

varsha

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL(ST) NO. 27222 OF 2024
WITH
INTERIM APPLICATION NO. 15088 OF 2024
WITH
INTERIM APPLICATION NO. 15087 OF 2024
IN
SECOND APPEAL(ST) NO. 27222 OF 2024**

Bhagwan Sambhaji Kamte and Anr ... Appellants/Applicants

VS.

Uttreshwar Bhagwan Kamte and Ors ... Respondents

Mr. Vivek V. Salunke for Appellants.

CORAM : GAURI GODSE, J.

DATED : 24th JANUARY 2025

ORDER:

INTERIM APPLICATION NO. 15087 OF 2024

1. Heard learned counsel for the appellants. This application is for condonation of delay of 710 days in filing the second appeal. The second appeal is preferred by defendants to challenge the concurrent judgments and decrees for partition and separate possession. I called upon the learned counsel for the appellants to point out whether the second appeal raises any substantial

questions of law.

2. Learned counsel for the appellants submits that despite framing the point for consideration on legal necessity for alienating suit property in favour of defendant no.2, the first appellate court failed to render any findings on the said point. She therefore submits that the second appeal raises substantial questions of law on the point that it was obligatory on the part of the first appellate court to record findings on the point for determination framed in the appeal. He further submits that the ground was raised by the appellants in the first appeal that alienation in favour of defendant no.2 was a legal necessity of the joint family. Hence, the first appellate court being the last fact finding court while deciding the appeal under Section 96 of the Civil Procedure Code, ought to have recorded the findings on the point of legal necessity. Learned counsel therefore submits that the aforesaid arguments raise substantial questions of law.

3. I have perused both the judgments. The plaintiff no. 1 and plaintiff no.3 are the children of plaintiff no.2 and defendant no. 1. There is no dispute that defendant no.1 alienated the suit property in favour of defendant no.2. There is no dispute that defendant no.1 alienated the suit property in favour of defendant no.2 during the

pendency of the suit. Both the courts have disbelieved the defendant's contentions that alienation was for legal necessity.

4. I do not find any substance in the arguments raised on behalf of the appellants that the first appellate court failed to record any reasons on the point of legal necessity. In paragraph 12 of the judgment, the first appellate court has referred to the point of legal necessity. The first appellate court held that defendant no.2 who is the purchaser during the pendency of the suit has purchased it without any reasonable inquiry about the status, family members and legal necessity. Thus, on examination of evidence on record, the first appellate court held that defendant no.1, failed to prove that she is a bonafide purchaser who purchased the property after due inquiry.

5. It is well established principle of law that the burden is upon the purchaser to prove that alienation of the joint family property was for legal necessity. It is the duty of the purchaser to plead and prove that the alienation was for legal necessity and transaction was entered into after due inquiry. It is not the defendant no.2' case that she is unaware about the pendency of the suit. Admittedly, the alienation is during pendency of the suit.

6. In view of these admitted facts, the reasons recorded by the

first appellate court cannot be faulted. I do not find any illegality or perversity in the reasons recorded by both the courts. The second appeal does not raise any substantial question of law.

7. In the facts and circumstances of the case, I do not find it necessary to issue notice in the application for condonation of delay. Hence, in the facts and circumstances of the delay is condoned.

8. For the reasons recorded above, the second appeal is dismissed. In view of dismissal of the second appeal, Interim Application No. 15088 of 2024 is disposed of as infructuous.

(GAURI GODSE, J.)