



Presented on : 25-03-2015  
Registered on : 25-03-2015  
Decided on : 23-03-2026  
Duration : Y M D  
10 11 26

**IN THE COURT OF DISTRICT JUDGE - 3, ALIBAG,**  
**DIST. RAIGAD**

(Presided over by S.D.Bhagat)

**Regular Civil Appeal No.29 /2015.**

**CNR NO.MHRG010009942015**

**Exhibit No.42/A**

1. **Mr.Mahesh Balaji Mhatre**  
Age.60 years, Occ. Farmar  
R/at- Tambadshet, Tal.Pen, Dist.Raigad.
2. **Smt.Vastala Pandurang Patil**  
Age.63 years, Occ. Household  
R/at- Pezari (Bandhanroad),  
Tal.Alibag, Dist.Raigad.
3. **Smt.Sulochana Shankar Thakur**  
Age.61 years, Occ. Household  
R/at- Khopoli, Saibaba Nagar,  
Tal.Khalapur, Dist.Raigad.
4. **Mr.Sagar Arun Bhagat**  
Age.28 yrs, Occ. Agriculture  
R/at -Tambadshet, Tal.Pen  
Dist.Raigad. **...Appellants.**
5. **Mr.Sangam Arun Bhagat**  
Age.27 yrs, Occ. Agriculture  
R/at- Tambadshet, Tal.Pen  
Dist.Raigad.

- 6. Mr.Sumit Arun Bhagat**  
Age.26 years, Occ. Agriculture  
R/at.Tambadshet,  
Tal.Pen, Dist.Raigad.

**Vs**

- 1. Mr.Balu Dharma Mhatre** ... Respondents  
Age.46 years, Occ- Agriculture & Service  
(himself and legal heirs of respondent No.2 & 6)
- 2. Mr.Dharma Khandu Mhatre**  
Deceased after decision of suit through his  
legal heirs respondent No.1 and 3, 6 to 9.
- 3. Mr.Krushna Dharma Mhatre**  
Age. 53 years, Occ. Agriculture  
(himself and legal heirs of respondent No.2 & 6)
- 4. Mr. Milind Krushna Mhatre**  
Age. 27 years, Occ. Education
- 5. Mr.Sanket Krushna Mhatre**  
Age.25 years, Occ. Education
- 6. Smt.Shantibai Dharma Mhatre (Deceased and represented  
respondent No.1,3,7,8 & 9)**  
  
**No.1 to 6 R/at.Tambadshet,  
Tal.Pen, Dist.Raigad.**
- 7. Smt.Pradnya Pandharinath Mhatre**  
(herself and legal heirs of respondent No.2 & 6)  
Age.38 years, Occ. Service  
R/at - C/o.Gyan Vikas Shankshan Sanstha  
Sector 19, Koparkhairane, Navi Mumbai,  
Dist.Thane.
- 8. Smt.Manakshi Govardhan Patil**  
(herself and legal heirs of respondent No.2 & 6)  
Age.35 years, Occ. Service  
R/at- Twin Bridge, Block No.306,

Plot No.1, Sector 16 Ghansoli Gaon,  
Navi Mumbai, Dist.Thane.

- 9. Smt.Malati Dharma Mhatre**  
(herself and legal heirs of respondent No.2 & 6)  
Age.51 years, Occ. Service,  
R/at - Tambadshet,  
Tal.Pen, Dist.Raigad.

**Appeal against judgment and decree  
passed in RCS No.183/2012 by C.J.J.D  
Pen dt.18-02-2015.**

**Appearance :-**

Shri.R.V.Oak advocate for the appellants.  
Shri.Jaywant Gharat for the respondent No.1.  
Shri.V.C.Thakur for the respondent No.3.  
Shri.A.M.Katkar for the respondent Nos.4 to 9.

**:: J U D G M E N T ::**

(Delivered on this 23<sup>rd</sup> day of March, 2026)

**Introduction :-**

The present appeal is directed against the Judgment and Decree dated 18.02.2015 passed by the learned Civil Judge Junior Division, Pen in Regular Civil Suit No.183 of 2012, whereby the learned trial court partly decreed the suit filed by the plaintiff for declaration and partition of the suit properties.

