

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.261 OF 2013

(Gangaram Joti Kadam since deceased thr. his LRs. Vs. Sitaram Joti Kadam since deceased thr. his LRs.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.

Court's or Judge's orders.

Shri Dilip Bodake, Advocate for Appellants.

*Shri Nikhil Wadikar i/b Shri Nandu Pawar, Advocate for Respondent No.1
(a) to 1(c).*

CORAM: R.K. DESHPANDE, J.

DATE: 13th JULY, 2015.

Heard the learned counsels for the parties.

Admit on the following substantial question of
law.

(g) Whether the Civil Court can decide the issue of co-tenancy as per provisions of Section 85 and 85-A of the Bombay Tenancy and Agricultural Land, 1948?

(j) Whether defendant No.1 proves that since 1955 there was no joint family of Gangaram and Sitaram as per oral partition which was subsequently reduced in writing in the form of memorandum of partition (partition yadi) below Exh-120 as per provisions of the Indian Evidence Act, 1872 r/w. Provisions of Principles of Mulla's Hindu Law?

The learned counsel for the respondent waives service of notice.

In view of the substantial question of law as to whether the Civil Court decide the co-tenancy as per the provisions of Section 85 and 85-A of the Bombay Tenancy and Agricultural Land Act, 1948, the issue of tenancy can be referred to the Tenancy Court for adjudication pending the decision of the second appeal. The trial Court to forward the record and proceedings to the appropriate Tenancy Court for deciding the following issue.

“Whether the Gangaram was the exclusive tenant in respect of the suit property or was the co-tenant along with the Sitaram?”

The concerned Tahsildar to forward the findings on the issue of tenancy to this Court with a copy to the trial Court.

C.A. No.722/2013

Pending the decision of civil application, this Court has granted *ad-interim* relief in terms of prayer clause (a) on 17.09.2014. The said interim relief shall continue to operate during pendency of second appeal. However, this interim relief shall not come in the way, either of the trial Court or Tenancy Court to decide the issue of tenancy, which is required to be referred to the Tenancy Court.

JUDGE