

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 175 OF 2023

WITH

IA/1985/2023 IN SA/175/2023

WITH

IA/1988/2023 IN SA/175/2023

Yashwant Narayan Hadas And Ors.

...Appellants

Versus

Govind Yevaji Hadas

...Respondent

....

Mr. Sachin Gite, for Appellants / Applicants.

Mr. Sugandh Deshmukh, for Respondent.

....

CORAM : SANDEEP V. MARNE, J.

DATED : 06 FEBRUARY 2024.

P.C. :

Heard Mr. Gite, the learned counsel appearing for Appellants and Mr. Deshmukh, the learned counsel appearing for Respondent. After having considered the submissions canvassed by the learned counsel appearing for parties, Second Appeal is **admitted** on following substantial questions of law :

- i) Whether allotment of unequal shares in the oral partition can alone be a ground for rebutting presumption of partition between the parties ?

ii) Whether certification of mutation entry as well as finalization of consolidation scheme showing separate possession would lead credence to the defence of oral partition raised by the Defendants ?

2. Printing dispensed with. Mr. Deshmukh waives the service of notice on behalf of Respondent. Appellants to file private paper book within a period of one week from today. Hearing of Appeal is expedited.

INTERIM APPLICATION NO.1985 OF 2023 IN SA/175/2023

3. The Interim Application is filed to bring on record legal heirs of deceased Appellant No.6. The Application is fairly not opposed by Mr. Deshmukh. For the reasons stated in the Application, same is allowed. Legal heirs of Appellant No.6 are permitted to be brought on record. Amendment be carried within a period of 03 weeks from today. Interim Application is disposed of.

INTERIM APPLICATION NO.1988 OF 2023 IN SA/175/2023

4. The Application is filed by the Appellants seeking stay of the Judgment and decree passed by the First Appellate Court. By its Decree, First Appellate Court has partly decreed the suit of the Plaintiffs for partition and has determined shares of the parties in the suit for partition. The defence of the Defendants is execution of oral partition and separate possession of shares since year 1975. Thus, it is an admitted position that since 1975, the parties

are possessing the lands in their respective occupation. This position would be disturbed on account of decree of partition and separate possession granted by the First Appellate Court. Since Appeal is admitted by formulating substantial questions of law, it would be necessary to stay the effect of the First Appellate Court's decree dated 07 July 2022.

5. Accordingly, during pendency of the present Appeal, Judgment an decree dated 07 July 2022 passed by the District Judge-4, Nashik in Regular Civil Appeal No.424 of 2015 shall remain stayed subject to condition that the Appellant would not create any third party rights in respect of properties in their possession. Interim Application is disposed of.

SANDEEP V. MARNE, J.

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