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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 623 OF 2019
WITH
CIVIL APPLICATION NO. 1285 OF 2019
IN
SECOND APPEAL NO. 623 OF 2019**

Subhadra Dinkar Mohite ... Appellant/Applicant
vs.
Rangrao Chandru Mokale (Deceased thru ... Respondent
Lrs)

Mr. Mahindra B. Deshmukh, for Appellant/Applicant.

Mr. Rahul S. Kadam for Respondent Nos. 1a to 1g and 2.

CORAM : GAURI GODSE, J.

DATED : 16th JULY 2024

ORDER:

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

I) Whether the suit was barred by Order II of Rule 2 of the Civil Procedure Code, 1908 ('CPC') as in the first suit for declaration of ownership there was no prayer made for seeking possession?

II) Whether in view of the claim of the plaintiff to be in possession was not accepted in the suit for declaration, the subsequent suit seeking possession would be barred by Order II Rule 2 of the CPC?

III) Whether the suit seeking decree for possession on the cause of action as pleaded by the plaintiff can be held to be filed within the period of limitation?

2. Mr. Kadam, waives notice on behalf of respondent nos. 1a to 1g and 2.
3. Call for records and proceedings.
4. Printing is dispensed with.
5. Appellant shall file private paper-book within a period of one year from today.

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6. This application is for stay to the impugned judgment and decree for possession. The Second Appeal is already admitted on the substantial questions of law as recorded in the order.

7. Hence, the decree for possession is required to be stayed during the pendency of the Second Appeal. Hence, during the pendency of the Second Appeal there will be stay in terms of prayer clause (a). During the pendency of the appeal the parties shall not create any third party interest.

8. The Civil Application is allowed in the aforesaid terms.

(GAURI GODSE, J.)