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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 187 OF 2022

WITH

INTERIM APPLICATION NO. 1336 OF 2022

IN

SECOND APPEAL NO. 187 OF 2022

Chandan Rupsingh Rathod

.....Appellant

Vs.

Nirmala Maruti Kamble and anr

.....Respondents

Mr. Anvil Kalekar for appellant

Mr. Abhaysingh Shinde for Respondent No. 1.

CORAM : GAURI GODSE, J.

DATE : 9th JULY 2024

ORDER:

1. Learned counsel for the appellant submits that respondent no. 2 has expired. He seeks leave to delete respondent no. 2.

2. Leave granted. Appellant is permitted to delete respondent no. 2 at his own risk.

Note : This is the corrected order pursuant to speaking to minutes order dated 7th August 2024.

3. Amendment to be carried out forthwith in the Court.
4. Heard learned counsel for the appellant. Second appeal is admitted on the following substantial questions of law:
 - (i) Whether the first Appellate Court has erred in decreeing the suit by ignoring the admission given by the plaintiff that Maruti was missing since 1965?
 - (ii) Whether the findings recorded by the first Appellate Court accepting the plaintiff to have her right in the property is sustainable in view of admissions given by the plaintiff in her cross-examination?
 - (iii) Whether the suit for partition was hit by non-joinder of necessary parties as the plaintiff herself claimed that she had a daughter from Maruti and she was not made a party to the suit?
5. **Mr. Abhaysingh Shinde waives service for respondent no.1.**
6. Call for record and proceedings. Printing is dispensed with.

Note : This is the corrected order pursuant to speaking to minutes order dated 7th August 2024.

7. Appellant to file private paper-book within a period of one year.

INTERIM APPLICATION NO. 1336 OF 2022:

8. This application seeks stay of the execution and operation of the impugned Decree. There is a Decree for partition and separate possession by declaring the rights of the plaintiff and her daughter. So far as the Decree for partition is concerned, the partition proceedings to go on, however, there will be stay to the actual handing over of possession.

9. Declaration granted in clause 2(C) of the operative order shall remain stayed. During the pendency of the second appeal, parties shall not create any third party interest.

10. Application is disposed of in above terms.

[GAURI GODSE, J.]