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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 404 OF 2024
WITH
INTERIM APPLICATION NO. 10761 OF 2024
IN
SECOND APPEAL NO. 404 OF 2024**

Dhanaji Raghunath Mahadik

.....Appellant

Vs.

Rahul Tulshiram Mahadik and Ors

.....Respondents

**WITH
SECOND APPEAL ST NO. 17597 OF 2024
WITH
INTERIM APPLICATION NO. 9974 OF 2024
IN
SECOND APPEAL ST NO. 17597 OF 2024**

Dinesh Pandurang Phalake

.....Appellant

Vs.

Rahul Tulshiram Mahadik

.....Respondent

Mr. Surel Shah, Senior Advocate i/b Mr. Rushikesh Phadefor the appellants

CORAM : GAURI GODSE, J.

DATE : 6th AUGUST 2024

ORDER:

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

(i) Whether the plaintiffs would be entitled to seek partition and separate share in the property that was already sold by Manaku on 10th January 1994?

(ii) Whether the suit filed in the year 2014 seeking declaration and partition is within limitation in as much as mutation entry no. 1617 was effected on 17th July 1995 regarding division of the property which was never challenged by Tulshiram during his lifetime?

(iii) Whether the first Appellate Court erred in not deciding the application filed by the appellants in the first appeal seeking production of additional documents to bring on record copies of sale deeds executed by Manaku and defendant no. 1?

(iv) Whether the appellants would be entitled to bring on record the documents of sale deed executed by Manku

and defendant no. 1 by way of additional evidence before the first Appellate Court?

2. In addition to Court notice, appellants to serve the respondents by private notice and file affidavit of service.
3. Call for record and proceedings. Printing is dispensed with.
4. Appellants to file private paper-book within a period of one year.

INTERIM APPLICATION NO. 10761 OF 2024 AND INTERIM APPLICATION NO. 9974 OF 2024 :

5. Issue notice to respondents, returnable on 22nd October 2024.
6. In addition to Court notice, applicants to serve the respondents by private notice and file affidavit of service before the next date.
7. By way of ad-interim relief, there will be stay only to the actual handing over of possession.
8. It is clarified that proceedings for final decree for division of the property can proceed.

[GAURI GODSE, J.]