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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.399 OF 2012

Mahadev Somnath Swami

APPELLANT

VERSUS

Shivaling Shivacharya Guru
Madiwal Shivacharya & Others

RESPONDENTS

.....

Mr. N. C. Swami, Advocate for the appellant
Mr. A. B. Chalak, h/f Mr S. B. Talekar, for respondents No.1 to 3

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 17th DECEMBER, 2015

ORDER :

1. Heard.
2. **Admit** on the following substantial question of law.
 - i. Whether trial court's order can be said to be proper in rejecting the plaint with reference to contentions coming up from the other side disregarding the plaint averments and whether the appellate court can be said to be right in sustaining said order while the law as declared in various judgments of the Supreme Court and High Courts is that for rejection of plaint what is germane is averments in plaint and pleas taken by the other side would not be relevant ?

2. Mr. Chalak, learned advocate holding for Mr. Talekar waives notice for respondents No.1 to 3.

3. At the request of learned advocates for the parties, for convenience and facility this second appeal be placed with second appeals No.391 of 2012 and 508 of 2012.

[SUNIL P. DESHMUKH, J.]

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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 6903 OF 2012
IN
SECOND APPEAL NO.399 OF 2012

Mahadev Somnath Swami

APPLICANT

VERSUS

Shivaling Shivacharya Guru

Madiwal Shivacharya & Others

RESPONDENTS

.....

Mr. N. C. Swami, Advocate for the applicant

Mr. A. B. Chalak, h/f Mr S. B. Talekar, for respondents No.1 to 3

.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 17th DECEMBER, 2015

ORDER :

1. The suit had been instituted by present applicant seeking declaration of ownership and injunction. The incident referred to is of the year 2005 and that in respect of the same, *status quo* order was operating only till 2006. Thereafter, there does not appear to be any interim relief operating in favour of the plaintiff - present appellant.

2. In the circumstances, this is not a case wherein discretion can be exercised at this stage in favour of the applicant.

3. Civil application, as such, stands rejected and is disposed of.

[SUNIL P. DESHMUKH, J.]