

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR**

**SECOND APPEAL NO.339 OF 2015
WITH
CIVIL APPLICATION NO.810 OF 2015**

Shri Tukaram Appa Aparadh,
Age- Around 58 Years, Occu.- Agriculture,
R/o. 10/1279, Pujari Mala, Ichalkaranji,
Tal.- Hatkanangale, Dist.- Kolhapur

..Appellant
(Org. Dft. No.8)

Versus

1. Sou. Sitabai Satayppa Chigare,
Age- Around 69 Years, Occu.- Household,
R/o. Takliwadi, Tal.- Shirol, Dist.- Kolhapur.
2. Sou. Mangal Ramchandra Chigare,
Age- Around 61 Years, Occu.- Household,
R/o. Takliwadi, Tal.- Shirol, Dist.- Kolhapur.
3. Smt. Balkabai Kallappa Badame,
Age- Around 82 Years, Occu.- Household,
R/o. Ghosarwad, Tal.- Shirol, Dist.- Kolhapur.
4. Shri. Pandurang Kallappa Badame,
Age- Around 48 Years, Occu.- Agriculture,
R/o. Ghosarwad, Tal.- Shirol, Dist.- Kolhapur.
5. Sou. Ratnabai Pandurang Badame,
Age- Around 40 Years, Occu.- Agriculture,
R/o. Ghosarwad, Tal.- Shirol, Dist.- Kolhapur.
6. Shri. Milind Pandurang Badame,
Age- 21, Occu.- Not Known,
R/o. Ghosarwad, Tal.- Shirol, Dist.- Kolhapur.
7. Shri. Shailesh Pandurang Badame,
Age- 19, Occu.- Not Known,
R/o. Ghosarwad, Tal.- Shirol, Dist.- Kolhapur.
8. Sou. Rukmini Shyamrao Madyapgol,
Age- Around 42 Years, Occu.- Agriculture,
R/o. Chandur (Dhonerwadi), Behind
Chandreshwar Mandir (Ram Vasti),

Tal.- Chikkodi, Dist.- Belgaum,
State – Karnataka.

9. Sou. Sumitra alias Shrimanti Dattatraya Arge,
Age- Around 58 Years, Occu.- Housewife,
R/o. Abdullat (Laxmi Nagar), Tal._ Shirol,
Dist.- Kolhapur.

..Respondents
(Org. Defendants)

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Mr. N. J. Patil, Advocate for Appellant (Through V.C.).

Mr. Wable a/w Mr. Benazir Jamadar u/i Mr. Umesh Mankapure,
Advocate for Respondent Nos.1 and 2.

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : 26th AUGUST, 2025.

JUDGMENT:-

1. The appellant/original defendant no.8 impugns judgment and decree dated 26.11.2014, passed by learned District Judge, Jaysingpur in Regular Civil Appeal No.14/2009, thereby upholding judgment and decree dated 02.01.2009, passed by learned Civil Judge Junior Division, Kurundwad in Regular Civil Suit No.57/2001, by which suit filed by respondent nos.1 and 2 for partition and separate possession of suit property has been decreed.

2. The respondent nos.1 and 2 (original plaintiffs) instituted Regular Civil Suit No.57/2001 seeking relief of partition and separate possession in respect of land Gut No.1220 situated at village Ghosarwad, contending that suit land was originally owned by one Kallappa. He died leaving behind plaintiffs and defendant nos.1, 2, 6 and 7. The defendant no.2 executed registered sale deed dated 16.06.1998 to the extent of 1H 60R of suit land in favour of defendant

no.8. According to plaintiffs, defendant no.2 had no right to execute sale deed or sale is without legal necessity and same is not binding upon their rights. It is further contention of plaintiffs that decree passed in Regular Civil Suit No.43/1997 is collusive and does not bind rights of plaintiffs.