**02.** By the impugned judgment, the learned trial court held that the suit properties described in paragraph 1-A of the plaint were ancestral joint family properties, and further held that the sale deeds executed by defendant No.1 in favour of

defendant Nos.3, 4, 6, 7 and 9 were not binding upon the share of the plaintiff. Consequently, the learned trial court passed a preliminary decree for partition.

**03.** Being dissatisfied with the said judgment and decree, the defendants have preferred two appeals, namely Regular Civil Appeal No.25 of 2015 and Regular Civil Appeal No.29 of 2015. Since both appeals arise out of the same judgment and decree, they were heard together. However, separate judgments are being delivered for clarity and convenience.

### **Facts of the Case**

**04.** The original plaintiff Balu Mhatre instituted the suit contending that the suit properties were ancestral properties of the family originally belonging to Khandoo Mhatre, the grandfather of the plaintiff. According to the plaintiff, after the death of Khandoo Mhatre, the properties devolved upon his sons including Dharma Mhatre (defendant No.1) and continued as joint family properties.

**05.** The plaintiff further contended that defendant No.1, with the intention of depriving the plaintiff and defendant No.2 of their legitimate share, executed six sale deeds in favour of close relatives, namely defendant Nos.3, 4, 6, 7 and 9, without any legal necessity and without consent of the other coparceners.

**06.** It was therefore contended that the said transactions were collusive and nominal transactions executed only to defeat

the plaintiff's share in the joint family property. On this basis the plaintiff sought declaration that the said sale deeds were not binding on his share and further sought partition and separate possession.

### **Defence of the Defendants :-**

07. The contesting defendants filed written statement at Exh.31, contending that defendant No.1 had alienated the suit properties for legal necessity and for the benefit of the Hindu joint family. It was further contended that the purchasers had paid valid consideration and therefore the sale deeds were binding upon the plaintiff. Defendant No.9, who is the appellant in the present appeal, also claimed that he was a bona fide purchaser for value.

### **Judgment of the Trial Court :-**

08. After appreciating the oral and documentary evidence, the learned trial court held that: the suit properties were ancestral joint family properties, the plaintiff had 1/6th share in suit properties Nos.1 to 9 , the plaintiff along with defendant Nos.1, 2 and 6 to 8 had collectively half share in property No.10, the sale deeds at Exh.54 to Exh.59 were not binding on the share of the plaintiff. Accordingly, a preliminary decree for partition was passed.

### **Submissions of the Appellant :-**

09. The learned advocate for the appellant contended that the trial court failed to frame a specific issue regarding legal necessity, though such defence was raised in the written

statement. It was therefore argued that the judgment of the trial court should be set aside and the matter should be remanded to the trial court for fresh trial after framing an issue regarding legal necessity.

### **Submissions of Respondent No.1 :-**

10. Respondent No.1 opposed the appeal and contended that the trial court has correctly appreciated the oral and documentary evidence, the alienations were made in favour of close relatives only to defeat the plaintiff's share, the defendants failed to prove legal necessity, remand is not warranted as evidence is already on record, Respondent No.1 relied upon several judgments including:

*Vikrant v Uttam Langade* (AIROnline 2021 Bom 5320)

*Sushilkumar Jaiswal v Awtarsingh Taneja* (AIROnline 2023 Bom 1228) 2022 (2) Mh.L.J. 59

### **Points for Determination :-**

11. The following points arise for determination:

<b>Sr.No.</b>	<b>Points</b>	<b>Findings</b>
1.	Whether the appellant proves that the trial court erred in holding that the suit properties are ancestral joint family properties ?	... Not proved.
2.	Whether the appellant proves that the alienations made by defendant No.1 were supported by legal necessity ?	... Not proved.

- |    |   |                     |
|----|---|---------------------|
| 3. | Whether the appellant proves that the matter deserves to be remanded for framing an issue regarding legal necessity ? | ... Not proved.     |
| 4. | Whether the judgment and decree passed by the trial court require interference ?                                      | ... Not proved.     |
| 5. | What order ?  | As per final order. |

### **REASONS**

#### **AS TO POINT NO.1 :-**

Whether the appellant proves that the trial court erred in holding that the suit properties are ancestral joint family properties ?

