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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 824 OF 2016
WITH
CIVIL APPLICATION NO. 1135 OF 2015
IN
SECOND APPEAL NO. 824 OF 2016**

Shankar Ramrao Surve

.....Appellant

Vs.

Dhonduramrao Surve

.....Respondent

Mr. Prafulla B. Shah i/b Mr. Kayval Prafulla Shah for the appellant
Mr. Mahendra Agvekar a/w Ms. Shraddha Chavan for the respondent

CORAM : GAURI GODSE, J.

DATE : 30th AUGUST 2024

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ORDER:

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

(i) Whether in the absence of any documentary evidence in support of the defendant's case that the suit properties described in plaint paragraph 1A were his self acquired properties, the suit could have

been dismissed for partition and separate possession of the said properties?

(ii) Whether both the Courts ought to have taken into consideration that the defendant failed to step into the witness box to support his contentions that he had acquired suit properties described in plaint paragraph 1A during the pendency of proceedings as he was cultivating the suit properties as an independent tenant?

(iii) Whether only based on 7/12 extracts produced at exhibits 55 to 59, the properties described in plaint paragraph 1A can be treated as self acquired properties of the defendant in the absence of any documentary proof that the same were acquired in his independent capacity, in as much as the existence of joint family of the parties is not in dispute?

2. Mr. Mahendra Agvekar waives service for the sole respondent.
3. Call for record and proceedings. Printing is dispensed with.
4. Learned advocate for the appellant shall file private paper-book

within a period of one year.

CIVIL APPLICATION NO. 1135 OF 2015:

5. This application is for an order of injunction restraining the respondent from creating third party interest in respect of the suit properties described in plaint paragraph 1A. Second appeal is admitted on the questions of law as recorded in the order admitting the second appeal. The second appeal involves the issue with regard to applicant's entitlement for partition and separate possession in respect of the properties described in plaint paragraph 1A. Hence, in the event any third party interest are created in respect of the said properties, the same would amount to multiplicity of proceedings. There is no reply filed to oppose the contentions in the application for grant of interim relief.

6. For the aforesaid reasons, during the pendency of the second appeal, there will be interim relief in terms of prayer clause (a).

7. Application is allowed in the above terms.

[GAURI GODSE, J.]