

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.396 OF 2025
WITH
INTERIM APPLICATION NO.9292 OF 2025**

Krushna Madhavrao Thete and Ors. ... Appellants
versus
Pramod Bhika Hire and Anr. ... Respondents

Mr. Sachin Gite, for Appellants.

CORAM: N.J.JAMADAR, J.

DATE : 1 OCTOBER 2025

ORDER :

1. Heard the learned Counsel for the Appellants.
2. This Second Appeal is directed against a judgment and order dated 27 November, 2024 passed by the learned District Judge, Niphad, Nashik, whereby while dismissing the appeal preferred by the Appellants – original Defendant Nos.2 to 5, learned District Judge modified the decree passed by the trial Court, thereby enhancing the share of the Respondents – original Plaintiffs to 2/3rd instead of ½ share of Respondent No.1 only, in the suit properties.
3. Deceased Defendant No.1 was the father of Plaintiff No.1 and husband of Plaintiff No.2. Defendant No.2 is the brother of late Defendant No.1. In the partition between Defendant Nos.1 and 2, 67 Are land out of Gat No.763 came to the share of Defendant No.1. The Plaintiffs asserted, Defendant

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No.1 was given in to vices, and to gratify those vices Defendant No.1 had sold the suit land to Defendant Nos.3 to 5 without any legal necessity, under the Sale Deed dated 14 July 2005. Hence, the Plaintiffs instituted the suit for declaration, partition and separate possession of their share in the suit land and suit house.

4. Defendant No.1 had appeared and contested the suit. Though, it was admitted that the suit properties were ancestral properties, yet, it was contended that Defendant Nos.1 and 2 had sold their share in the land bearing Gat No.763 to Defendant Nos.3 to 5 for a legal necessity. Defendant No.2 also supplemented the defence of the Defendant No.1. Defendant Nos.3 to 5 claimed that, they had bonafide purchased the suit land for a valuable consideration without notice.

5. By a judgment and decree dated 29 November 2013, the learned Civil Judge partly decreed the suit and declared that, the sale deed executed by Defendant Nos.1 and 2 was not binding on Plaintiff No.1 to the extent of his $\frac{1}{2}$ share i.e. 33.5 Are of the suit land and directed Defendant Nos.2 to 5 to jointly and severally handover vacant and peaceful possession of 33.5 Are land to Plaintiff No.1. The Court Commissioner was directed to be appointed to effect the partition of the house property. The learned Civil Judge was of the view that, the Defendants failed to establish that the suit land was sold for a legal necessity.

6. Learned District Judge concurred with the view of the trial Court. Upon re-appraisal of the evidence, learned District Judge held that, the Defendants failed to prove that, the sale was for legal necessity and the Defendant Nos.3 to 5 were the bonafide purchaser for value without notice. The fact that, the deceased Defendant No.1 was a retired Head Master and was drawing pension, weighed with the learned District Judge in negating the claim of the Defendants that to bear the expenses of medical treatment, the deceased Defendant No.1 had sold the suit land. Learned District Judge was also of the view that the Plaintiff No.2 – widow of deceased Defendant No.1 was also entitled to a share in the suit properties, and, therefore, the decree was modified.

7. The contentions on behalf of the Appellants – Defendant Nos.2 to 5 that, the decree could not have been modified without Plaintiffs having filed cross objection, was repelled by holding that, in a situation of the present nature, the Plaintiffs were entitled to urge that, the findings, as regards the shares of the parties, ought to have been recorded in favour of the Plaintiffs and it was not necessary to file cross objection.

8. Mr. Gite, learned Counsel for the Appellants, principally canvassed two submissions. Firstly, the Appellate Court committed an error in law in granting 2/3 share in the suit properties to the Plaintiffs, though they had not filed cross objection in the appeal. Since the Plaintiffs were claiming the reliefs which

were not granted by the trial Court, it was incumbent upon the Plaintiffs to file cross objection. Secondly, according to Mr. Gite, the courts below committed manifest error in holding that, there was no legal necessity. Attention of the Court was invited to the evidence of Defendant No.2 on the aspect of the ill-health of the deceased Defendant No.1 and the expenses incurred for his treatment.

9. The second ground of challenge first. The Courts below have recorded the consistent findings of fact that, the Defendants failed to establish the legal necessity. Indisputably, the deceased Defendant No.1 was a retired Head Master and, thus, drawing a pension. No reliable evidence could be adduced before the trial Court that, the deceased Defendant No.1 was suffering from such ailments as to warrant substantial expenditure for his treatment. Dr. Pandurang Patil, a Homeopath, was examined. The Courts below have found that he was charging Rs.40 to 70 as fees for treatment, including medicines. There was no pleading to the effect that, the deceased Defendant No.1 was suffering from cancer of kidneys. Nor any reliable evidence in that regard was placed on record.

