

MHLA010019992017



Received on : 03/08/2017
Registered on : 03/08/2017
Decided on : 15/04/2026
Duration : 08Y 08M 12Days.

**IN THE COURT OF ADHOC DISTRICT JUDGE-1, LATUR,
AT LATUR
(Presided over by : Vidyadhar S. More)**

REG. CIVIL APPEAL No.105/2017.

EXHIBIT No.34

Sachin s/o Subhashappa Kevalram
Age.26 years, Occ. Nil (Education),
R/o. Kevalram Galli, Tq. Ausa,
District Latur.

***** APPELLANT
(ORIG. PLAINTIFF)**

:: VERSUS ::

- 1) Subhashappa s/o Sidramappa Kevalram (died)
Through LR's
- 1/1 Renuka w/o Chandrashekar Korale,
Age.35 years, Occ. Household,
- 1/2 Rasika @ Sarika w/o Rajshekar Pandhare,
Age.32 years, Occ. Household,
R/o. Parkette Galli, Udgir,
District Latur.
2. Sulochana w/o Subhashappa Kevalram,
Age.53 years, Occ. Household,
3. Santosh s/o Subhashappa Kevalram,
Age.29 years, Occ. Nil (Education),
All R/o. Kevalram Galli, Tq. Ausa,
District Latur.
4. Deelip s/o Narsingrao Pawar,
Age.52 years, Occ. Business,
5. Deepali w/o Deelip Pawar,
Age.46 years, Occ. Household,

6. Prabhavati w/o Bhimashankar Swami,
Age.51 years, Occ. Household,
R/o. Sitaram Nagar, Latur.
Colony, Ausa road, Latur.

*** **RESPONDENTS**
(ORIG. DEFENDANTS)

Appeal under Section 96 of Civil Procedure Code, 1908.

Advocates' Appearance :

Shri S.Y. Deshpande, advocate for Appellant/Original plaintiff.

Shri G.P. Katale, advocate for Respt. No. 4 to 6/Org.Deft.No.4 to 6.

Respondent Nos.1 to 3 are Ex-parte.

:: J U D G M E N T ::
(DELIVERED ON : 15.04.2026.)

This appeal is preferred being aggrieved by the judgment and decree passed by Civil Judge, Junior Division, Ausa District Latur, dated 22.09.2016 in Regular Civil Suit No. 230/2010. The appellant is the original plaintiff, whereas respondent Nos.1 to 6 are the original defendants. Hereinafter, the parties are referred by their original nomenclature in the original suit.

The case of the plaintiff:-

2. The defendant No.1 is plaintiff's father, defendant No.2 is his mother and defendant No.3 is his brother. The partition had taken place between the father of plaintiff and his five brothers by court decree in RCS No. 484/1987. The defendant No.1 was allotted Sy.No. 28 to the extent of 6 A. land in East-North corner and the house property No. 1353/8 situated at Pirmagajwadi, Tq. Ausa. As such Sy.No. 28 to the extent of 6 A. land and house property are the ancestral properties of the plaintiff wherein

plaintiff is having birth right. The father of plaintiff (defendant No.1) was addicted to liquor, gambling. As he was addicted to bad vices, he used to raise loans to fulfill his bad vices. During the period 1990 to 1993 without having any legal necessity the defendant No.1 sold out Sy.No. 28 for nominal consideration. Defendant No.1 sold out 3 A. land out of Sy.No.28 to defendant No.6 by registered sale deed dated 12.03.1990. He again sold out 1 acre land in favour of defendant No.6 by registered sale deed dated 07.01.1991. Again defendant No.1 sold out 2 acres remaining land in Sy.No. 28 to defendant No.4 by registered sale deed dated 26.04.1993. All these lands were sold by defendant No.1 without legal necessity of the family. The plaintiff was born on 19.08.1989. At the time of execution of those sale deeds, he was minor.

