

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

**CIVIL APPLICATION NO.799 OF 2021 IN
SECOND APPEAL (ST.) NO.922 OF 2021**

(Smt. Parwatabai wd/o Fulichand Gajbhiye & ors. Vs. Rajkumar s/o Lahu Gajbhiye & anr.)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri U.K. Bisen, Advocate for the applicants/appellants.

CORAM:- SMT. M.S. JAWALKAR, J.

DATED :- JANUARY 19, 2022

Heard.

2. The present application is filed for grant of leave to filed appeal through L.R's of deceased appellant No.2.

3. It is submitted that respondent No.2 in R.C.A. No.09/2017 i.e. Smt. Shudhata w/o Rajesh Wanjari was expired on 01/06/2018, however, her legal representatives were not brought on record by the appellant. The learned appellate Court has allowed the appeal and reversed the judgment of the trial Court. The respondent in first appeal i.e. appellant Nos.1, 3 and 4 along with legal representatives of the deceased Shudhata preferred the second appeal. However, as legal representatives were not brought on record in the R.C.A. No.09/2017 there is technical difficulty to file second appeal by the legal representatives.

4. As the right to sue/pursue the proceeding is subsisting, leave is granted to proceed with second appeal by legal representatives of respondent No.2 in R.C.A. No.09/2017.

5. As such the application is allowed and legal representatives of appellant No.2 are permitted to proceed the appeal along with other appellants.

6. The application is disposed of accordingly.

CIVIL APPLICATION (ST.) NO. 923 OF 2021

Heard.

Issue notice to the respondents, returnable on 09/02/2022, on the following substantial questions of law :

(i) Whether the appellate Court erred in reversing the judgment and decree of the trial Court when the respondent Nos.1 & 2 and their witnesses admitted that in view of partition amongst father of deceased plaintiff Fulichand and his brothers namely Udaram, Sudam, Aako and Lahu appropriate portion came to their respective shares and they were in possession of their respective shares and the same is corroborated by the documentary evidence i.e. Exh.34 to 39 & 72?

(ii) Whether the appellate court erred in reversing the judgment and decree of the

trial Court when in the records of Revenue Department and Local Body Gram Panchayat, it is clearly mentioned that the suit land is owned and possessed by the appellants and the land of respondents is different and in the year 2012 the respondent No.1 is tried to carry out construction of appellants land?

(iii) Whether the appellate court and trial court has committed an error in appreciating the settled position of law and evidence available on record which clearly indicates that in view of the order dated 26.06.2008 passed by Tahasildar, Sadak Arjuni the respondents were restrained from interfering with the appellants property i.e. suit land and since the respondents have jumped the said order and illegally threatened the original plaintiff Fulichand and his wife the police report Below Exh.38 was lodged against the respondents?

(SMT. M.S. JAWALKAR, J.)

**DB*