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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 719 OF 2024
WITH
INTERIM APPLICATION (ST) NO. 29697 OF 2024**

Anil Shankar Pawar ... Appellant/Applicant

Vs.

Rudrappa Dhondiram Phalle ... Respondents

Mr. Kalpesh U. Patil for the Appellant/Applicant.

CORAM : GAURI GODSE, J.

DATE : 14th DECEMBER 2024

ORDER :

1. Heard learned counsel for the appellant. The second appeal raises the following substantial questions of law :

(i) Whether both the courts erred in not considering the applications dated 16th January 2013 and 9th April 2015 filed by defendant no. 1 for framing additional issues regarding payment of compensation to the plaintiff in the event court comes to a conclusion that there is encroachment on plaintiff's property ?

(ii) Whether both the courts erred in not correctly appreciating the agreement dated 22nd July 1970 between the predecessor of the parties indicating that the plaintiff had carried out encroachment on defendant no. 1 property ?

(iii) Whether both the courts failed to appreciate the admission given by PW-1 with regard to the agreement dated 22nd July 1970 which would indicate that there was encroachment on defendant no1's property ?

(iv) Whether plaintiff would be entitled to a decree for removal of encroachment in the absence of mandatory compliance as required under Order VII Rule 3 of the Civil Procedure Code, 1908 ?

(v) In the facts of the case whether it would be necessary to remand the matter to the trial court for framing issues with regard to payment of compensation in terms of the proposed additional issue suggested by defendant no. 1 by filing applications dated 16th January 2013 and 9th April 2015 ?

2. Issue notice for final disposal at admission stage on the aforesaid questions of law.

3. Notice is made returnable on 26th February 2025.
4. In addition to court notice, learned Advocate for the appellant to serve the respondents by private service and file service affidavit before the next date.
5. Learned counsel for the appellant shall keep private paper book ready before the next date.
6. Learned counsel for the appellant on instructions submits that the appellant would be agreeable to resolve the dispute amicably.

Interim Application (St) No. 29697 of 2024

7. Rule on interim relief in terms of prayer clause (a) is made returnable on 26th February 2025.
8. In addition to court notice, learned Advocate for the applicant to serve the respondents by private service and file service affidavit before the next date.
9. Till next date there will be ad-interim relief in terms of prayer clause (a).

[GAURI GODSE, J.]