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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
SECOND APPEAL NO. 559 OF 2024  
WITH  
CIVIL APPLICATION NO. 764 OF 2019**

Gulab Vithoba Lokhande and Others ... Appellants

Vs.

Khandu Duryodhan Lokhande and Others ... Respondents

Mr. Ajay A. Joshi for the Appellants.

Mr. Sejal A. Hariyan i/b. Mr. Padmanabh D. Pise for the Respondents

**CORAM : GAURI GODSE, J.**

**DATE : 18<sup>th</sup> SEPTEMBER 2024**

**ORDER :**

1. Copy of the compilation of additional documents is taken on record.

2. Heard the learned counsel for the appellants. The Second Appeal is admitted on the following substantial questions of law :

(i) Whether the finding recorded by the learned Judge of the appellate court on the basis of evidence of plaintiff's witness number 2, on the point of map, is completely perverse ?

(ii) Whether learned Judge of appellate court committed flagrant error by recording the finding that “defendants have admitted that they are residing in the premises as per boundaries which has been described of plot number 51” is completely perverse, in view of fact that no where the defendants have admitted as such ?

(iii) Whether learned Judge of appellate court committed serious error by being oblivious to the core issue involved in the present matter, that is whether the suit premises city survey number 51/96 is in actual possession of defendants ?

(iv) Whether learned Judge of appellate court committed serious error by relying upon the evidence of witness number 2 of the plaintiff who is surveyor examined to prove the Map prepared in the year 1957, in view of the fact that the said map has not been proved by leading evidence on the point of accuracy of said map by examining the person who drawn up the said map or any other witness who is acquainted with facts of the preparation of the map ?

(v) Though the First Appellate Court allowed the

application for production of additional evidence whether the First Appellate Court erred in not following the procedure under Rule 28 of Order XLI of The Civil Procedure Code , 1908 ?

3. Mr. Hariyan waives notice for the respondents.
4. Call for record and proceedings.
5. Printing is dispensed with.
6. Learned Advocate for the appellants shall file private paper book within one year from today.

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7. Rule on interim relief in terms of prayer clause (a) is made returnable on 10<sup>th</sup> December 2024.
8. Mr. Hariyan waives notice for the respondents.
9. Till next date ad-interim relief in terms of prayer clause (a).
10. During the pendency of the application, appellant shall not create any third party right in respect of the suit property.

**[GAURI GODSE, J.]**