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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 800 OF 2019
WITH
CIVIL APPLICATION NO. 1611 OF 2019
IN
SECOND APPEAL NO. 800 OF 2019**

Krishna Vasant Kharat

.....Appellant

Vs.

Dinkar Eknath Kadam (Since Decd
Thr LRs)

.....Respondents

**WITH
SECOND APPEAL NO. 493 OF 2019
WITH
CIVIL APPLICATION NO. 1410 OF 2019
CIVIL APPLICATION NO. 1190 OF 2019
IN
SECOND APPEAL NO. 493 OF 2019
WITH
SECOND APPEAL NO. 492 OF 2019
WITH
CIVIL APPLICATION ST NO. 23992 OF 2019
IN
SECOND APPEAL NO. 492 OF 2019**

Dinkar Eknath Kadam (Decd. Thr. LRs)

....Appellants

Vs.

Krishna Vasant Kharat and ors

....Respondents

Mr. Pradeep Thorat a/w Ms. Aditi Naikare for the appellants in SA 493/2019 and for respondent nos. 1A to 1C and 2 in SA 800/2019
Mr. Dilip Bodake a/w Ms. Shraddha Pawar for the appellant in SA 800/2019 and for respondent nos. 5A to 5E in SA 493/2019 and for

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respondent nos. 1A to 1F and 2 in SA 492/2019

CORAM : GAURI GODSE, J.

DATE : 22nd NOVEMBER 2024

ORDER:

1. Heard learned counsel for the parties. The second appeals are admitted on the following substantial questions of law:

I. Whether the suit filed by Krishna for declaration of his share could have been dismissed on the ground that there was no prayer made for partition?

II. In the event Krishna is entitled to a declaration about his undivided share in the suit property, whether the sale deeds executed in favour of Dinkar Kadam and Pravin Kadam would be binding upon Krishna's share?

III. Whether the first Appellate Court was justified in holding that Pravin Kadam is entitled to only 46 Ares portion out of the Suit property especially when the Sale Deed dated 27th April, 1978 executed in favour of the Appellant No. 2 clearly shows that 1/10th portion out of 9 H 23 Ares is sold to the appellant no. 2?

IV. Whether the first Appellate Court was justified in reversing the finding recorded by the Trial Court in paragraph no. 30 that Pravin Kadam was entitled to 1 Anna 6 pai share on the basis of the sale deed dated 27th April, 1978 when there was no cross-objection or appeal filed by the respondent no. 1 challenging the said finding?

V. Whether the first Appellate Court is justified in passing the decree of declaration of ownership in favour of Krishna to the extent 109 Ares by ignoring the fact that respondent no. 1 has already sold his entire share in the suit property during the pendency of the suit and the appeal?

VI. In view of agreements produced at Exhibit 101 by Dinkar Kadam, whether Dinkar Kadam would be entitled to a decree of injunction restraining other co-sharers from dispossessing Dinkar Kadam?

VII. Whether Krishna's suit for declaration could be held as barred by limitation in view of mutation entry 770, in

as much as the suit filed by Krishna was for a declaration of his share in the suit property on the cause of action with reference to the sale deed executed in favour of Dinkar Kadam and Pravin Kadam?

VIII. Whether the reasons recorded by the first Appellate Court in determining the shares of the parties can be accepted with reference to claim of Krishna through his father Vasant in the suit property owned by Dagadu?

IX. Whether the reasons recorded by the first Appellate Court are sustainable with reference to determination of respective shares as claimed by the parties?

2. Mr. Bodke waives notice for respondent nos. 1, 5A to 5E in Second Appeal No. 493 of 2019 and for respondent nos. 1A to 1F and 2 in Second Appeal No. 492 of 2019. Mr. Thorat waives notice for respondent nos. 1A to 1C and respondent no. 2 in Second Appeal No. 800 of 2019.

3. In addition to Court notice, learned advocates for the respective appellants shall serve the remaining respondents by private notice and

file affidavit of service.

4. Call for record and proceedings. Printing is dispensed with.
5. Learned advocate for the appellants shall file private paper-book within a period of one year.

CIVIL APPLICATION NO. 1611 OF 2019 AND CIVIL APPLICATION 1190 OF 2019:

6. Appellants in all three second appeals are the only contesting parties in the appeals. Appellants in all the three appeals have prayed for stay of the execution and operation of the impugned decree.
7. Since the second appeals are admitted on the points with reference to the respective rights of the appellants, the execution and implementation of the impugned decree shall remain stayed during pendency of the second appeals.
8. Since rest of the respondents in the second appeals have not contested the first appeals, notice to rest of the respondents is not necessary in the civil applications.
9. Both the civil applications are disposed of in above terms.

[GAURI GODSE, J.]