

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****CIVIL APPLICATION NO.1319 OF 2014****IN****SECOND APPEAL NO. 544 OF 2014****Chandrakant Sitaram Sabale & Ors.****..... Applicants****VERSUS****Dnyanadev Sitaram Sabale****..... Respondent**

Mr.P.B.Gujjar for the Applicants.

Mr.Sachin Mhaske for the Respondent.

CORAM : R.D. DHANUKA, J.**DATED : 3rd FEBRUARY, 2016****P.C.**

Rule. Learned counsel appearing for the respondent waives service. Civil application is returnable forthwith. Heard learned counsel appearing for the parties.

2. There are several substantial questions of law arise in this second appeal which are separately formulated while admitting the second appeal.

3. In my prima facie view, the learned advocate who was representing the appellants (original defendants) had not followed the mandatory procedure required to be followed under the provisions of Code of Civil Procedure, 1908 and also the civil manual for withdrawing his appearance and thus the applicants could not remain present before the learned trial judge. There was no separate notice issued by the learned trial judge before proceeding with the matter ex-parte against the applicants. The applicants have thus made out a case for grant of interim relief

as prayed in the civil application.

4. Learned counsel appearing for the respondent submits that the respondent has already filed an execution application. By an order dated 19th March, 2015 passed by this court, this court has made it clear that the partition proceedings can go however actual physical possession thereof shall not be delivered.

5. Civil application is made absolute in terms of ad-interim order passed by this court on 19th March, 2015. No order as to costs.

[R.D. DHANUKA, J.]