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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 388 OF 2024
WITH
INTERIM APPLICATION NO. 9631 OF 2024
IN
SECOND APPEAL NO. 388 OF 2024**

Nishant Bhimsha Gaikwad ... Appellant/Applicant

vs.

Shivaji Ram Jadhav and Ors ... Respondents

Mr. Ashok Tajane for Appellant/Applicant.

CORAM : GAURI GODSE, J.

DATED : 7th OCTOBER 2024

ORDER:

1. Heard learned counsel for the appellant. Second appeal is admitted on the following substantial questions of law:

I) Whether the First Appellate Court erred in setting aside the decree for removal of encroachment inspite of recording findings in paragraph nos. 13 and 14 of the impugned judgment with reference to the admission given by the defendants ?

II) Once the plaintiff's title over the suit property is accepted and it is not the defendants' case that they are occupying the adjoining property, whether the First Appellate

Court is right in setting aside the decree for removal of encroachment?

III) In the absence of any documents of title or right to retain possession of the encroached area by the defendants, whether the suit for removal of encroachment could have been dismissed after accepting the plaintiff's title over the said area?

2. In addition to Court notice, learned advocate for the appellant to serve the respondents, by private notice and file affidavit of service.
3. Call for records and proceedings.
4. Printing is dispensed with.
5. Learned advocate for the appellant shall file private paper-book within a period of one year from today.

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6. Learned counsel for the applicant seeks leave to withdraw the application with liberty to file a fresh application. Leave granted with liberty as prayed.
7. Application is disposed of as withdrawn with liberty as prayed.

(GAURI GODSE, J.)