prosecution for offence of gambling is not sufficient to infer that father was addicted to gambling. After receiving the sale proceeds, father had helped plaintiffs by sending money to them.

12. The sale deed dated 06.01.1999 shows that land was sold for legal necessity for Rs.2,10,000/-. The deposition of the DW-1 disclosed that the land was required to extend financial assistance to the business of the plaintiffs. The purchasers have ascertained the legal necessity. It is not expected that they should examine as to whether the consideration is utilized for satisfying legal necessity. An amount of Rs.1,00,000/- was sent to Nivedita through Demand Draft. The purchasers in the present case have discharged their obligation.

13. It is emphasized by learned counsel Mr. Jadhavar that the identity of Nivedita has not been disclosed. The respondents-purchasers cannot be blamed for that. It is within the special knowledge of either the plaintiffs or their parents. The parents have not come forward to throw light on certain facts. An adverse inference needs to be drawn against them.

14. Reliance is placed by the respondents on the judgment of Sant Bakhsh Singh and others vs. Lachhman Prasad and others reported in 1944 SCC Online Oudh CC 11 : AIR 1946 Oudh 92 to buttress that the suit is collusive. I find force in the submissions of the respondents that present suit is collusive one. Further reliance is placed on the judgment of D. S. Lakshmaiah and Another vs. Balasubramanyam and another reported in 2003 SCC Online SC 915 and Makhan Singh (Dead) by Lrs. vs. Kulwant Singh reported in (2007) 10 Supreme Court Cases 602 to buttress that there is no presumption of the property being joint family property and one who asserts has to prove the nature of the property. The principles regarding onus and shifting of onus laid down by the Supreme Court are not disputed.

15. I have gone through the depositions of PW-1 which is read out by learned counsel Mr. Jadhavar from the paper book. That is not sufficient to dislodge the conclusions drawn by the Courts below. Neither the findings recorded by Courts below can be treated to be perverse or unreasonable.

16. The proposed substantial question argued by the appellants is devoid of substance. The decree granting 1/6th share in Survey No.181/65/B and House Property No.234 has not been challenged by either of the parties but it is not understood as to how the plaintiffs are entitled to 1/6th share. The respondent no.2-mother cannot be said to be class I heir. She cannot be said to be widow during lifetime as the respondent no.1 is surviving. The plaintiffs and respondent no.1 are entitled to 1/5th share each in above properties.

17. The Second Appeal is dismissed with above clarifications.

(SHAILESH P. BRAHME, J.)