



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

SECOND APPEAL NO.197 OF 2025

APPELLANT

Ori. Plaintiff on R.A.

: Shri Manoj Umaji Gharad, aged 44 years, Occ. Agriculturist, R/o C/o Shri Deepak Govindrao Ingole, Shivaji Nagar, Near Tiranga Chowk, Sangam Talkies, Nagpur.

..VERSUS..

RESPONDENTS

Ori. Defendants on R.A.

- : 1 Shri Umaji Hari Gharad, aged 71 years, Occ. Agriculturist,
2. Smt. Sushilabai Umaji Gharad, aged 69 years, Occ. Agriculturist,
3. Ku. Chanda Umaji Gharad, aged 51 years, occ. Agriculturist, R/o. Shelu, Post Wadoda (Bhugaon) Tah. Kamptee, Dist. Nagpur.
4. Ku. Nanda Umaji Gharad, aged 46 years, Occ. Agriculturist,
5. Ku. Leena Umaji Gharad, aged 44 years, Occ. Agriculturist,
6. Ku. Vaishali Umaji Gharad, Aged 42 years, Occ. Agriculturist,
- Respondent No.1 to 6 R/o Selu Post Wadoda (Bhugaon) Tah. Kamptee Dist. Nagpur
7. Shri. Narayan Madanlal Bajaj, Aged 56 years, Occ. Business, R/o 432, Hanuman Nagar, Nagpur
8. Shri. Jugalkishor Madanlal Bajaj, Aged 76 years, Occ. Business, R/o 433,

Hanuman Nagar, Nagpur

9. Shri. Shrawan Pandurang Gharad,
Aged 53 years, Occ. Business, R/o Selu
Post Wadoda (Bhugaon) Tah. Kamptee,
Dist. Nagpur

OR

R/o Near Shri. Ugale's House, Behind
Umiya Building Third Lane Bharat
Nagar, Kalamana Market, Nagpur

- 10 Sau. Surekha Shrawan Gharad, Aged
32 years, Occ. Household, R/o Selu
Post Wadoda (Bhugaon) Tah. Kamptee
Dist. Nagpur

OR

R/o Near Shri. Ugale's House, Behind
Umiya Building Third Lane Bharat
Nagar, Kalamana Market, Nagpur.

Mr. Chandrakant D. Rohankar, Advocate for Appellant.

CORAM : ROHIT W. JOSHI, J.

DATE : 18.02.2026

J U D G M E N T :

1) Heard finally with consent of learned advocate for the appellant.

2) The appellant in the present appeal is original plaintiff in Special Civil Suit No.1339 of 2008, which was filed for declaration, partition, separate possession and

perpetual injunction. The respondents are original defendants. Hereinafter the parties will be referred as “plaintiff” and “defendants” for the sake of brevity

3) The defendant No.1 is father of plaintiff. Defendant Nos. 1 and 2 had sold the suit properties bearing Survey Nos.73/2 and 72 vide sale deed dated 26.05.1997 to defendant No.7. Likewise, defendant No.1 and his mother i.e. plaintiff's grandmother had sold suit property bearing Gat No.79 and 80/2 to defendant No.8 vide sale deed dated 26.05.1997. The plaintiff filed suit for partition and separate possession challenging these alienations.

4) The learned Trial Court held that the suit properties were ancestral properties and accordingly granted declaration that sale deeds dated 26.05.1997 executed by defendant No.1 and his mother in favour of defendant No.8 was not binding on the share of plaintiff and defendant Nos.2 to 6 and also that sale deed executed by defendant Nos.1 and 2 in favour of defendant No.7 are not binding on the share of plaintiff and defendant Nos.2 to 6. It was held that the plaintiff was entitled for 1/7th share in the suit properties.

The suit was accordingly decreed.

5) Aggrieved by the said judgment and decree, defendant Nos.9 and 10, who had purchased the aforesaid suit properties from defendant Nos.7 and 8, preferred an appeal, being Regular Civil Appeal No.194 of 2018, which came to be allowed by learned District Judge-4, Nagpur vide judgment and decree dated 10.01.2025. This reversing decree is subject matter of challenge in the present second appeal.

6) The learned First Appellate Court has held that the suit properties were not ancestral properties. The issue of limitation is also decided against the plaintiff.

7) The suit was not contested by defendant No.1 to 6, who are his family members and that the evidence of plaintiff was allowed to go unchallenged in the suit. Defendant No.1 (father), however, entered the witness box, although he did not file written statement. He stated in the deposition that he learned that defendant Nos.7 and 8 were engaged in money lending business and since he was in need of money to perform marriages of his daughters, he had taken a loan from

them and that the sale deeds in question were got executed towards security of the loan amount by defendant Nos.7 and 8. Defendant No.1 (father) also deposed that he had lodged police complaints against defendant Nos.7 and 8 on 31.05.2006 and 03.10.2006.

8) The learned First Appellate Court has observed while dismissing the suit that although defendant No.1 (father) came up with a case of fraud in his evidence, the plaintiff who is his son did not allege any such fraud. The learned First Appellate Court also found it difficult to accept that the plaintiff was not aware about the allegations of father although they were residing together. In sum and substance, the learned First Appellate Court has arrived at conclusion that the suit was filed at the behest of the father, who had himself executed Sale Deeds in favour of defendant Nos.7 and 8. In view of the aforesaid, observations of the learned First Appellate Court has allowed the appeal.

9) Even if the case of plaintiff is accepted that the suit properties are ancestral properties, it is seen that there is no statement in the plaint that the sale deeds in question were

without any legal necessity. It is well settled that alienation of ancestral property by a Karta is not void ab-initio and merely voidable at the behest of coparceners if the same is without legal necessity.

10) Even in the absence of legal necessity, alienation of ancestral property by a Karta is not void per se. It is therefore, necessary for any coparcener to challenge the alienation and get rid of the same if it is without legal necessity. It is also well settled that the issue of legal necessity in a suit challenging alienation by a Karta arises for consideration only if want of legal necessity is pleaded in the plaint. Once such pleading is made by the plaintiff, the burden of establishing the legal necessity rests on the defendant/purchaser. However, in the present case, there is no pleading that the sale was not for legal necessity. Rather the evidence of father indicates that the alienations were for legal necessity, namely marriages of daughters in the family. Although the father claims that the sale transactions were a camouflage for loan transactions, he has not challenged the sale deeds on this ground.

11) In view of the aforesaid, in the considered opinion of this Court, the judgment and decree passed by the learned First Appellate Court does not warrant any interference. Second Appeal is, therefore, **dismissed** with no order as to costs.

(ROHIT W. JOSHI, J.)

Tanmay..