**12.** This point lies at the very root of the matter. Unless the true character of the suit properties is first determined, the subsequent questions, namely whether defendant No.1 could validly alienate them, whether the plaintiff had any subsisting share therein, and whether the impugned sale deeds are binding on such share, cannot be properly answered. The whole controversy thus begins with the nature of the suit property.

**13.** The plaintiff's case throughout has been clear and consistent. According to him, the suit properties originally belonged to Khandoo Mhatre, who was the grandfather of the plaintiff. After his death, the properties devolved upon his descendants. The plaintiff asserts that these properties never ceased to be family properties and that there was no partition by

metes and bounds separating the shares of the concerned branch members. He therefore claimed that the suit properties retained their character as ancestral / joint family properties, and that defendant No.1 could not, behind the back of the plaintiff and defendant No.2, unilaterally alienate them in a manner prejudicial to their undivided shares.

**14.** In support of this case, the plaintiff entered the witness box and adduced oral as well as documentary evidence. The documentary evidence consists substantially of the public revenue record, including the relevant 7/12 extracts and mutation entries, such as mutation entry Nos. 1973, 1986 and 3412. These documents, though not documents of title in the strict and absolute sense, are nonetheless public documents carrying presumptive evidentiary value regarding possession, succession, devolution and recognition of rights by the revenue authorities. In agrarian and family property disputes, such documents are not decisive by themselves, but they certainly form an important and often reliable evidentiary basis.

**15.** The evidence led by the plaintiff shows that the property stood in the name of the common ancestor and thereafter devolved upon the line of succession represented by defendant No.1. The plaintiff's oral testimony is not a mere bald assertion. It stands fortified by the revenue entries and mutation record showing how the property came down in the family. It is significant that the plaintiff's version is not contradicted by any competing documentary evidence of exclusive acquisition by defendant No.1. No sale deed, grant, exchange deed, partition deed or other title document is produced by the contesting

defendants to indicate that the suit properties were the self-acquired and separate properties of defendant No.1.

**16.** Not only that, the written submissions of respondent No.1 rightly emphasize that the plaintiff's case on the ancestral nature of the property also receives support from defendant No.2 Krishna Mhatre, who has supported the plaintiff's claim. That aspect assumes importance because defendant No.2 is not an outside person, but a member of the same family. His support to the plaintiff's case, particularly on the character of the property and the impropriety of the alienations, lends internal corroboration to the case that the properties were family properties and that the plaintiff was not setting up any artificial or newly invented claim.

**17.** A very material aspect of the matter is the admissions which have come on record during cross-examination of the defence witnesses. In civil litigation, particularly where the dispute concerns family property and intra-family transactions, admissions made in cross-examination often carry decisive weight. The appellate court cannot overlook these admissions while reassessing the record.

**18.** From the written submissions of respondent No.1 and from the evidence noticed by the trial court, it emerges that defendant No.6 Pradnya Mhatre admitted in cross-examination that the suit properties had not been partitioned by metes and bounds. She also admitted that the plaintiff had a share in the suit property. More importantly, she admitted that Survey No.57 Hissa No.1 at Hamarapur was ancestral. Such admissions are

incompatible with a plea that defendant No.1 was the exclusive owner with absolute freedom to deal with the properties as his separate estate.

**19.** Likewise, defendant No.9 Mahesh Mhatre, who is the appellant in the present appeal, made important admissions in cross-examination. He admitted that original Survey No.57/1 belonged to the plaintiff's grandfather Khandoo and that after Khandoo's death the land came in the name of the plaintiff's father. These admissions, made by the alienee himself, are highly significant. Once the appellant admits the original source of title in the common ancestor and the devolution of the property into the line of the plaintiff's father, it becomes difficult for him to sustain a plea that the plaintiff had no concern whatsoever with the property or that the property had already become the independent and exclusive estate of defendant No.1.

