

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.426 OF 2017
WITH
CIVIL APPLICATION NO.817 OF 2017

Yashwant Narayan Barve
(DECEASED) Thru. Lrs. And
Other
Vs

...Appellant/Applicant

Smt. Sobhanabai Mukund Barve
(DECEASED) Thru Lrs.
Sou.Sangita Suresh Shahane

...Respondents

Mr. Atul Damle, Senior Advocate i/b Mr. Rupesh Lanjekar for the
Appellant/Applicant.

Mr. Uday P. Warunjikar for the Respondents.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 26th MARCH, 2024.

P. C. :

1. Heard.

2. **Admit** on the following substantial questions of law:

1. *Whether the findings of 1st Appellate Court have been rendered perverse by failing to notice the evidence of Court Commissioner which discloses that in the previous partition only House No.78/4 was allotted to share of the plaintiff?*

2. *Whether the 1st Appellate Court committed an error in*

construing the terms of the sale deed dated 30th April 1957 by which the balance property was purchased by the appellant ?

3. Dr. Warunjikar, learned advocate waives notice on behalf of the respondents. Private paper book is already on record. The parties are ad-idem that considering the limited issue involved, the appeal can be taken up for final hearing.

4. List the Appeal on the final hearing board of 18th April 2024.

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5. By this Civil Application the applicant seeks stay of the impugned judgment as well as restraining orders restraining the defendants from carrying out the work of fencing around the suit property.

6. Learned counsel for the parties submit that the measurement can be permitted to be carried out as directed by the order of the Trial Court, however the work of fencing should not be carried out till the disposal of the Second Appeal.

7. In view thereof, the respondents are permitted to continue with the work of carrying out measurements of the properties with due notice to the appellant. However the work of fencing not to be carried out without leave of this Court.

(SHARMILA U. DESHMUKH, J.)