

MHLA160001232011



R.C.S. No.05/2011

Nirmala & Ors. Vs. Manik & Ors.

ORDER BELOW EXH.184

This is an application to frame additional issue of legal necessity.

2. Heard Learned Advocate Shri. R.M.Patil for the plaintiffs and learned Advocate Shri.B.V.Patil for defendant Nos.2 and 3 and learned advocate Shri. U.C. Mahajan for defendant No. 4 and 5 at length.

3. I have carefully gone through the record. The plaintiffs claimed reliefs of partition and separate possession and pleaded about illegal transfer of ancestral land and sale-deeds dated 11/02/1999, 02/07/1999 and 23/05/2000. The defendant No.1 admitted the plaintiffs' suit and prayed to declare null and void sale-deeds dated 11/02/1999 and 23/05/2000. However, the defendant Nos.2 to 5 have denied illegality in alleged sale-deeds and pleaded about that land was alienated for legal necessity. Accordingly, the issue of legal necessity is important in this suit to determine the validity of alleged transactions and right and liabilities of the parties. It is also material to decide the fact in issue and adjudicate the claim of parties. But issue of legal necessity is yet not framed. There is need to frame additional issue in that regard. It is permissible in eye of law and the stage of argument is immaterial for framing of issue, vide Order XIV Rule 5 of the Code of Civil Procedure.

4. Both sides have made dispute of burden of proof of legal necessity. The burden of proof regarding the necessity is generally supported by the principles of analogous to section 101 of the Indian

Evidence Act and corresponding section 104 of the Bharatiya Saksha Adhiniyam 2023. Similarly, an issue of legal necessity is especial knowledge of the purchaser i.e. defendant Nos.2 to 5. In view of section 106 of the Indian Evidence Act and corresponding section 109 of the Bharatiya Saksha Adhiniyam 2023, the burden is shifted upon the defendants to prove the legal necessity. The application is deserved to be allowed. Hence, I pass the following order.

ORDER

1. The application is allowed and framed following additional issue, in the interest of justice.

Additional Issue:-

2A) “Do the defendant Nos. 2 to 5 prove that the defendant No.1 sold the land in legal necessity ?”

2. Both parties shall expedite the suit and adduce evidence if necessary without claiming adjournment.

3. Order dictated on computer and pronounced in open court.

Date- 23/04/2026.
Deoni.

(S.A. Surjuse)
Civil Judge Jr. Dn., Deoni.

In view of order below Exh.184, following Additional issue is framed.

Additional Issue:-

2A) Do the defendant Nos. 2 to 5 prove that the defendant No.1 sold the land in legal necessity?

Date- 23/04/2026.
Deoni.

(S.A. Surjuse)
Civil Judge Jr. Dn. Deoni.