

VPH

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL (St.) No. 23529 OF 2018
WITH
CIVIL APPLICATION No. 1208 OF 2018

Ankush Nivrutti Gawari & Ors. ... Appellants
Vs.
Madhukar Sopan Gawari & Ors. ... Respondents

Mr. Drupad S. Patil, for the Appellants / Applicants.

Ms. Tanvi Shende i/b H. V. Kode, for the Respondent Nos. 1 to 19.

CORAM : A. M. DHAVALA, J.
DATE : SEPTEMBER 24, 2018

PC :-

1. Heard learned advocate for the Appellants. One-fourth share of Malhari, father of defendant Nos. 15, 16 and 17 was mortgaged to the Society way back in 1963. The Society with the consent of the Collector sold the specific property to one Nivrutti, father of defendant Nos. 1 to 5. Remaining legal heirs have filed suit for partition and separate possession and for holding that said sale was not binding on them. The trial Court Court decreed the suit and the first appellate Court has

dismissed the appeal.

2. The appeal is admitted on following substantial questions of law :

- (i) Whether the challenge to the execution of sale-deed of the suit property and delivery of possession to the father of the plaintiff is within limitation?
- (ii) Whether the suit is bad for non-joinder of Society as necessary party, or as plaintiff has not challenged the auction?
- (iii) Whether both the courts below have decreed the suit by ignoring settled principles of law or ignoring the vital material?

3. In view of admission of the appeal, execution and implementation of the judgment and decree of the trial Court is stayed to the extent of delivery of possession, subject to appellant furnishing surety under Order 41, Rule 5(3)(b) to the satisfaction of the first appellate Court within 15 days from the date of uploading of this order. In view of this, pending civil application is disposed of. Call R & P.

Sd/-
[A. M. DHAVALE, J.]