

Iresh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 154 OF 2024
WITH
INTERIM APPLICATION NO. 2117 OF 2024
IN
SECOND APPEAL NO. 154 OF 2024**

Raghu Maruti Thorat Deceased

.....Appellant

Vs.

Joti Krishna Thorat Deceased

.....Respondent

Mr. Kayval P. Shah for appellant

Mr. Pranav Dessai a/w Mr. Kiran Padalkar and Ashwini Padalkar i/b
Padalkar and Partners for respondents

CORAM : GAURI GODSE, J.

DATE : 12th JULY 2024

ORDER:

1. Heard. Second appeal is admitted on the following substantial questions of law:

(i) Whether the suit for removal of encroachment could have

been decreed by the first Appellate Court by ignoring material factual aspect that the gift relied upon by the plaintiff as a source of title did not provide for any area of the property?

(ii) Whether the findings of facts recorded by the first Appellate Court regarding ownership of the plaintiff on the suit property i.e. encroached area based on the gift deed which did not contain the area could have been accepted on the basis of oral evidence on record?

(iii) Whether reversal of findings of facts on record, more particularly the fact that the gift deed did not contain the actual area gifted is sustainable ?

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

INTERIM APPLICATION NO. 2117 OF 2024:

6. Rule on interim in terms of prayer clauses (a), (b) and (c) is made returnable on 27th September 2024
7. Mr. Pranav Dessai waives service for respondents.
8. Till next date there will be ad-interim relief in terms of prayer clause (a).

[GAURI GODSE, J.]