3. The defendant nos.1 to 7 failed to file written statement. However, defendant no.8 (purchaser) filed his written statement contending that sale deed executed in his favour is for legal necessity. It is pleaded that defendant nos.1 and 2 had entered into an agreement to sale with Ramgonda Patil and others. However, said transaction could not be completed. The defendant nos.1 and 2 were required to refund amount to Ramgonda Patil and others, so also to meet family expenses they needed funds. Eventually, defendant no.2 executed agreement to sale dated 08.05.1990 in favour of defendant no.8 and later on, executed sale deed dated 16.06.1998 for satisfying legal necessity.

4. The Trial Court framed issues based on pleadings of parties. The issue no.3 was framed “whether defendant no.8 proves that sale deed dated 16.06.1998 is executed for legal necessity?”. Parties proceeded to lead evidence in the suit. The Trial Court after hearing all parties, decreed suit and declared that plaintiffs are entitled for 1/6th share in suit property and sale deed dated 16.06.1998 is invalid to the extent of

plaintiffs' share in the suit property, so also directed delivery of possession in favour of plaintiffs.

5. Aggrieved defendant no.8 filed Regular Civil Appeal No.14/2009 before learned District Judge at Jaysingpur assailing judgment and decree dated 02.01.2009 passed in suit. The Appellate Court concurred with judgment and decree passed by Trial Court. Eventually, dismissed Appeal vide impugned judgment and order dated 26.11.2014. Hence, this Second Appeal.

6. The present Second Appeal was placed for admission before this Court on 29.06.2015. The learned Advocate for appellant had invited attention of this Court to issue no.3 framed by Trial Court on the point of legal necessity to sale ancestral property. It was further contended that Appellate Court has not touched aforesaid aspect of the matter while confirming decree of Trial Court. In view of submissions advanced, notice for final disposal was issued on following substantial question of law:

“Whether findings recorded by lower Appellate Court are in ignorance of vital issues framed and decided by the Trial Court, which vitiate the judgment and call for remand of matter?”

7. In pursuance to notice for final disposal, respondent nos.1 and 2 caused appearance. The learned Advocate appearing for respective parties elaborately advanced their submissions on aforesaid question of law.

8. Mr. Patil, learned Advocate appearing for appellant would submit that First Appellate Court failed to frame necessary points for consideration and follow procedure contemplated under Order 41 Rule 31 of Code of Civil Procedure. Mr. Patil would submit that it was incumbent upon Appellate Court to frame points for determination on controversy involved in Appeal and render decision thereon. By inviting attention of this Court to findings recorded by Appellate Court, he would submit that Appellate Court failed to discuss evidence on record on point of legal necessity to transfer suit land in favour of defendant no.8. The Appellate Court simply recorded concurrence with findings of Trial Court without independently appreciating evidence on record and deliberating on correctness or otherwise of findings recorded by Trial Court. Mr. Patil would submit that First Appellate Court being last fact finding Court was under obligation to delve into pleadings and evidence on record and independently apply mind before recording concurrence or dissent with findings arrived by Trial Court. He would, therefore, urge that this is a fit case for relegating matter to First Appellate Court for framing appropriate points and freshly record findings thereon.

9. Per contra, Mr. Wable, learned Advocate appearing for respondents would submit that Trial Court considered pleadings and evidence tendered into service by defendant no.8 in support of his contentions as to legal necessity and recorded negative findings. He

would further invite attention of this Court to findings recorded by Appellate Court in paragraph no.8 of judgment and endeavours to convince this Court that Appellate Court has applied mind to the pleadings and evidence on record while approving finding on the point of issue no.3. Thus, he urges to dismiss Appeal.

10. Having considered submissions advanced and on perusal of findings recorded by Trial Court as well as Appellate Court, it can be observed that Trial Court had framed specific issue on the point of legal necessity to execute sale deed dated 16.06.1998 in favour of defendant no.8. It can be observed that defendant no.8 took plea in written statement that defendant no.2 was facing financial duress, as he was to refund amount to Ramgonda Patil and others. Similarly, evidence is brought on record to show that agreement to sale dated 21.02.1989 was executed by defendant nos.1 and 2 in favour of Ramgonda and others. Apart from that, documents are filed to show charge of various loans over suit property.