3. Thereafter, defendant No.6 sold out the land purchased in 1990 and 1991 to defendant No.5 and 4. Defendant No.1 sold out all the lands in Gat No. 28 by three different sale deeds during period of 1990-1993 to defendant No.4 and 6 without having any legal necessity. So these sale deeds are not binding on the share of the plaintiff. After becoming major, plaintiff demanded share in the suit properties from defendant No.1 and 4 to 6, but they denied. Hence, plaintiff was constrained to file this suit for partition and separate possession of the suit properties and for declaration that sale deeds executed by the defendant No.1 are not

binding on his share.

Case of defendant Nos.4 & 5:-

4. Defendant Nos.4 and 5 only contested the suit by filing written statement. Defendant No.5 is not direct purchaser from defendant No.1. She purchased 3 acres of land in survey No. 28 from defendant No.6 by registered sale deed dated 24.07.1991. All the lands were sold out by defendant No.1 to meet out legal necessities of the family. Defendant No.2 (mother of plaintiff) also consented the sale transaction in favour of these defendants by consent deed dated 22.07.1997. The sale transactions are perfectly binding on all the family members including plaintiff. Defendant Nos. 1 & 2 tried to obstruct the possession of defendant No.4 in the year 1997. Therefore, defendant No.4 filed suit RCS No. 417/1997 which ended in terms of compromise between defendant No.4 and defendant Nos.1 & 2. Defendant Nos.1 & 2 had admitted that sale deeds were executed to meet legal necessity of the family. The defendants have also repaid the loan of Siddheshwar Bank standing in the name of the defendant No.1 and also the loan of Maharashtra Agricultural and Rural Development Bank. It is well within knowledge of the plaintiff and defendants that the sale deeds came to be executed by defendant No.1 for family necessity and for repayment of debts. After 20 years the plaintiff has filed this suit only to extract money and to trouble these defendants.

5. Heard learned counsel of the appellant(plaintiff) and respondent Nos.4 to 6 (defendant Nos.4 to 6).

6. Learned counsel of the plaintiff vehemently argued that father of plaintiff by name Subhashappa sold out the suit property i.e. Sy.No. 28 by three different sale deeds dated 20.03.1990, 07.01.1991 and 26.04.1993 without having legal necessity. He would submit that the property was sold out to fulfill his bad vices without taking into consideration welfare of the family. Learned counsel of the appellant also pointed out that the whole landed property was sold out and nothing remained with the family of Subhashappa and this shows that it was sold out without having legal necessity. On the other hand, learned counsel of the respondent Nos.4 to 6 argued that defendants have proved that the property was sold out by Subhashappa for the legal necessity of the family. He pointed various circumstances in the case suggesting that property was sold out for legal necessity.

7. The whole case revolves around point of legal necessity. The burden to prove that the vendor Subhashappa sold out suit property for legal necessity of the family is on the purchasers i.e. defendant Nos.4 to 6. Learned trial court has given finding in favour of the existence of the legal necessity at the time of sale. So, the decision on this point would decide the fate of this appeal. Accordingly, I am framing following points for my determination. I have given findings thereon for the reasons stated thereunder.

	<u>POINTS</u>		<u>FINDINGS</u>
1.	Whether the purchasers have proved : that Subhashappa sold out the suit property for legal necessity of the family ?	:	Yes.
2.	Whether impugned judgment and : decree needs any interference?	:	No.
3.	What order ?	:	As per final order.