**20.** The appellant's own purchase conduct also weakens his stand on this issue. He admitted that before purchase he issued no public notice and obtained no consent of the plaintiff. This shows not only lack of due inquiry but also suggests that the appellant proceeded with the transaction despite the property carrying visible elements of family claim and possession. In fact, he admitted that on the western side of Survey Nos.57/1A and 57/1B the house of the plaintiff's wife Rajshree was situated and that the plaintiff and his wife were residing there. Thus, the appellant was clearly not dealing with a remote, isolated or stranger's property. He was dealing with land which, even according to his own admissions, was historically traceable to the plaintiff's family and physically

connected with the plaintiff's residential possession.

**21.** The written submissions filed on behalf of the appellant in RCA No.29/2015 do attempt to argue that the property inherited by defendant No.1 from his father became his separate property and, therefore, during his lifetime the plaintiff could not demand partition. That argument, however, cannot be accepted in the facts and manner it is urged here. First, one cannot examine such a legal submission in a vacuum detached from the pleadings and evidence actually brought on record. Second, the defence case itself, as pleaded before the trial court, was not that defendant No.1 was dealing with wholly self-acquired independent property. On the contrary, the defendants themselves justified the alienations on the footing of family legal necessity and benefit of the Hindu joint family. This position is reflected in the written statement and in the notes of argument. Once the defence itself invokes legal necessity and benefit of joint family, it implicitly accepts the family character of the property and the need to justify alienation under that legal framework. A party cannot, for supporting the alienations, rely on legal necessity applicable to joint family property and simultaneously seek to deny the family character of the very same property, unless the evidence overwhelmingly compels such a conclusion. No such overwhelming evidence exists here.

**22.** It is also noteworthy that the trial court did not arrive at its conclusion on Issue No.1 mechanically. The learned trial Judge considered the revenue entries and the broad evidentiary situation and noticed that there was no substantial rebuttal from the side of defendant Nos.9 to 14 except evasive

denial. The trial court's reasoning on this aspect is not perverse. It may be that revenue entries alone are not conclusive proof of title, but here they are not standing alone. They are accompanied by the plaintiff's consistent oral evidence, defendant No.2's supporting evidence, and crucial admissions by defence witnesses themselves.

**23.** The written submissions of respondent No.1 also rightly invoke the principle underlying admitted facts need not be proved. When significant facts emerge by way of admission from the other side, the court is entitled to act upon such admissions. Here, the defence admissions substantially reinforce the plaintiff's case that the property was ancestral and that no partition had taken place.

**24.** After considering the entire oral and documentary evidence, this Court finds that the finding of the trial court that the suit properties are ancestral joint family properties is based on proper appreciation of evidence. The appellant has not pointed out any reliable material to dislodge that finding. There is no positive evidence of self-acquisition by defendant No.1, nor any evidence of earlier partition severing the plaintiff's claim in respect of the suit properties concerned in this appeal.

**25.** Accordingly, I hold that the appellant has failed to prove that the trial court committed any error in holding that the suit properties are ancestral joint family properties. The finding recorded by the trial court on this aspect is legal, proper and supported by evidence. Therefore, point No.1 is answered in the Negative.

**AS TO POINT NO.2 :-**

Whether the appellant proves that the alienations made by defendant No.1 were supported by legal necessity and therefore binding upon the plaintiff ?

26. This point constitutes the real core of the appeal. Even if defendant No.1 was managing the family affairs, that circumstance by itself did not authorize him to deal with joint family properties according to his unfettered will. Under Hindu law, an alienation of joint family property by the karta or manager is sustainable only when it is shown that such alienation was made for legal necessity, or for benefit of estate, or with the consent of all persons whose interests are affected. Therefore, once the plaintiff challenged the sale deeds on the ground that they were executed without legal necessity and behind his back, the burden lay heavily upon the alienees and supporting defendants to establish the legal justification for such transactions.

27. The law on this point is no longer res integra. In *Vikrant s/o Vilasrao Patil (dead) through LRs. v. Uttam Nivrati Langade, AIROnline 2021 Bom 5320*, the Bombay High Court has reiterated that where the validity of an alienation of joint family property is sought to be sustained on the ground of legal necessity, the burden of proof lies on the purchaser / alienee. The purchaser must show either that there was actual legal necessity, or at least that he made proper and bona fide inquiry regarding the existence of such necessity. Mere recital in the sale

deed is not sufficient. The principle stated in the authority cited in the notes as Alienation of Joint Family Property by Karta: Permissibility is to the same effect: the purchaser must prove actual necessity or bona fide inquiry into the necessity. When the evidence in the present case is measured against these settled principles, the defence of legal necessity clearly fails.