11. The Trial Court discarded aforesaid evidence, for want of specific pleading regarding loans of Co-operative Societies. The Appellate Court in paragraph no.8 of judgment simply observed that no authentic or satisfactory evidence is produced before Trial Court on point of existence of legal necessity and sale transaction in deference to such legal necessity. Even there is no discussion as regards to admissibility or otherwise of evidence tendered by appellant in support of his claim

as to existence of legal necessity to defendant no.2 at the time of execution of sale deed.

12. The Appellate Court being last and final fact finding Court, judgment of Appellate Court must reflect application of mind and findings so recorded must be supported by sufficient reasons. Order 41 Rule 31 of Code of Civil Procedure lays down procedure while dealing with First Appeal against judgment and decree passed by Trial Court. The Appellate Court is under mandate to follow procedure contemplated under Order 41 Rule 31 of Code of Civil Procedure. Rule 31 of Order 41 reads thus:

“Contents, date and signature of judgment.

The judgment of the Appellate Court shall be in writing and shall state-

- (a) the points for determination;*
- (b) the decision thereon;*
- (c) the reasons for the decision; and*
- (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled, and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.”*

13. In case of ***Santosh Hazari Vs. Purushottam Tiwari (Dead) by Lrs.***¹, Supreme Court observed in paragraph no.15 as under:

“The appellate Court has jurisdiction to reverse or affirm findings of Trial Court. First Appeal is a valuable right of parties and unless restricted by law, whole case is open for rehearing both on questions of fact and law. The judgment of Appellate Court must, therefore, reflect its conscious application of mind, and record findings supported by reasons, on all issues arising alongwith the contentions put forth, and pressed by parties for decision of Appellate Court; while reversing a finding of fact Appellate Court must come into

¹ (2001) 3 SCC 179.

close quarters with reasoning assigned by Trial Court and then assign its own reasons for arriving at a different finding. This would satisfy Court hearing a further appeal that First Appellate Court had discharged duty expected of it.”

14. In yet another judgment, Three Judge Bench of Supreme Court in case of *Madhukar and Others Vs. Sangram and Others*² aforesaid statement of law is reiterated that sitting as a Court of First Appeal, it was duty of the High Court to deal with all issues and evidence led by the parties before recording its findings.

15. Looking to aforesaid exposition of law, if judgment of Appellate Court is considered, it is evident that neither requisite point for consideration on the point of legal necessity is framed nor has been findings recorded thereon by Appellate Court. The Appellate Court has simply recorded concurrence with findings of Trial Court without delving into evidence and pleadings of parties. Apparently, Appellate Court failed in its duty to re-appreciate evidence on record and give due consideration to the contentions of parties. The Appellate Court was expected to render its own opinion on the point of admissibility, sufficiency of evidence tendered by defendant no.8 on the point of legal necessity and also deliberate upon findings recorded by Trial Court on aforesaid aspect. The Appellate Court recorded concurrence with findings of Trial Court in cryptic manner causing serious prejudice to rights of defendant no.8. The judgment of First Appellate Court does not reflect independent application of mind or conscious

² (2001) 4 SCC 756.

concurrence with findings recorded by Trial Court. Even while recording concurrence with judgment of Trial Court it is expected that Appellate Court would supplement reasons for such concurrence so that in case of Appeal against appellate decree, High Court would be in a position to record its satisfaction that Appellate Court had due adherence with requirement of Order 41 Rule 31 of Code of Civil Procedure.

16. In that view of the matter, substantial question of law as framed by this Court vide order dated 29.06.2015 is answered in affirmative. Hence, following order:

ORDER

- a. Second Appeal is partly allowed.
- b. The judgment and decree dated 26.11.2014 passed by learned District Judge, Jaysingpur in Regular Civil Appeal No.14/2009 is quashed and set aside.
- c. Appellate Court to formulate point for determination in tune with provisions of Order 41 Rule 31 of Code of Civil Procedure, thereafter hear and decide Appeal on its own merits.
- d. Appellate Court shall endeavour to decide Appeal expeditiously and in any case, within period of six months from the date of receipt of this order.

- e. Parties to co-operate.
- f. In view of disposal of Second Appeal, pending Civil Application also stands disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/August-2025