

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.69 OF 2024

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VITTHAL
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Suresh Kashiram Jadhav-Patil & Ors.

...Appellants

Versus

Uttam Kashiram Jadhav & Anr.

...Respondents

WITH
INTERIM APPLICATION NO.954 OF 2024
IN
SECOND APPEAL NO.69 OF 2024

Suresh Kashiram Jadhav-Patil & Ors.

...Applicants

Versus

Uttam Kashiram Jadhav & Anr.

...Respondents

Mr. Abhay S. Khandeparkar, Senior Advocate a/w Rishikesh G. Bhagat
i/b Khandeparkar & Associates, for the Appellants.

Mr. Girish Agrawal (Through VC), for the Respondents.

CORAM: MADHAV J. JAMDAR, J.
DATED: 18 AUGUST 2025

JUDGMENT:

1. Heard Mr. Abhay S. Khandeparkar, learned Senior Counsel with Mr. Rishikesh Bhagat, learned Counsel appearing for the Appellants and Mr. Agrawal, learned Counsel appearing for the Respondents.
2. Mr. Khandeparkar, learned Senior Counsel for the Appellants, submitted that the following substantial question of law arises in this Second Appeal :-

Whether the finding of the learned Trial Court as confirmed
by the learned Appellate Court that sale deed executed in

favour of the Defendant Nos.2 to 5 is not for legal necessity is contrary to the evidence on record?

3. Mr. Khandeparkar, learned Senior Counsel, submitted that a tractor was purchased by taking loan from the bank in the year 2000, and for repayment of the said loan, the suit properties were required to be sold. Accordingly, the said suit properties were sold to Defendant Nos.2 to 5 i.e. the present Appellants by the registered Sale-Deed dated 10th April 2003 and 16th April 2003. Learned Senior Counsel therefore submitted that the position on record clearly shows that the suit properties were sold for legal necessity, and therefore, the findings recorded by both the learned Courts are required to be quashed and set aside.

4. On the other hand, Mr. Agrawal, learned Counsel for the Respondents, submitted that the suit properties were sold to Defendant Nos.2 to 5, who are coparceners and having a share in the suit properties. He submitted that there is nothing on record to show that the sale consideration was utilized for clearing the said bank loan. He further submitted that DW-2 - Dr. Prakash Pawar has been examined to show that Defendant No.1 was suffering from diseases, and for incurring the medial expenses, the suit properties were sold. However, he submitted that the said evidence on record shows that Defendant No.1 was admitted in the hospital in the year 2008 and the suit

properties were sold in the year 2003. He submitted that the said transactions are not genuine transactions and therefore no interference in the impugned Judgment and Decrees is warranted.

5. Perusal of the record shows that both the Courts have concurrently held that the sale was not for legal necessity. The said finding has been arrived at on the basis of the material on record. Both the Courts have discussed the said aspect in detail. The Defendant Nos.2 to 5 have examined DW-2 - Dr. Prakash Pawar to substantiate the contention that the properties were sold for the medial treatment of Defendant No.1. However, the said sale is of the year 2003 and the medial treatment is given in the year 2008. Thus, there is no legal necessity for the sale of the property in the year 2003 for the medical treatment given in the year 2003.

6. As far as the consideration of sale deeds is concerned, the same is Rs.4,00,000/- in cash. Both the Courts have recorded a finding of fact that the consideration is not paid before the Sub-Registrar. In fact, finding is recorded that there is no legal necessity for the sale of the suit properties. The sale deeds mention the legal necessity as household expenses and repayment of the loan and nothing is mentioned about the medical expenses.

7. In any case, the position on record shows that the sale was executed by the Defendant No.1 i.e. Kashiram G. Jadhav-Patil in favour

of the Defendant Nos.2 to 5, who are the sons from the second wife of the Respondent No.1. The Plaintiffs are the sons from the first wife. Thus, the position on record clearly shows that to deprive the share of the Plaintiffs i.e. Plaintiff Nos.1 and 2 who are the sons of the first wife, the suit properties have been sold to Defendant Nos.2 to 5, who are the sons of the second wife and the said transactions are brought into existence just to deprive the rights of Plaintiff Nos.1 and 2. The consideration of Rs.4,00,000/- is shown in cash. Both the Courts have held that the payment of consideration in cash is not before the Sub-Registrar. Thus, both the Courts have in effect raised the doubt regarding payment of consideration.

8. Both the Courts have held that there is nothing on record to show outstanding loan of huge amount. In fact, both the Courts have held that if the sale is for legal necessity and the sale is by the Defendant No.1 to his sons i.e. Defendant Nos.2 to 5 i.e. present Appellants, then the father-Defendant No.1 could have easily taken money for repayment of loan from his said sons and there was no legal necessity to sell the same to his sons. Thus, both the Courts have held that the said sale transactions executed by Defendant No.1 in favour of Defendant Nos.2 to 5 i.e. his sons from second wife is to deprive the share in the ancestral property to the Plaintiff Nos.1 and 2 i.e. his sons from first wife. Thus, it is clear that the finding recorded by both the Courts that

the sale is not for legal necessity is the finding recorded on the basis of the evidence on record.

9. Accordingly, there is no substance in the substantial question of law raised by Mr. Khandeparkar, learned Senior Counsel for the Appellants.

10. Accordingly, Second Appeal is dismissed, however, with no order as to costs.

11. In view of dismissal of the Second Appeal, nothing survives in the Interim Application and the same is also disposed of.

[MADHAV J. JAMDAR, J.]