**28.** The plea raised by the defendants is that defendant No.1 sold the properties for the medical treatment of himself and defendant No.5 and for the maintenance of the family. Such a plea is specific and serious. It necessarily calls for evidence of a clear and convincing nature. If illness is pleaded, the nature of illness, the period of treatment, the place of treatment, the expenditure incurred, and the reason why sale of ancestral property became unavoidable must come on record. If family maintenance is pleaded, some evidence should show the family's financial distress, inadequacy of other income, and the necessity of raising funds by alienation. If old age and ailment are pleaded, then at least some medical record, prescription, hospital paper, or cogent oral evidence of the person directly concerned ought to be produced. None of this has happened here.

**29.** The best and most natural witness on the issue of legal necessity was undoubtedly defendant No.1 Dharma, because he was the person who allegedly faced the financial and medical need and he was the executant of the sale deeds. If in truth the properties had to be sold because of compelling necessity, defendant No.1 was the one who could have most directly explained the nature of that need. Yet he did not enter

the witness box.

**30.** This omission assumes greater significance in view of the admission of defence witness Pradnya that defendant Dharma was attending court on every date and was capable of walking and talking. In other words, he was not shown to be in such a physical condition that would prevent him from deposing. Therefore, his abstention from the witness box invites an adverse inference. The trial court was justified in drawing such inference, and this appellate court finds no reason to differ.

**31.** Coming now to the evidence of defendant No.6 Pradnya Mhatre, it is seen that her testimony is wholly inadequate to discharge the burden of proving legal necessity. In examination-in-chief she made a general assertion that the properties were sold because of family requirements and ailments. But broad assertions are not proof. In cross-examination, the weakness of her version became apparent. She admitted several material facts which seriously undermine the defence.

**She admitted that :-**

Defendant Dharma was regularly attending court and was physically capable; there had been no partition of the suit property; in 2006 Milind had no source of income; in 2011 Milind also had no source of income; the plaintiff had a share in the suit property; the six sale deeds were executed without signatures of the plaintiff and defendant No.2.

**32.** These admissions are highly material. If Milind and

some of the other purchasers had no source of income, then the court is entitled to examine with suspicion whether they were financially capable of paying substantial consideration. If no consent of the plaintiff and defendant No.2 was taken, then the transactions appear to have been effected behind their back. If there had been no partition, the family nature of the property stands reinforced. If defendant Dharma was physically capable of attending court, then his non-examination becomes even more telling.

**33.** The respondent's written submissions also point out that Pradnya could not furnish any convincing particulars regarding the illness of defendant No.1 or defendant No.5, nor any concrete details of expenditure. She even stated ignorance in relation to medical expenses concerning the plaintiff. Her version is thus vague, unparticularized and unsupported by documentary corroboration.

**34.** The evidence of Maruti Patil, examined on behalf of the defendants, also does not advance the defence case. On the contrary, his cross-examination damages it. He admitted that the economic condition of defendant Dharma was good. He had no written proof about Dharma's illness. He did not know on which dates Dharma had called his sons and daughters for help. He did not know how much consideration defendant No.1 had received under the relevant sale deeds. He did not even know the exact dates of the transactions. A witness who lacks personal knowledge of the very circumstances constituting the alleged necessity cannot establish legal necessity in the eye of law. His testimony is too general, too uncertain and too devoid of

particulars to carry the burden required in such matters.

**35.** The present appellant Mahesh Mhatre has also not discharged the burden cast upon him as an alienee. His evidence mainly proves that a sale deed was executed in his favour. But proving execution of a sale deed is not enough. What had to be shown by him was that the sale was justified by legal necessity, or at least that he made genuine and bona fide inquiry regarding such necessity. His cross-examination demonstrates the contrary. He admitted that he did not issue any public notice before purchasing the property and did not take the plaintiff's consent. He admitted the ancestral source of the property. He admitted circumstances showing the plaintiff's physical connection and residence near the suit property. All this suggests that the appellant purchased the property without due inquiry and with full opportunity to know that the property was associated with family claims.

