



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.99 OF 2024

APPELLANT
(Original Plaintiff On R/A)

:-

Mujaffar Hussain S/o Abdul Gaffar, Aged about 47 years, Occ Service, R/o Buldhana, Tq. And Dist. Buldhana.

..VERSUS..

RESPONDENTS
(Original defs. On R/A)

:-

- 1) Rajabhua Tulshiram Pawar,
Aged about 38 yrs, Occ. Agriculturist,
- 2) Tulshiram Sitaram Pawar,
Aged about 59 yrs, Occ. Agriculturist,
Both R. Nos.1 and 2 R/o in front of
Amrut Hrudayalaya Multi Specialty
Hospital, Jambhrun Road, Buldhana, Tq.
And Dist. Buldhana-443001.
- 2) **Amended portion at pg. 2-A**
Tulshiram Sitaram Pawar,
Since deceased, through legal
representatives-
 - (a) Smt. Yamunabai Wd/o Tulshiram Pawar,
(Wife), Aged about 67 Years, Occupation
Housewife,
 - (b) Sharad S/o Tulshiram Pawar, (Son)
Aged about 42 Years, Occupation
Agriculturist,
 - (c) Rajabhau Tulshiram Pawar, (Son)
Aged about 38 years, Occupation Service,
 - (d) Ku. Dipali D/o Tulshiram Pawar,
(daughter)

Aged about 35 Years, Occupation- Nil,

(e) Smt. Pallavi W/o Pratik Adhao,
(daughter)

Aged about 32 Years, Occ. Medical
Practitioner

(f) Renuka D/o Tulshiram Pawar, (daughter)
Aged about 28 Years, Occupation Nil,
All above C/o Smt. Yamunabi Wd/o
Tulshiram Pawar, Pawar Layout, opposite
Dr. Vyawahare Hospital, Jambharun
Road, Buldhana – 443001.

3) Abdul Gaffar Sk. Ismail,
Aged about 78 yrs, Occ. Nil (Retd H.M.),
C/o Husna Salim Sheikh, Sonu Garrage
(Old Scout Bhavan), Chandak Layout,
Chikhli Road, Buldhana – 443001.

Mr. R.M. Sharma, Advocate for Appellant.

Mr. N.B. Kalwaghe, Advocate for the Respondent Nos.1 and 2.

CORAM : ROHIT W. JOSHI, J.

DATE : 04/11/2025

ORAL JUDGMENT :

1. Heard.

2. The plaintiff has filed the present second appeal
challenging the judgment and decree dated 27.04.2012, passed by

the learned 3rd Joint Civil Judge Junior Division, Buldhana, dismissing the Regular Civil Suit No.279 of 1996, which was a suit filed by the appellant in order to challenge the sale deed dated 12.11.1991, executed by his father (defendant No.3) acting as his guardian. The plaintiff has also challenged the judgment and decree dated 04.09.2023, passed by the learned District Judge-2, Buldhana, dismissing the Regular Civil Appeal No.83 of 2012, arising out of the of the said decree.

3. The suit property is an agricultural land situated at village Yelgaon, Tal. and Dist. Buldhana, admeasuring around 1.30 H.R. The suit property was received by the plaintiff from his grandmother. During the minority of the plaintiff, the suit property was sold by the his father (defendant No.3) to the defendant Nos.1 and 2 vide registered sale deed dated 12.11.1991 (Exh.116).

4. It is the case of the plaintiff that the father, acting as guardian of the minor plaintiff was not to authorized to sell the suit property as the said sale transaction was not for the benefit of the minor or for any of the purpose which enable a guardian to sell property of minor under the Muslim Personal Law (Shariat) Application Act, 1937. The defendant No.3, the father, filed written statement supporting the plaintiff. He also stated in the written

statement that he did not receive consideration for the said sale transaction. The defendant Nos.1 and 2, the purchasers contested the suit, contending that the suit property was sold by the father for the benefit of the family. It is stated that the father was in need of money for construction of residential house and for meeting other expenses of family such as education of the minor children and household needs.

5. Based on rival pleadings, the learned trial Court framed issues in the matter. The plaintiff examined himself and two other witnesses. The defendant No.3 did not enter the witness box. The defendant No.1 and adjoining owner of the suit property were examined as witnesses by the defendant Nos.1 and 2. The learned trial Court has found that the grandmother of the plaintiff had acquired the suit property in the year 1977 for a consideration of around Rs.3,000/-. It has found that the sale consideration under the impugned sale deed of the year 1991 is Rs.65,000/-, which is adequate and reasonable sale consideration. The learned trial Court has also held that the defendant No.3 was making construction of house property at the relevant time and was in need of money for the said purpose. The learned trial Court also observed that the defendant No.3/father had to support family comprising himself,

his mother, wife and four children. The children were taking education at the relevant time and as such, there was burden on the family for meeting expenses and also for making construction of the residential house. The learned trial Court has also found that the suit property was at considerable distance from Buldhana where family was residing and as such, it was not convenient for the defendant No.3 to cultivate the suit property. In the light of the aforesaid, the suit came to be dismissed.

6. As stated above, the plaintiff preferred an appeal challenging the decree passed by the learned trial Court. The learned First Appellate Court has considered the evidence on record and concurred with the findings recorded by the learned trial Court and accordingly dismissed the appeal.

7. Mr. Rohit Sharma, learned Advocate for the appellant/original plaintiff argues that the learned First Appellate Court has not considered the evidence in its proper perspective and had merely taken a broad overview of the evidence on record and has accordingly failed to discharge his duties as a final Court of facts. He has placed reliance on the judgments of the Hon'ble Supreme Court in the matters of *R.P. Bhardwaj ..vs.. Union of India and others*, reported in (2005) 10 SCC 244 and *B.M. Narayana*

Gowda ..vs.. Shanthamma (Dead) by LRs. And another, reported in (2011) 15 SCC 476.

