

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

911 SECOND APPEAL NO.379 OF 2023
WITH CA/4400/2023 IN SA/379/2023

JAISING VITHOBA GIRASE THROUGH ITS SPL POWER OF ATTORNEY,
CHARANSINGH JAISING GIRASE
VERSUS
PRATAPSING VITHOBA GIRASE AND ORS

...
Advocate for Appellant : Mr. P.R. Katneshwarkar h/f. Mr. M.V. Bhamre
Advocate for Respondents 1, 4 & 5 : Mr. B.R. Warma
...

CORAM : ARUN R. PEDNEKER, J.
DATED : 18/07/2023

PER COURT :

1. Heard the learned counsel for the parties. As the appeal filed by the original defendant No. 1/present appellant before the Appellate Court is dismissed and appellant has approached this Court by filing present second appeal. The contesting respondents are present today.
2. Peculiar facts of the case are that Regular Civil Suit No. 35/2012 (Old Special Civil Suit No. 116/2010) filed for partition has been decreed by the Trial Court by judgment and order dated 24.10.2027. Against the order of the Trial Court, two different appeals were preferred before the Appellate Court bearing Civil Appeal Nos. 138/2017 and 143/2017. Unfortunately, both the appeals were placed before the two different Judges of District Court at Dhule. In Civil Appeal No. 138/2017 judgment and order is passed by the Appellate Court on 7.9.2022 which is challenged in the present proceedings. However, Civil Appeal No. 143/2017 is pending before the another District Judge at Dhule. There is possibility that there may arise conflict of judgments. Both the civil appeals arise from the same suit and both the civil appeals ought to have been clubbed together and

heard by the same Judge. The respondent has also not seriously objected for the same.

3. In view of the same, the judgment and order passed in Civil Appeal No. 138/2017 on 7.9.2022 is set aside and the matter is remanded back to the Appellate Court. The Principal District Judge at Dhule is directed to assign both the civil appeals to one Judge. Both the civil appeals to be tagged together and heard and decided together.

4. The interim orders that are passed at the time of filing of the appeal before the Appellate Court would continue to operate till the disposal of the appeals. Second Appeal is disposed of accordingly. Civil Application, if any, is also disposed of.

[ARUN R. PEDNEKER J.]

ssc/