

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION**

INTERIM APPLICATION NO. 1918 OF 2024

Laxmibai Balaram Samjiskar & Ors.	Applicants
<i>IN THE MATTER BETWEEN</i>	
Balaram Bhikhu Samjiskar	Appellant
V/S	
Shakuntala Vishnu Kadam & Ors.	Respondents

**WITH
INTERIM APPLICATION NO. 9111 OF 2024
IN
SECOND APPEAL NO. 138 OF 2019**

Mr. Vivek Patil a/w. Mr. Devesh Sawant i/b. Vivek Patil and Associates for the Applicants.
Mr. Abhineet N. Pange i/b. Mr. Ashish Agarkar for the Respondent.

CORAM : M. M. SATHAYE, J.

**DATED : 28 MAY 2024
(Vacation Court)**

P.C.:

1. Leave to amend is granted to correct the date mentioned in the prayer clause (b). Amendment to be carried out forthwith during the course of the day.
2. This Application is filed by legal heirs of sole Appellant for recall of the order dated 02.02.2024 by which the Second Appeal was disposed of as abated, with a further prayer to restore the Second Appeal.

3. Learned Counsel for the Applicants submits that the order disposing of the Second Appeal proceeded on the basis that the necessary steps had not been taken after the original Appellant has passed away.

4. Learned Counsel for the Applicants states that this is factually incorrect, in view of the fact that Interim Application (ST) No. 5871 of 2023 was already filed on 28.02.2023. Perusal of the office note shows that this Application was filed on 28.02.2023, as claimed.

5. Learned Counsel for the Respondents submits that he was not aware of the Application which was filed for bringing legal heirs of the Appellant, as claimed by the Applicants and therefore, seeks time to file reply to both restoration application as well as the application for bringing legal heirs on record.

6. In that view of the matter, stand over to **24 June 2024**.

7. The matter is arising out of decree for partition. During pendency of the Appeal, usual interim order dated 13.02.2019 was in force by which it was directed that the partition can proceed but actual possession was deferred till further orders. Also, learned Counsel for the Respondents has fairly made a statement that they will not take any steps except following due process of law.

8. In light thereof, it is directed that the clauses 2 & 3 of the Order dated

13.02.2019 passed in Second Appeal No. 138 of 2019 with Civil Application No. 1583 of 2018 shall continue to operate during pendency of this Application.

9. All concerned to act on authenticated or digitally signed copy of this order.

(M. M. SATHAYE, J.)