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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 475 OF 2022
WITH
INTERIM APPLICATION NO. 9829 OF 2022
IN
SECOND APPEAL NO. 475 OF 2022**

Sou. Kasubai Dattu Nale and Ors ... Appellants/Applicants

vs.

Sou. Dagdubai Sakharam Patil ... Respondents
and Ors

Mr. Chetan G. Patil, for Appellants/ Applicants.

Mr. Swaroop M. Karade for Respondent No.1.

CORAM : GAURI GODSE, J.

DATED : 10th JULY 2024

ORDER:

1. Heard. The Second Appeal is admitted on the following substantial questions of law:

I) Whether both the Courts erred in not recording a specific independent finding on the defendant's claim of absolute ownership in the suit property based on the will, only on the ground that the principles of *res judicata* will be applicable, in view of the judgment and decree in Regular Civil Appeal No. 401 of 2003?

II) Whether both the courts ought to have independently examined and recorded the finding on the right of Dattu to bequeath the suit property to defendant nos. 2 to 5?

III) Whether Dattu can be said to be the sole coparcener and thus entitled to bequeath the entire suit property in favour of defendant nos. 2 to 5?

IV) Whether the plaintiffs were entitled to seek partition and separate possession on the ground that they are coparceners?

V) Whether the plaintiffs could claim a share in the suit property as coparceners or could claim their rights in Dattu's share in the event Dattu is to be held sole coparcener?

2. Mr. Karande waives notice on behalf of Respondent No.1. In addition to Court notice, appellant to serve the rest of the respondents by private notice and file affidavit of service.

3. Call for records and proceedings.

4. Printing is dispensed with.

5. Appellants to file paper-book within one year from today.

INTERIM APPLICATION NO. 9829 OF 2022

6. This application is for seeking a stay of the execution and

implementation of the impugned decree. The impugned decree is for partition and separate possession.

7. Learned counsel for the applicant submits that during the pendency of the First Appeal there was an order of stay only to handing over of actual possession of the suit property.

8. Since, decree is for partition and separate possession the final proceedings for the division to proceed. However, there will be a stay to the actual handing over of the physical possession.

9. During the pendency of the Second Appeal, the parties shall not create any third party interest.

10. Interim Application is disposed of in the above terms.

(GAURI GODSE, J.)