8. Mr. Sharma, learned Advocate refers to the written statement and contends that there are no pleadings in the written statement as regards inquiry made by the defendant Nos.1 and 2/purchaser with respect to the alleged necessity. He also refers to a statement in the cross-examination of defendant No.1, where it is stated that the father (defendant No.3) has sold the property for himself. He has placed reliance on the judgment dated 29.11.2021 delivered by this Court at its Nagpur Bench in Second Appeal No.288 of 2018 to contend that alienation of property of a minor by his guardian can only by legal necessity and that the burden of proving the legal necessity is on the purchaser. He also refers to the said judgment to contend that the purchaser must bring on record that there was actual need and necessity for guardian to sell the property of the minor and further that purchaser before entering into the sale transaction, has made inquiry with respect to the alleged need or necessity. He further submitted that the learned First Appellate Court has not appreciated the evidence on record at all and has mechanically confirmed the findings recorded by the learned trial Court.

9. *Per contra*, Mr. N.B. Kalwaghe, learned Advocate for the respondent Nos.1 and 2/purchaser supports the judgment and decree passed by both the learned Courts. He contends that although the father was working as a Headmaster, he had a large family comprising eight members to support. He draws attention to the evidence to point out that at the relevant time, all the children were taking education and one of the sons was staying away from the residential house at Pune. Mr. Kalwaghe, learned Advocate for the respondents, also draws attention to the statement in the sale deed that the father needed money for the purpose of constructing a residential house. Mr. Kalwaghe, learned Advocate argues that despite the specific recital in the sale deed regarding the purpose of the sale, there is no averment in the plaint that the construction was not being undertaken at the relevant time. Apart from this, he draws attention to the judgment dated 04.06.2020, delivered by this Court at its Nagpur Bench in Second Appeal No.457 of 2005. The said Second Appeal arises out of a suit filed by brother of the plaintiff challenging an agreement of sale with respect to a property standing in the name of the said brother which was entered into by the father (defendant No.3) during his minority. Mr. Kalwaghe, learned Advocate contends that there appears to be a pattern in the

family of transferring property and to challenge the same after receiving consideration.

10. I have perused the record of the case with the able assistance of the learned Advocates and referred to the plaint and written statement. Perusal of the written statement indicates that pleadings with respect to inquiry about legal necessity are made by the defendant Nos.1 and 2. It also transpires from the evidence on the record that, the father (defendant No.3) had to support family comprising of eight members. It is an admitted position on record that all the four children were taking education at the relevant time and that one son was residing at Pune for the purpose of education. The evidence will also suggest that the suit property was situated at a distance from Buldhana, where the family was residing.

11. Perusal of the sale deed at Exh.116 will demonstrate that the property was sold because the family was in need of money for construction of residential house, that it was not profitable to cultivate the land and also for maintenance of the plaintiff. The learned trial Court has considered the evidence on record and on application of the plaint has found that the essential ingredients enabling the father as a natural guardian of a minor son to alienate the property of the minor son are duly established. Mr. Sharma,

learned Advocate by referring to the assessment register at Exh.120 strongly contended that the construction of the house property was completed on 01.04.1991 and therefore, the family was not in need of money for construction of house on 12.11.1991, when the sale deed was executed. However, the sale deed itself records that the money was required for construction of the house, which was one of the considerations for the sale of the suit property. The plaintiff has not averred in the plaint that the construction was not on going at the relevant time. The plaintiff has not challenged the sale deed on the ground that contrary to the statement in the sale deed, the construction was already over and that money was not required for construction of residential house.

12. As regards the judgment by the learned First Appellate Court, Mr. Sharma, learned Advocate, as stated above, has strongly criticized the judgment on the ground that the learned First Appellate Court has not considered the evidence at all. It must be stated that the learned First Appellate Court was concurring with the judgment delivered by the learned trial Court. The learned First Appellate Court has taken into consideration the fact that the suit property was purchased by the grandmother of plaintiff in the year 1977 for a consideration of Rs.3,000/- and that it was sold in the

year 1991 for consideration of Rs.65,000/-. The learned First Appellate Court has taken note on the fact that the plaintiff, his brother and sister were taking education at the relevant time and they were dependent on the father. It is held that, the father had to maintain a big family only from his salary. The learned First Appellate Court has also taken into consideration that the defendant No.3 found it difficult to cultivate the land personally and also was in need of money for making construction of the residential house. The learned First Appellate Court has also recorded that the sale transaction was not challenged on the ground that the father was a man of vices as extravagance.

13. Having regard to the fact that the learned First Appellate Court was writing a confirming judgment thereby affirming a well reasoned judgment delivered by the learned trial Court, in the considered opinion of this Court, the learned First Appellate Court considered the evidence on record and recorded brief reasons for agreeing with the learned trial Court while discharging its duties as an Appellate Court.

14. This Court has also while conducting evaluation of the substantial questions of law that were sought to be raised, perused the evidence on record in light of the provisions under Section 103

of the Code of Civil Procedure and has satisfied itself that the plaintiff has failed to prove that the impugned sale transaction was not for benefit of the family or legal necessity. In that view of the matter, in the considered opinion of this Court, no substantial question of law arises for consideration. Second Appeal is **dismissed**.

15. No order as to costs.

(ROHIT W. JOSHI, J.)

C.L. Dhakate