**36.** The written submissions of respondent No.1 rightly stress that the appellant is not an ordinary rustic purchaser but a person with legal knowledge. Even leaving aside that aspect, the law expects every prudent purchaser of joint family property to make reasonable inquiry. Where the property is shown to have come from the common ancestor and the plaintiff's family occupation is visible on the spot, a purchaser cannot simply rely on recitals and remain indifferent to the rights of other family members. Failure to make such inquiry disentitles him from claiming the protection available to a bona fide purchaser.

**37.** Another suspicious circumstance which cannot be

ignored is that several of the impugned sale deeds were executed in favour of close relatives of defendant No.1 his own children and close nephew. The written submissions of respondent No.1 have highlighted this aspect. The record shows that defendant No.1 allegedly sold different parcels to persons closely related to him, some of whom admittedly had no source of income at the relevant time. When close family transfers take place in the setting of an already existing undivided family property, and when the recipients lack demonstrated financial capacity, the court must carefully scrutinize whether the transactions were genuine commercial sales supported by consideration or only devices intended to defeat the shares of non-consenting co-sharers.

**38.** The trial court has appreciated this aspect in paragraphs 27 to 32 of its judgment. It observed that there was no explanation as to how such purchasers arranged the consideration amount. This Court finds that observation justified. The defence has not produced any evidence of source of funds of the concerned purchasers. Nor has it produced bank record, account books, receipt books or any independent evidence showing actual passing of consideration. In the absence of such evidence, and in the light of the admissions noted above, the trial court's inference that the transactions were nominal or at least not proved as genuine necessity-based sales cannot be said to be perverse.

**39.** It is also of considerable relevance that none of the sale deeds bears the consent or signatures of the plaintiff or defendant No.2, though the defence witnesses admitted that

these persons had a share in the property. It is true that the absence of consent by itself may not always nullify an alienation if legal necessity is proved. But where legal necessity is not proved, the fact that the sales were effected behind the back of non-consenting co-sharers becomes a strong indicator that the transactions were not made in the regular course for family benefit, but rather with a design adverse to their interests.

**40.** The legal authorities cited by respondent No.1 strengthen this conclusion. In *Vikrant v. Uttam Langade*, the Bombay High Court clearly held that the purchaser must prove legal necessity and that recital in the sale deed alone is insufficient. The principle stated in the authority regarding alienation by karta is also that the purchaser must prove actual necessity or bona fide inquiry. In the present case, the purchasers have failed on both counts. Neither actual necessity is proved, nor due inquiry is shown.

**41.** Therefore, upon independent and careful reappraisal of the entire evidence, this Court finds no infirmity in the conclusion reached by the trial court that the alienee-defendants failed to prove legal necessity. The oral evidence relied upon by the defence is vague, unsupported, and substantially weakened by cross-examination. The non-examination of defendant No.1 is fatal to the plea. The admissions of Pradnya, Maruti and Mahesh reinforce the plaintiff's case rather than the defence. The surrounding circumstances. Therefore, I answered point No.2 is in the negative.

**As to Point No.3 :-**

Whether the appellant proves that the matter deserves to be remanded for framing an issue regarding legal necessity ?

**42.** The appellant has strongly pressed for remand on the ground that the trial court did not frame a separately worded issue specifically on legal necessity. This argument has already been carefully considered in the connected appeal, and the same requires to be addressed here in a manner consistent with that judgment.

**43.** The law relating to remand is contained in Order XLI Rules 23, 23-A, 24 and 25 of the Code of Civil Procedure. Remand is not to be ordered as a matter of course. It is an exception. Where the record is complete and the appellate court finds sufficient material to decide the controversy finally, remand ought to be avoided.

**44 .** In the present case, the suit was not decided on any preliminary issue. It was tried fully on merits. Both sides led oral and documentary evidence. The defence of legal necessity was clearly pleaded. The plaintiff knew that this was the defence. The defendants knew that the plaintiff disputed it. Evidence was in fact led on that aspect. The trial court, though it did not frame a separately numbered issue in those exact words, has in substance considered the defence of legal necessity in great detail while deciding the issues relating to partition and declaration. Paragraphs 27 to 32 of the trial court judgment leave no room for doubt that the question of legal necessity was

fully gone into.

