



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

SECOND APPEAL NO.248 OF 2025

Bainabai W/o Banshiram Ingole and others .Vs. Subhas Kundlik Musale

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

Court's or Judge's Order

Ms R.S. Sirpurkar, Advocate for appellants.

CORAM : ROHIT W. JOSHI, J.

DATE : 29/09/2025

1. The wife and children of original defendant No.3 filed a suit challenging alienation of the suit property by the defendant No.3 in favour of defendant No.1. The grounds of challenge are that the alienation was, in fact, a camouflage for a loan transaction and that the defendant No.3 did not have the authority to sell the suit property since the property was an ancestral property of the plaintiffs and the defendant No.3. It was further contended that the alienation was not for any legal necessity but was only to meet expenses for vices of the defendant No.3.

2. As regards loan transaction, evidence in that regard was sought to be introduced though the deposition of PW-2/plaintiff's witness No.2. However, the plaintiffs could not keep the witness present for cross-examination, as a consequence of which, the evidence of said witness was expunged. In the first round of litigation, the learned First Appellate Court had remanded the suit to the learned trial

Court so as to enable the plaintiffs to record deposition of PW-2. However, the order of remand was set aside by this Court with a direction to decide the suit on the basis of evidence that was available on record at the time the suit was initially decided.

3. Mrs. Renuka Sirpurkar, learned Advocate for the appellants has drawn attention to the certain mutation entries from the Exhs.45 to 52 to contend that the defendant Nos.1 and 2 had purchased several immovable properties in the village, which according to her establishes that they were engaged in the business of money lending. The said documents were brought on record and sought to be proved in the course of evidence of PW-2, whose evidence cannot be considered in view of the fact that he did not enter in the witness box for cross-examination. The mutation entries themselves are clearly insufficient to make out the case of money lending.

4. As regards the second contention that the property is an ancestral property which was sold without legal necessity, perusal of the plaint will demonstrate that the plaintiffs have only averred that the suit property was ancestral property, without further elaboration of facts as to how the same could be termed as ancestral property. Even in the examination-in-chief also there is no clarification in this regard. The question as to nature of property i.e. whether it

is ancestral property or not is a mixed question of law and facts. The essential facts as to how the defendant No.3 became the owner of the suit property are not on record. In that view of the matter, the second contention also cannot be entertained.

5. No case is made out for interference with concurrent findings passed by the learned Courts. The second appeal is therefore **dismissed** with no order as to costs.

(ROHIT W. JOSHI, J.)

C.L. Dhakate