



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO.258 OF 2025

Triratna Bouddha Mahasangh, Wardha through its President Dhammachari Harshaveer @
Gopal Jiwane and others .Vs. Chandrakirti S/o Natthuji Shambharkar and others

WITH

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Gopal Jiwane and others .Vs. Chandrakirti S/o Natthuji Shambharkar and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. N. Sharma, Advocate for appellants.

Mr. D.R. Bhoyar, Advocate for respondent No.1.

CORAM : ROHIT W. JOSHI, J.

DATE : 08/10/2025

1. The present second appeals arise out of common judgment and decrees dated 17.06.2022, passed by the learned Civil Judge Junior Division, Samudrapur, in Regular Civil Suit No.35 of 2013 and Regular Civil Suit No.246 of 2008. The plaintiff in Regular Civil Suit No.35 of 2013 is son of Natthuji Shambharkar who has sold the suit property to the plaintiff in Regular Civil Suit No.246 of 2008, vide sale deed dated 13.05.1991. The plaintiff who is son of the vendor of Natthuji filed the aforesaid suit challenging the said sale deed, *inter alia* contending that the suit property was ancestral property of Natthuji and his family members and that the same was sold to the defendant by the aforesaid sale deed without any legal necessity. The learned trial Court has decreed the suit holding that the defendant No.1 purchaser, could not prove that the sale

deed was executed for any legal necessity. It will be pertinent to mention that the defendant had also filed a suit being Regular Civil Suit No.246 of 2008 *inter alia* seeking decree for prohibitory injunction restraining the plaintiff and other family members of Natthuji from disturbing its possession over the suit properties. The plaint was amended in order to incorporate a prayer for possession. In view of the finding that the sale transaction was not for legal necessity, the suit for possession is dismissed.

2. As regards the sale deed, the learned trial Court has declared that the sale deed is valid only to the extent of share of deceased father Natthuji in the suit properties. The defendant trust preferred two separate appeals being Regular Civil Appeal No.13 of 2022 and Regular Civil Appeal No.14 of 2022, which have been dismissed by the common judgment dated 14.12.2022.

3. The defendant trust has filed present second appeals challenging the aforesaid common judgment and decrees drawn on the basis of the said judgment. The learned Advocate for the defendant/appellant contends that Natthuji has sold the suit properties to the defendant/trust in order to purchase another property for the family for the purpose of residential accommodation. He therefore, contends that the sale deed was executed by the Natthuji as Karta for legal necessity and as such, it will be binding on all

the family members. It is not in dispute that the contention could not be proved in as much as the sale deed with respect to the property allegedly purchased is not on record and there is no evidence to suggest that the Natthuji had purchased other property after sale of the suit property to the defendant trust.

4. Both the learned Courts have accepted the contention of the plaintiff that the sale transaction was not for legal necessity. It is well settled that the Karta of a Joint Hindu Family does not have absolute authority to deal with the property of the Joint Hindu Family. He can transfer such property only in cases of legal necessity, for the discharge of liabilities etc. The burden of proving that the transaction was for legal necessity or for any other permissible purpose lies on the purchaser. The purchaser, i.e., the defendant trust, has failed to discharge the said burden.

5. In the considered opinion of this Court therefore, no substantial question of law arises for consideration in the present appeals. The second appeals are **dismissed**.

6. It is pertinent to mention that, as on the date of the sale deed, Natthuji's family comprised of his wife, two sons, and two daughters. As on the date of sale deed, Natthuji's daughter did not have any share in the property

of Joint Hindu Family since the sale deed is prior to the commencement of the Hindu Succession (Amendment) Act of 2005.

7. The learned Courts have held that the sale transaction is valid to the extent of share of Natthuji. The share of Natthuji will be $1/4^{\text{th}}$ in the suit property the other $3/4^{\text{th}}$ share belonging to his wife and two sons.

(ROHIT W. JOSHI, J.)

C.L. Dhakate