



FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 311 OF 2010

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. A.R. Borulkar, Advocate for the appellants.

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CORAM : S.V. GANGAPURWALA, J.

DATE : 06/04/2011

PER COURT :

1. This is plaintiffs' Second Appeal.
2. The plaintiffs had filed Suit for partition and separate possession. The trial Court decreed the Suit. The defendants preferred Appeal. The appellate Court allowed the Appeal and dismissed the Suit. The plaintiffs being aggrieved thereby, have preferred the present Second Appeal.
3. Mr. Borulkar, the learned counsel for the appellants submits that the lower appellate Court was in error in dismissing the Suit on the ground that the property which was sold to one Piraji was



not included in the suit properties and as such the Suit for partition and separate possession is not maintainable. According to the learned counsel, the property was sold more than 25 years back i.e. prior to the birth of the plaintiff nos. 2 to 6.

4. When the plaintiffs were not born on the date of sale, they would not get any right to claim any share in the property which was already sold prior to their birth. Even the trial Court had come to the conclusion that there is absolutely no evidence of legal necessity and had decreed the Suit of the plaintiffs. The lower appellate Court only on the ground that the spirit has to be seen, has held that the same may be for legal necessity.

5. In light of the above, the following substantial question of law arises :

(i) Whether the Suit can be said to be bad in law on the ground of non joinder of necessary parties and non joinder of total properties when the property which was not included in the suit property was sold 25 years back i.e. prior to the birth of plaintiff nos. 2 to 6 ?

(ii) Whether the plaintiffs could have claimed any share in the property sold to Piraji prior to the birth



of plaintiffs ?

(iii) Whether the lower appellate Court was right in setting aside the finding on the count of legal necessity as arrived by the trial Court without coming to the close quarters of the reasonings given by the trial Court ?

6. Admit.

7. Print is dispensed with.

[S.V. GANGAPURWALA,J.]

KNP/SA 311.2010