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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 490 OF 2022
WITH
INTERIM APPLICATION NO. 10200 OF 2022
IN
SECOND APPEAL NO. 490 OF 2022**

Shri Atmaram @ Ramkrishna Dalve
(D/H) Shantabai A. Dalve (D/H)
Shantabai A. Dalvi (Deceased) Shri ... Appellants/Applicants
Machindra A. Dalvi and Ors

vs.

Shri Sopan Krishna Dalvi (since ... Respondents
deceased through Lrs) and Ors

**WITH
INTERIM APPLICATION NO. 8343 OF 2024
IN
SECOND APPEAL NO. 490 OF 2022**

Nivrutti Krishna Dalvi ... Applicant

IN THE MATTER

Shri Atmaram @ Ramkrishna Dalve
(D/H) Shantabai A. Dalve (D/H)
Shantabai A. Dalvi (Deceased) Shri Appellant
Machindra A. Dalvi and Ors

vs.

Shri Sopan Krishna Dalvi (since ... Respondents
deceased through Lrs) and Ors

Ms. Poonam Bhosale for Appellants/Applicants.

Mr. Darshan Nagpure a/w. Ms. Anita Adsul and Ms. Sunita Nagpure
for Applicant in IA/8348/24.

Mr. Arnold Thomas for Respondents.

CORAM : GAURI GODSE, J.

DATED : 14th OCTOBER 2024

ORDER:

INTERIM APPLICATION NO. 426 of 2024

1. This application is for bringing on record the names of heirs and legal representatives of deceased sole respondent. There is a delay of 123 days in filing the application. The heirs and legal representatives are represented through advocate.

2. Learned advocate for the respondent does not oppose the reasons stated in the application for condonation of delay.

3. I have perused the reasons stated in the application. The reasons mentioned in the application are acceptable and justifiable.

4. For the reasons stated in the application, the delay is condoned and application is allowed in terms of prayer clauses(b), (c) and (d). Amendment to be carried out within three weeks from today.

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

I) Whether the burden on the point of Order II, Rule 2 of Civil Procedure Code, 1908 ('CPC') could have been casted upon the defendant, when admittedly earlier suit filed by the plaintiff for declaration and injunction was dismissed for not making any consequential relief of possession?

II) Whether the plaintiff was under obligation to produce the proceedings of the earlier suit and the judgment and decree of the earlier suit to point out that the present suit was on the fresh cause of action and there was no bar under Order II, Rule 2 of the CPC?

III) Whether the reasons recorded by the First Appellate Court are sustainable in law in the absence of the document being produced on record in earlier suit which was admittedly dismissed for not seeking any consequential relief of possession?

6. Learned advocate for all respondents waives notice.
7. Call for records and proceedings.
8. Printing is dispensed with.
9. Learned advocate for the appellants shall file private paper-book within a period of one year from today.

INTERIM APPLICATION NO. 10200 OF 2022

10. Rule on interim relief in terms of prayer clause (a) is made returnable after 12 weeks. Respondents are at liberty to file affidavit-in-reply before the next date.

11. Learned advocate for all respondents waives notice.

12. Till next date, there will be ad-interim stay in terms of prayer clause(b).

13. During the pendency of the application, parties shall not create any third party interest in the suit property.

INTERIM APPLICATION NO. 8343 OF 2024

14. To be heard alongwith the second appeal.

(GAURI GODSE, J.)