REASONS

As to Point No.1 :-

8. It is the case of the defendant Nos.4 & 5 that Subhashappa was not having source of income from field property. To maintain his family including providing education to the children, for repayment of the bank loans and for other legal necessities Subhashappa sold out the suit property. The father of plaintiff Subhashappa sold out the suit property Sy.No.28 by three different sale deeds at different period total adm. 6 A. Subhashappa sold out total 6 A. land in Sy. No. 28 by the sale deeds dated 20.03.1990 to defendant No.6, by sale deed dated 07.01.1991 to defendant No.6 and lastly by sale deed dated 26.04.1993 to defendant No.4. The birth year of the plaintiff is 1989. So at the time of last sale deed, the plaintiff was only 4 years old. Plaintiff's brother Santosh (defendant No.3) was 2 years elder. Learned counsel of the plaintiff argued that what would be the expenditure for the education on 4 - 5 years old

children. It is to be noted that only expenditure on education was not the reason, but overall maintenance of the family was the reason coupled with other reasons including repayment of debts. It is to be noted that plaintiff was having two elder sisters. Subhash had to maintain the family of six members i.e. four children, wife and he himself.

9. It is averred by the plaintiff that Subhashappa used to raise loan for fulfilling his bad vices. The plaintiff has failed to prove that Subhashappa addicted to liquor, playing gambling etc. He has not examined any witness for proving the fact that Subhashappa was addicted to bad vices at the relevant time. Defendant No.1 and 2 (parents of plaintiff) did not appear in the suit. But as it is contention of the plaintiff himself that Subhashappa raised debts, probability can not be ruled out that repayment of debts was also one of the reasons for selling out the suit property. PW-6 Bhimashankar Swami is the husband of defendant No.6. Subhashappa sold out suit property on 20.03.1990 and 07.01.1991 to defendant No.6. Being husband of defendant No.6, he claims to be conversant with the transactions took place. PW-6 Bhimashankar stated in his evidence that in the month of March 1990, Subhashappa's father and Subhashappa's brother had been to him and told him that as Subhashappa was in debts, he wanted to sell his land. So the fact that Subhashappa was in debts at the relevant time appears probable.

10. It has been brought on record that on 30.08.1991 Subhashappa availed loan of Rs. 15,000/- from Siddheshwar Bank and on 19.01.1993 he availed loan of Rs. 16,000/- from Cooperative Agricultural and Rural Development Bank. Subhashappa executed sale deed dated 26.04.1993 in favour of the defendant No.4 in respect of 2 acres land. Defendant No.4 Dilip Pawar has stated in his evidence that Subhashappa sold out his land for repayment of the bank loans and other legal necessities of the family. As there were loans of the banks on Subhashappa, the contention of the defendant No.4 that as Subhashappa had to repay the loan, he executed sale deed in his favour appears probable one. Learned counsel of the appellant argued that the loan was repaid in the year 1997 and so it can not be held that Subhashappa executed sale deed dated 26.04.1993 in favour of defendant No.4 for repayment of loan of bank. It is to be noted that there were loans of bank on Subhashappa. He told defendant No.4 that he wanted to sell the land for repayment of bank loan and other legal necessity of family. For the purchaser, confirmation of the fact of the existence of loan is sufficient. After paying consideration he is not supposed to see whether, in fact, the money paid by him was applied for repayment of loans or not.

11. In the year 1997, defendant No.4 filed suit against Subhashappa and his wife for seeking permanent injunction against them. In that suit compromise was arrived between present

Dilip Pawar, Subhashappa and his wife Sulochana. Compromise decree is filed at Exh. 37. In this compromise Subhashappa and his wife admitted that Subhashappa sold the lands for legal necessity of the family. It is to be noted that the vendor and his wife themselves admitted in compromise that they sold out the lands out of legal necessity of the family, so it assumes importance. This circumstance also makes the court hold that the lands were sold by Subhashappa for legal necessity of the family. Defendant No.2 Sulochana also executed registered consent deed on 22.07.1997 stating that her husband entered into transactions of sale to meet out legal necessity of the family. This is also an additional circumstance for an inference that Subhashappa must have sold the lands out of legal necessity of the family.

