

AGK

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

**SECOND APPEAL NO.110 OF 2021
WITH
CIVIL APPLICATION NO.719 OF 2019**

Bandopant Dattatraya Nikam & Ors. ... Appellants
V/s.
Prakash Tukaram Nikam & Ors. ... Respondents

**WITH
INTERIM APPLICATION (ST.) NO.23276 OF 2021
IN
SECOND APPEAL NO.110 OF 2021**

Ashatai Balasaheb Jadhav ... Applicant
V/s.
Bandopant Dattatraya Nikam & Ors. ... Respondents

Mr. Kuldeep U. Nikam for the appellants/applicants.
Mr. J.P. Kharge for the respondents.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 7, 2023

P.C.:

1. Admit on the following substantial question of law.

“Whether the Courts below were justified in recording a finding that the plaintiffs failed to prove partition in view of the fact that on prima facie perusal of the document, it appears that the document titled as partition deed was in fact a Memorandum of partition recording past transactions of partition and consequent

mutation entry in the revenue record indicating fact of partition.

CIVIL APPLICATION NO.719 OF 2019

2. Since the second appeal is admitted and the Trial Court had decreed the suit, the injunction which was in force in favour of the appellants during the pendency of the appeal and this Court by order dated 3 May 2023 protected the appellants, the respondents are restrained from disturbing appellants' possession over the suit property. However, such injunction shall not be subject to allowing respondent No.4b to take Well water situated at Gat No.1154 by using diesel pump till final disposal of the second appeal.

3. Civil Application stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)