

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION NO.828 OF 2015
IN
SECOND APPEAL NO.703 of 2004

Narmadabai w/o Chindhaji Gawai and ors.

-vs-

Kaduba Balaji Gawai and ors.

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

Court's or Judge's Orders.

Shri R. G. Kavimandan, Advocate for appellants/applicants.
Shri P. S. Kshirsagar, Advocate for respondents.

CORAM : **A.S.CHANDURKAR, J.**
DATE : **December 03, 2015**

For reasons mentioned in the application, same is allowed in terms of its prayer. Shri P. S. Kshirsagar, learned counsel waives notice on behalf of the respondents.

S.A. No.703 of 2004

In suit for partition and separate possession filed by the respondents herein, the trial Court while answering Issue No.13 held that the plaintiffs were not entitled for partition and separate possession. It further decreed the suit in so far as relief of joint possession was concerned. The plaintiffs filed R.C.A. No.90 of 1993 while the defendants filed R.C.A. no.46 of 1993. The Appellate Court in paragraph 17 of its judgment confirmed the conclusions of the trial Court regarding non-entitlement of the plaintiffs to the prayer for partition and separate

possession by partly allowing R.C.A. No.90 of 1993. The plaintiffs were entitled for mesne profits. The appeal filed by the defendants came to be dismissed.

Admit on the following substantial question of law :

“ Whether decree for joint possession could have been ordered after recording a finding that the relief for partition and separate possession could not have been granted ? ”

Shri P. S. Kshirsagar, learned counsel waives notice on behalf of the respondents.

The appellants to file private paper-book within period of ten weeks from today. As appeal is of the year 2004, its hearing is expedited.

JUDGE