

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.772 OF 2016
WITH
CIVIL APPLICATION NO.1123 OF 2016**

Smt. Kusum @ Kumud Hari Gore
And Others

... Appellants.

Versus

Smt. Shantabai Govind Waghmode
And Another

... Respondents.

.....

Mr. Sharad T. Bhosale for the Appellants.

.....

CORAM : S.C. GUPTE, J.

DATE : 9 FEBRUARY 2017

P.C. :

. Heard learned Counsel for the parties.

2 On 16 December 2016, this Court had directed the Appellants to serve the Respondents by a private notice and file an affidavit of service. The notice has been duly served and an affidavit of service has been filed to that effect.

3 The second appeal is admitted on the following substantial questions of law :

(i) Whether the First Appellate Court was right in law in decreeing a suit for partition filed by Respondent No.1 (original Plaintiff) without there being any challenge to the sale deed executed in respect of the property by the

Appellants (original Defendant Nos.1 to 3) in favour of Respondent No.2 (original Defendant No.4) ?

(ii) Whether the First Appellate Court was right in law in decreeing a suit for partition brought about by the coparceners only in respect of part of the joint family property ?

4 The printing of paper book is dispensed with. The Appellants shall file a private paper book within a period of 12 weeks from today.

5 There is an ad-interim order granted by this Court, and which has been operating since 2 September 2016, in terms of prayer clause (a) of the civil application, which seeks stay of execution of the judgment and decree passed by the First Appellate Court. The impugned judgment and decree effects partition of the suit property. This Court has found *prima facie* merit in the contention of the Appellants that the impugned judgment and decree does not pertain to the entire of the joint family property, but effects a partial partition and that the impugned judgment and decree passed without there being any challenge to the sale of the suit property effected by the Appellants herein may not be tenable. In the premises, pending the hearing and final disposal of the second appeal, the impugned judgment and decree cannot be executed.

6 The civil application is, accordingly, made absolute in terms of prayer clause (a).

(S.C. GUPTE, J.)