

rrpillai

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 510 OF 2024
WITH
INTERIM APPLICATION NO. 11664 OF 2024**

Lilabai Shamrao Vasudev ... Appellants/Applicants
(Deleted since deceased)

Vs.

Bajirao Shamrao Vasudev and Others ... Respondents

Mr. Prashant P. Kulkarni a/w. Ms. Rachna Mamnai for the
Appellants/Applicant.

Mr. Shantanu S. Kalekar for Respondent No. 1.

CORAM : GAURI GODSE, J.

DATE : 7th OCTOBER 2024

ORDER :

1. Heard. Second Appeal raises the following substantial questions of law :

(i) In view of the the pendency of the Regular Civil Appeal No. 97 of 2012, whether the trial court had any jurisdiction to modify its own decree for dismissal of the suit and pass a fresh decree for partition ?

(ii) When the dismissal of the suit for partition and separate possession was challenged in Regular Civil Appeal No. 97 of 2012 in which the learned District Judge had issued directions to the trial court calling for findings on additional issues alongwith all other issues, whether the trial court could have modified the original decree dismissing the suit or whether the trial court was required to follow the directions issued by the District Court on 12th April 2019 and only record findings and submit the findings before the District Court where the appeal was pending ?

(iii) Whether the decree for partition and separate possession passed by the trial court on 4th October 2019 is sustainable in view of the pendency of the Regular Civil Appeal No. 97 of 2012 on the date of the trial court's decree ?

(iv) In view of the withdrawal of Regular Civil Appeal No. 97 of 2012, whether the plaintiff would be entitled to a decree for partition and separate possession passed by the trial court during the pendency of the Regular Civil Appeal No. 97 of 2012 filed for challenging the dismissal of the suit for partition and separate possession ?

(v) Whether the First Appellate Court erred in not considering the issue with regard to ground of challenge raised by the defendants in ground no. 3 of the First Appeal Memo ?

2. Issue notice for final disposal of the Second Appeal on the aforesaid questions of law.
3. Learned Advocate for respondent no. 1 waives notice for respondent no.1.
4. Office is directed to issue notice to the remaining respondents alongwith copy of this order.
5. Notice is made returnable on 15th January 2025.
6. In addition to court notice, learned Advocate for the appellants to serve the remaining respondents by private service alongwith copy of this order and file service affidavit before the next date.
7. Learned Advocate for the appellant shall file private paper book before the next date.

Interim Application No. 11664 of 2024

8. Rule on interim relief in terms of prayer clause (a) is made returnable on 15th January 2025.
9. Learned Advocate for the respondent no. 1 waives notice for respondent no.1.
10. In addition to court notice, learned Advocate for the applicant to serve the remaining respondents by private service and file service affidavit before the next date.
11. Till next date there will be ad-interim stay in terms of prayer clause (b).

[GAURI GODSE, J.]