VARSHA VIJAY RAJGURU
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 487 OF 2024

Waman Sakharam Kokare and Ors … Appellants

vs.

Kondiba Sakharam Kokare since deceased thr Lrs and Ors … Respondents

WITH
INTERIM APPLICATION NO. 11297 OF 2024
IN
SECOND APPEAL NO. 487 OF 2024

Waman Sakharam Kokare … Applicant

vs.

Bhagubai Kondiba Kokare … Respondent

Mr. Dinesh Bhosale for Appellants.

CORAM : GAURI GODSE, J.

DATED : 4th OCTOBER 2024

ORDER:

SECOND APPEAL NO. 487 OF 2024.

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

I) In the absence of any specific findings recorded with

regard to partition by metes and bounds in respect of ancestral joint family properties referred to in issue no.7, whether there could have been a decree for partition and separate possession in respect of the suit properties without adding the other properties in the suit?

II) Whether both the courts erred in ignoring the pleadings of defendant no.2 indicating that Gajrabai was also a necessary party, she being the sister of defendant nos. 1 and 2?

III) Whether the decree for partition and separate possession would be sustainable in the absence of adding of the ancestral properties as the suit properties and for non-joinder of necessary parties?

2. In addition to Court notice, learned advocate for appellants to serve respondents, by private notice and file affidavit of service.

3. Call for records and proceedings.

4. Printing is dispensed with.

5. Learned advocate for the appellants shall file private paper-book within a period of one year from today.

INTERIM APPLICATION NO. 11297 OF 2024.

6. Rule on interim relief in terms of prayer clause(b) is made returnable after 14 weeks.

7. In addition to Court notice, the learned advocate for the applicants to serve respondents, by private notice and file affidavit of service before the next date.

8. Till next date by way of ad-interim relief, there will be a stay to the actual handing over physical possession.

9. It is clarified that further proceedings for the division of property shall continue.

10. During the pendency of the application, the parties shall not create any third party interest.

(GAURI GODSE, J.)