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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 438 OF 2024
WITH
INTERIM APPLICATION ST NO. 20818 OF 2024
IN
SECOND APPEAL NO. 438 OF 2024**

Ragini Gururaj Acharya and Ors

.....Appellants

Vs.

Rajendra Dattatraya Hadgal and anr

.....Respondents

Mr. Tejpal Ingale a/w Mr. C. M. Lokesh for the appellants
Mr. Avesh Ghadge a/w Mr. Akshay Kulkarni for respondents

CORAM : GAURI GODSE, J.

DATE : 26th JULY 2024

ORDER:

1. Due to the technical error of connectivity, I was unable to access the soft copy. Hard copy tendered by the learned counsel for the appellant is taken on record.
2. Heard learned counsel for the appellant. Second appeal is admitted on the following substantial questions of law:

(i) Whether the decree for specific performance of part of the property and decree for partition and separate possession, could have been granted in the absence of a specific prayer in the plaint seeking specific performance of undivided share of defendant no. 1 and in the absence of any prayer for partition and separate possession?

(ii) Whether considering the pleadings and prayers, the decree passed for specific performance and partition in respect of part of the property satisfies the parameters under Section 22 of The Specific Relief Act, 1963?

3. Mr. Avesh Ghadge waives service for respondents.
4. Call for record and proceedings. Printing is dispensed with.
5. Appellant to file private paper-book within a period of one year.

INTERIM APPLICATION ST NO. 20818 OF 2024:

6. This application is for seeking stay of the impugned decree for specific performance and partition and separate possession.

7. Second appeal is admitted by a separate order on the questions of law as recorded in the order. The agreement for specific performance is alleged to have been signed by applicant no. 1. Applicant no. 1 and her husband Gururaj were co-owners of the suit property. It is the plaintiffs' case that after the death of Gururaj, applicant no. 1 had executed the agreement on behalf of the applicants. Applicant nos. 2 and 3 are children of applicant no. 1 and Gururaj. By the impugned decree, specific performance is granted only in respect of part of the property on the ground that same false to the share of applicant no. 1. In view of the applicants' claim of independent rights of all the applicants in the suit property, the decree for specific performance requires to be stayed during the pendency of the second appeal.

8. Hence, during the pendency of the second appeal, there will be interim stay in terms of prayer clause (a).

9. During the pendency of the second appeal, applicants shall not create any third party interest or part with possession of the suit property.

10. Interim application is disposed of in the above terms.

[GAURI GODSE, J.]