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

**SECOND APPEAL NO. 439 OF 2019
WITH
CIVIL APPLICATION NO. 675 OF 2018
IN
SECOND APPEAL NO. 439 OF 2019**

Mahabubi Abbas Naikwadi and ors

.....Appellants

Vs.

Shahajadbi Kamalso Kandekari and ors

.....Respondents

Ms. Vaishnavi Nagargode a/w Mr. Bhushan Walimbe for the appellants
Mr. Nagesh Y. Chavan a/w Mr. Sandip Khandekar for respondent no. 1

CORAM : GAURI GODSE, J.

DATE : 26th NOVEMBER 2024

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ORDER:

1. Heard learned counsel for the appellants. This second appeal is preferred by the original defendant nos. 1 to 6 to challenge the concurrent judgments and decrees granting partition and separate possession.

2. Learned counsel for the appellants submits that the suit was initially filed before the Civil Judge Junior Division and the same was transferred to the Civil Judge Senior Division. She submits that the

transfer of the suit to the Civil Judge Senior Division was never intimated to the appellants, hence, they were unable to attend the hearing of the suit. She further submits that the appellants' advocate who was initially appearing for them in the trial Court expired and hence, the trial Court's decree was passed in the absence of the appellants. She thus submits that the first Appellate Court ought to have considered remanding the matter back to the trial Court for granting an opportunity to the appellants to lead evidence and contest the suit on merits. She therefore submits that the second appeal raises substantial questions of law on the aforesaid grounds.

3. Learned counsel appearing for the original plaintiff supports the impugned judgments and decrees. He submits that the suit though transferred to Civil Judge Senior Division, it was before the same Court and it was only an administrative transfer from the Court of Civil Judge Junior Division to Civil Judge Senior Division. He further submits that in the first appeal, the appellants never raised any ground regarding death of their advocate which prevented them from contesting the suit on merits. He thus submits that the arguments raised on behalf of the appellants do not raise any substantial question of law.

4. I have perused the impugned judgments. The trial Court's judgment refers to appearance of an advocate for the defendants. Defendant no. 3 had filed a written statement and contested the suit. Thus, the contention raised on behalf of the appellants cannot be entertained for the first time in the second appeal. A perusal of the grounds of appeal in the District Court as well as the impugned judgment of the first Appellate Court nowhere indicates that the appellants had raised any grievance regarding death of their advocate due to which they were unable to contest the suit on merits. Hence, the grounds raised on behalf of the appellants would not require any consideration by this Court. Both the Courts have concurrently held that the plaintiff is entitled for partition and separate possession. I do not see any illegality or perversity in the reasons recorded by both the Courts.

5. The second appeal does not raise any substantial question of law. Hence, the second appeal is dismissed.

6. In view of dismissal of second appeal, Civil Application No. 675 of 2018 is disposed of as infructuous.

[GAURI GODSE, J.]