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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 558 OF 2018
WITH
CIVIL APPLICATION NO. 1291 OF 2018
INTERIM APPLICATION NO. 10790 OF 2024
IN
SECOND APPEAL NO. 558 OF 2018**

Laxman Hariba Suryawanshi and anrAppellants

Vs.

Ramchandra Daji Pawar and anrRespondents

Mr. Umesh R. Mankapure a/w Ms. Stefy J. Dias for the appellants

CORAM : GAURI GODSE, J.

DATE : 18th OCTOBER 2024

ORDER:

INTERIM APPLICATION NO. 10790 OF 2024:

1. This application is filed for bringing on record names of heirs and legal representatives of deceased appellant no. 1. There is delay in filing the application. Since the second appeal is pending admission since 2018, I have permitted the learned counsel for the appellants who appears for heirs and legal representatives of deceased appellant no. 1 to argue the second appeal on merits.

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

I. Whether the map at Exhibit 76 could have been accepted by both the Courts as a sufficient compliance for identification of encroached portion as pleaded by the plaintiff?

II. Whether the map at Exhibit 76 can be said to have cured the requirement of description of the encroached area as required to be pleaded under Order VII Rule 3 of Code of Civil Procedure, 1908 (Bombay Amendment)?

III. Whether the first Appellate Court's decree modifying the trial Courts decree would amount to granting a decree beyond the prayers in the plaint?

IV. In view of the settled legal principles by the Apex Court in the case of *Pratibha Singh Vs. Shanti Devi Prasad*¹, the evidence produced by the plaintiff and reliance placed on measurement map at Exhibit 76 can be held to be sufficient identification of the property

¹ (2003) 2 SCC 330

relatable to the requirement under Order VII Rule 3 of
CPC (Bombay Amendment)?

3. In addition to Court notice, learned advocate for the appellants shall serve the respondents by private notice and file affidavit of service.
4. Call for record and proceedings. Printing is dispensed with.
5. Learned advocate for the appellant shall file private paper-book within a period of one year.
6. Issue notice of the second appeal and Interim Application No. 10790 of 2024.
7. Notice is made returnable on 31st January 2025.
8. In addition to the Court notice, learned advocate for the appellants shall serve the respondents by private notice and file affidavit of service before the next date.

CIVIL APPLICATION NO. 1291 OF 2018:

9. Notice is made returnable on 31st January 2025.
10. In addition to the Court notice, learned advocate for the

appellants shall serve the respondents by private notice and file affidavit of service before the next date.

[GAURI GODSE, J.]