10. These factors coupled with the fact that, the deceased Defendant No.1 was drawing pension, in the circumstances of the case, erodes the claim of the Defendants that the sale of the suit land was for a legal necessity. To put in other words, it could not be demonstrated that, there was such pressure on

the estate of deceased Defendant No.1 as to warrant its sale. The Courts below have also recorded a finding that Defendant Nos.3 to 5 could not demonstrate that they had purchased the suit land bonafide. The absence of circumstances which usually attend a bonafide transaction, like, the title search, public notice and inquiry with the legal representatives of the vendor, were arrayed against Defendant Nos.3 to 5. This evaluation of evidence does not appear to be perverse. It cannot be said that the courts below have misread the evidence and that resulted in mis-carriage of justice.

11. On the aspect of the effect of the not filing the cross objection against the decree passed by the trial Court, the necessity of filing of cross objection in view of the 1976 Amendment to Rule 22 of Order 41 is required to be examined. In view of the said amendment, by the CPC Amendment (Act No.104 of 1976), the scope of filing cross objection was expanded to include the objections against “findings” of the lower court and different forms of raising cross-objections have been recognized. The insertion of the phrase “but may also state that the finding against him in the court below in respect of any issue ought to have been in his favour” and its separation from the words “may also take any cross-objection to the decree” substantially enhance the scope of filing the cross-objection. Only when a part of the decree was assailed by the Respondent, a memorandum of cross-objection was required to be filed.

12. Mr. Gite placed reliance on the judgment of the Supreme Court in the case of **Banarsi and Ors. V/s. Ram Phal**¹, wherein it was enunciated that under the amended CPC, read in the light of the Explanation, though it is still not necessary for the respondent to take any cross objection laying challenge to any finding adverse to him as the decree is entirely in his favour and he may support the decree without cross objection; the amendment made in the text of sub-rule (1), read with the Explanation newly inserted, gives him a right to take cross objection to a finding recorded against him either while answering an issue or while dealing with an issue.

13. Following the aforesaid judgment, in the case of **Saurav Jain and Anr. V/s. A.B.P. Design and Anr.**² the Supreme Court expounded the scope of amended provisions of Order 41 Rule 22 of CPC, as under :

“29. It is apparent from the amended provisions of Order 41 Rule 22 CPC and the above authorities that there are two changes that were brought by the 1976 Amendment. First, the scope of filing of a cross-objection was enhanced substantively to include objections against “findings” of the lower Court; second, different forms of raising cross-objections were recognized. The amendment sought to introduce different forms of cross-objection for assailing the findings and decrees since the amendment separates the phrase “but may also state

1 (2003) 9 SCC 606

2 (2022) 18 SCC 633

that the finding against him in the court below in respect of any issue ought to have been in his favour” from “may also take any cross-objection to the decree” with a semi colon. Therefore, the two parts of the sentence must be read disjunctively. Only when a part of the decree has been assailed by the Respondent, should a memorandum of cross-objection be filed. Otherwise, it is sufficient to raise a challenge to an adverse finding of the Court of first instance before the appellate court without a cross-objection.”

14. In the case at hand, the finding that the sale deed in respect of the share of deceased defendant No.1 was void for want of legal necessity qua the share of the Plaintiffs, was in favour of the Plaintiffs and constituted the foundation of the decree. It is pertinent to note that 67 Are land came to the share of the deceased Defendant No.1, in a partition with Defendant No.2. Plaintiff Nos.1 and 2 instituted the suit for partition. Since the Plaintiff No.1 claimed partition, Plaintiff No.2, the wife of deceased Defendant No.1, was also entitled to a share therein.

15. Viewed from this perspective, the impugned order and decree passed by the learned District Judge granting a share to the Plaintiff No.2 also in the suit land, cannot be faulted at. The Plaintiffs could lawfully assail the correctness of the findings of the trial Court in regard to the determination of

their shares in the suit land without filing the cross-objection.

16. In view of the above, no substantial question of law arises for consideration. Second Appeal, thus, deserves to be dismissed.

17. Second Appeal stands dismissed.

18. In view of the dismissal of the Second Appeal, Interim Application No.9292 of 2025 also stands dismissed.

(N.J.JAMADAR, J.)