

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

**SECOND APPEAL NO.220 OF 2024
WITH
INTERIM APPLICATION NO.7604 OF 2024
IN
SECOND APPEAL NO.220 OF 2024**

Shrikant Dnyanu Mali
(deceased) & Ors.

....Appellants/Applicants

V/S

Milind Rajaram Mali & Ors.

....Respondents

Mr. Sandeep Koregave *for the Appellants/Applicants.*

Mr. V.B. Rajure *for Respondent Nos.1 to 4.*

Mr. Milind R. Mali – Respondent No.1 - present in Court.

**CORAM: SANDEEP V. MARNE, J.
DATE : 08 MAY 2024.**

P.C.:

1 By the present Appeal, Appellants challenge decree dated 24 March 2023 passed by District Judge-4, Kolhapur, partly allowing Regular Civil Appeal No.62 of 2017 to the extent of shares granted by the Trial Court. Otherwise the Trial Court had decreed Plaintiffs' suit for partition on 3 February 2017.

2 It appears that Respondent No.5 has expired issue-less. So far as Respondent No.6 is concerned, he is already represented by Appellant No.1 and Respondent Nos.1 and 2. Respondent No.7 is already served.

3 Regular Civil Suit No.38 of 2008 is filed by Plaintiffs in respect of properties at Kagal. It appears that there is another set of properties at village Yalgud, Taluka Hatkangale, District Kolhapur in respect of which Special Civil Suit No.103 of 2010 is filed in the Court of Civil Judge Senior Division, Ichalkaranji by the Appellants for partition of the properties situated at village Yalgud.

4 After extensively hearing the Appeal, Mr. Koregave, the learned counsel appearing for the Appellants and Mr. Rajure, the learned counsel appearing for Respondent Nos.1 to 4 would agree that both the suits seeking partition of properties at Kagal and Yalgud ought to have been tried together. In that view of the matter, the decree passed in Regular Civil Suit No.38 of 2008 as modified by the First Appellate Court on 24 March 2023 is required to be set aside, so that Regular Civil Suit No.38 of 2008 in the Court of Civil Judge Junior Division, Kagal can be heard alongwith Special Civil Suit No.103 of 2010 pending on the file of Civil Judge Senior Division, Ichalkaranji. Instead of driving the parties to another set of litigation for clubbing of the said Suits, it is directed that Regular Civil Suit No.38 of 2008 now remanded on file of Civil Judge Junior Division, Kagal shall stand transferred to the Court of Civil Judge Senior Division, Ichalkaranchi for being decided alongwith Special Civil Suit No.103 of 2010.

5 With the consent of the learned counsel appearing for parties, the decree dated 3 February 2017 passed by the Civil Judge Junior Division, Kagal in Regular Civil Suit No.38 of 2008 as confirmed by the decree of First Appellate Court dated 24 March 2023 is set aside. Regular Civil Suit No.38 of 2008 shall stand restored on the file of Civil Judge Junior Division, Kagal. Principal District Judge, Kolhapur shall pass an administrative order for transfer of Regular Civil Suit No.38 of 2008 pending on the file of the Civil Judge Junior Division, Kagal to Civil Judge Senior Division, Ichalkaranji, who shall proceed to decide Regular Civil Suit No.38 of 2008 along with Special Civil Suit No.103 of 2010. All rights and contentions of the parties on merits are kept open. The Court of Civil Judge Senior Division, Ichalkaranji shall proceed to decide both the Suits, uninfluenced by any of the observations made by the Trial and the First Appellate Court.

6 With the above directions, the Second Appeal is disposed of.

7 With disposal of the Second Appeal, Interim Application taken out for stay does not survive. The same is also stands disposed of.

(SANDEEP V. MARNE, J.)