12. During cross-examination of PW-1 Dilip Pawar he was suggested by the plaintiff's side that Subhashappa was running brick kiln. Dilip Pawar admitted that Subhashappa was running brick kiln. At the relevant time of sale deed dated 26.04.1993, Subhashappa shut down the brick kiln. Means, it has come on record that before executing sale deed dated 26.04.1993 Subhashappa was running brick kiln. It is interesting to see as to when Subhashappa might have started the business of brick kiln. PW-6 Swami who is husband of defendant No.6 has stated in his evidence that at the time of sale deed dated 07.01.1991 in favour of defendant No.6, this witness PW-6 Swami was told that

Subhashappa in need of money for meeting out legal necessity of the family and for starting brick kiln. In the sale deed dated 07.01.1991, there is reference that Subhashappa is need of money for meeting out family necessity and for expansion of his business. If all these material is seen collectively, it can be validly inferred that by using the money received in the sale deed of 1990 and 1991, Subhashappa started the business of brick kiln. Of course, he must have started such business for getting more income source for the family. The reference in the sale deed of 1991 that he needs money for the expansion of his business suggests that this 'business' must be the business of brick kiln because on record there is no reference of any other business. It implies that the money received in the sale deed in favour of defendant No.6 dated 20.03.1990 was used for fulfilling the legal necessities of the family, repaying debts and as well as for starting the brick kiln at small scale. It appears that thereafter again he was interested to expand the business of brick kiln and so he entered the transaction of sale in the year 1991. It appears that though he started and expanded business of brick kiln, he failed to run that business efficiently and had to shut down that business and thereafter he again sold out the land to defendant No.4 in the year 1993. So there is reason to believe that Subhasappa sold out the lands for the purpose of starting and expanding business of brick kiln also. This is the another circumstance in chain which makes court hold in favour of existence of legal necessity at the time of sale.

13. In the sale deeds dated 20.03.1990, 07.01.1991 and 26.04.1993, there are references that the land was being sold to meet out the legal necessity of the family. Normally such references in the sale deed without having other circumstances in corroboration do not assume much importance. But I have already discussed the circumstances which show the existence of legal necessity at the relevant time of execution of sale deeds. So these reference in the sale deeds about existence of legal necessity can be taken as corroborative piece of evidence.

14. As such there are many circumstances suggesting existence of legal necessity at the time of selling out lands by Subhashappa. After about 20 years this suit is filed by the plaintiff for declaration that these sale deeds are not binding upon his share. After so many years purchasers have done there best to prove the legal necessity at the relevant time of the sale. Hence, for the discussion made above I hold that Subhashappa sold out the suit lands for legal necessity of the family. Being Karta he was having full authority to sell the property for the legal necessity of the family. So, the transactions are very much binding on other family members. Accordingly, I have recorded positive finding on point No.1.

As to Point No.2 :-

15. The learned trial court has correctly appreciated the

evidence on record and came to the conclusion that the father of plaintiff sold out the suit property for the legal necessity of the family. The trial court has rightly dismissed the suit. Hence, I see no scope for interference in the judgment and decree of learned trial court. Hence, I have recorded negative finding on point No.2.

As to Point No.3 :-

16. In view of findings on point Nos.1 & 2, I hold that the appeal deserves to be dismissed. Accordingly, I pass following order.

:: ORDER ::

- 1) Appeal is dismissed with costs.
- 2) The judgment and decree dated 22.09.2016 passed in Regular Civil Suit No.230/2010 by the learned Civil Judge, Junior Division, Ausa are hereby confirmed.
- 3) Decree be drawn up accordingly.
- 4) Record and proceeding be sent back to the learned trial court.
- 5) Inform the learned trial court accordingly.

Date: 15/04/2026

[Vidyadhar S. More]
Adhoc District Judge-1, Latur.

Judgment

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RCA No -105/2017

Sachin Vs. Subhashappa (Exh.34)

"CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER".

(L.S. Panhale)

Stenographer (Grade-1)

NAME OF STENOGRAPHER

Name of the Judge (With Court Room No.) :

Shri Vidyadhar S. More,
Ahoc District Judge-1, Latur.

Date for pronouncement of Judgment/Order:

15.04.2026

Judgment/Order signed by P.O. on:

15.04.2026