45. The Hon'ble Bombay High Court in *Sushilkumar Kamalnarayan Jaiswal v. Awtarsingh Jawaharsingh Taneja, AIROnline 2023 Bom 1228*, has held that even if a specific issue is not framed, if both parties have gone to trial knowing the controversy and have led evidence, decision is not vitiated and remand is not warranted. Similar principles are laid down in 2022 (2) Mh.L.J. 59, AIROnline 2021 Bom 2410, and 2017 (5) Mh.L.J. 163, all of which caution appellate courts against unnecessary remand.

46. The reason is obvious. A remand in such a case would merely prolong litigation and give the losing party an opportunity to fill up lacunae in the evidence. That is impermissible. The appellate court itself can, and indeed should, decide the matter finally under Order XLI Rule 24 CPC if the material on record is sufficient.

47. Here, the material is more than sufficient. The plaintiff, defendant No.2, Pradnya, Maruti and Mahesh have all been examined. The sale deeds and revenue records are on record. The defence of legal necessity has been fully explored in cross-examination. No failure of justice has been shown. Therefore, I hold that the absence of a separately framed issue on legal necessity has caused no prejudice to the appellant. Remand is neither necessary nor proper. Point No.3 is answered in the Negative.

**As to Point No.4 :-**

Whether the judgment and decree passed by the trial court require interference ?

48. In the light of the findings recorded on Point Nos.1, 2 and 3, it necessarily follows that the appellant has failed to establish any legal or factual error in the impugned judgment warranting interference.

49. The learned trial court has appreciated the oral and documentary evidence in a careful manner. Its findings on the ancestral nature of the property, the absence of legal necessity, the non-binding character of the sale deeds vis-a-vis the plaintiff's share, and the maintainability of the suit are all supported by the record. No perversity, no material misreading of evidence, and no miscarriage of justice is shown. Accordingly, the appeal deserves to be dismissed. Hence, Point No.4 is answered in the Negative.

**CONCLUSION :-**

50. The plaintiff has succeeded in proving that the suit properties were ancestral joint family properties and that he had a subsisting undivided share therein. The appellant and other alienee-defendants have failed to prove that the impugned sale deeds were executed for legal necessity or after bona fide inquiry. The prayer for remand is devoid of merit because the controversy on legal necessity was fully pleaded, fully tried and fully adjudicated. The judgment and decree passed by the learned trial court therefore call for no interference.

## ORDER

1. Regular Civil Appeal No.29/2015 stands dismissed.
2. The Judgment and Decree dated 18.02.2015 passed by the learned Civil Judge, Junior Division, Pen in Regular Civil Suit No.183 of 2012 are hereby confirmed.
3. Consequently, the preliminary decree passed by the trial court declaring the shares of the parties and directing partition of the suit properties shall stand confirmed.
4. It is hereby confirmed that :
  - (a) The plaintiff and defendant Nos.1, 2 and 6 to 8 are entitled to 1/6th share each in the suit properties mentioned at Serial Nos.1 to 9 of paragraph 1-A of the plaint.
  - (b) In the suit property mentioned at Serial No.10 of paragraph 1-A of the plaint, the plaintiff and defendant Nos.1, 2 and 6 to 8 together hold one-half share and defendant Nos.9 to 14 together hold one-half share.
5. The declaration granted by the trial court that the sale deeds at Exh.54 to Exh.59 executed by defendant No.1 in favour of defendant Nos.3, 4, 6, 7 and 9 are not binding on the share of the plaintiff is hereby confirmed.
6. The prayer made by the appellants for remand of the suit for framing an issue regarding legal necessity is rejected.
7. In the facts and circumstances of the case, parties shall

bear their own costs.

8. Draw decree accordingly.
9. Record and proceedings be sent back to the trial court forthwith.

Pronounced in open Court

Alibag.

(S.D.Bhagat)

Date : 23/03/2026.

District Judge-3, Raigad-Alibag.