

MJ Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 770 OF 2023
WITH
INTERIM APPLICATION NO. 1479 OF 2025
IN
SECOND APPEAL NO. 770 OF 2023**

Ashok Narayan Bhosale ... Appellant/Applicant
vs.
Kalpana Uttam Poul and Ors. ... Respondents

Mr. Amol Kanaki for the Appellant/Applicant.

Mr. Ashok N. Bhosale- Appellant, Present.

CORAM : GAURI GODSE, J.

DATED : 4th MARCH 2025

ORDER :-

INTERIM APPLICATION NO. 1479 OF 2025

1. This application is for restoration of the second appeal, which was dismissed in default.
2. Learned counsel for the applicant submits that since the advocate was held up in another Court, the matter was unattended.
3. In the facts and circumstances of the case, the application is allowed in terms of prayer clause (b). The second appeal is restored. Interim Application is disposed of.

4. I have heard learned counsel for the appellant on merits of the second appeal. The appeal is preferred by defendant no.1 to challenge the concurrent judgments and decrees for partition and separate possession.

5. Learned counsel for the appellant submits that the suit properties described in plaint paragraphs A, C and D are the self acquired properties of defendant no.1. He submits that both the Courts have granted partition and separate possession in respect of properties described in plaint paragraph 1A and 1B. He submits that defendant no.1 is aggrieved by the decree for partition in respect of Gat No.114(1) described in paragraph 1A. He submits that by way of registered sale deed dated 14th August 2013, defendant no.1 purchased the said property from his father. He submits that for repayment of loan, the father sold the said property to defendant no.1. He submits that since 1992, defendant no.1 was living separate and had his own independent income. He, therefore, submits that in view of the sale deed in favour of defendant no.1, he became exclusive owner of the said property. He submits that though the evidence was led to support his case that it was sold by the father for legal necessity, both the Courts have disbelieved appellant's contention on sale of the said property for legal necessity. He submits that both the Courts erred in not framing an

issue on sale of the said property for legal necessity. He thus, submits that the second appeal would require consideration as both the Courts ignored the crucial aspect that the said property was sold by the father in the name of defendant no.1 for legal necessity.

6. I have perused the papers of the second appeal. There is no dispute that said property i.e. Gat No.114/1 is an ancestral joint family property. Defendant no.1 claimed rights based on the sale deed executed only by father of the parties. Defendant no.1 claims the exclusive title based on the sale deed on the ground that father executed the sale deed for legal necessity. Both the Courts have examined defendant no.1's contention of the sale of the property for legal necessity, however, disbelieved defendant no.1's case for want of any sufficient evidence. The oral evidence led by the parties is examined by both the Courts. Defendant no.1's case that amount was paid to plaintiff nos.1 and 2 and defendant no.2 at the time of purchasing the said property is disbelieved for want of any supporting evidence.

7. Both the Courts held that except for the bare words of defendant no.1, nothing was produced on record to indicate that there was any legal necessity for sale of the said property in the name of defendant no.1. Defendant no.1's contention of he residing

separately since 1992 is also disbelieved by both the Courts for want of any evidence. Though, the learned counsel for the appellant contended that there was sufficient evidence to indicate that defendant no.1 was residing separately, nothing is shown on record to support the submissions. Both the Courts have considered the oral evidence and disbelieved defendant no.1's case that he was separated from the joint family.

8. Even otherwise, there is no dispute that the said property also belongs to the joint family. Hence, in the absence of any valid transfer of the property in the name of defendant no.1 for any legal necessity, no fault can be found in the reasons recorded by both the Courts. It is a well-established principle of law that the purchaser of property belonging to joint family on the ground of legal necessity is under obligation to prove that it was purchased for legal necessity. In the absence of any supporting evidence that the sale was for legal necessity, the reasons recorded in the impugned judgments disbelieving defendant no.1's case of legal necessity cannot be interfered in this second appeal. The arguments raised on behalf of the appellant would require re-examination of the evidence on record, which is not permissible under Section 100 of Civil Procedure Code.

9. In view of the concurrent findings of facts disbelieving defendant no.1's case of purchase of the property for legal necessity, the same cannot be re-examined in this appeal by re-appreciating the evidence. I do not find any illegality or perversity in the reasons recorded by both courts.

10. The second appeal does not raise any substantial question of law. Hence, the second appeal is dismissed.

11. In view of dismissal of the second appeal, interim application is disposed of as infructuous.

(GAURI GODSE, J.)