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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 7905 OF 2024
IN
SECOND APPEAL NO. 745 OF 2016**

Madhukar Pandurang Kansara ... Applicant/Appellant

vs.

Kesharbai Jawarlal Rathod and Ors ... Respondents

Mr. Harshad Palwe a/w. Mr. Farzana Khan for the
Applicant/Appellant.

Mr. Girish Agarwal a/w. Ms. Chitra Darekar for Respondent No.2.

Mr. Prathmesh T. Bhanuwanshe i/b. Mr. Sanjay P. Shinde, for
Respondent Nos. 8a to 8f and 8fa.

CORAM : GAURI GODSE, J.

DATED : 29th NOVEMBER 2024

ORDER:

INTERIM APPLICATION NO. 7905 OF 2024

1. This application is for restoration of the second appeal with a prayer to recall the order dated 22nd April 2019.

2. Learned counsel for respondents opposes this application on the ground that there is a delay of more than four years and there is no explanation for the condonation of delay. Since the second appeal is of the year 2016, I called upon the learned counsel

appearing for the appellant to point out whether the second appeal raises any substantial question of law.

3. Learned counsel for the appellant submits that defendant no.1 had agreed to sell the suit house property to the present appellant as it was his self acquired property. He submits that since there was an agreement for sale in favour of the present appellant, both the courts ought to have taken into consideration the rights created in favour of the appellant pursuant to the agreement for sale executed by defendant no.1. He thus, submits that in view of the partition decree the rights created in favour of the appellant, under the agreement for sale are affected. He submits that the said aspect has not been taken into consideration by either court.

4. He submits that the appellant, being the bonafide purchaser for value without notice, the decree for partition would not be binding upon him. He, thus, submits that the second appeal would, thus, raise substantial questions of law on the point of the appellant's right based on the agreement for sale in his favour.

5. I have perused the impugned judgments. Both the courts have concurrently held that the suit house property is the joint family property and passed a decree for partition and separate possession. Appellant and Defendant no.1, through whom the present appellant

claims right in the suit house property, had preferred separate first appeals to challenge the trial court's judgment and decree. Both the first appeals are dismissed by a common judgment. Defendant no.1 has accepted the decree for partition and separate possession, and there is no further challenge on behalf of defendant no.1.

6. The appellant claims the right in the suit property only based on an agreement for sale. Admittedly, the appellant has not taken any steps for the specific performance of the agreement, which, according to him, was executed by defendant no.1.

7. Thus, in the absence of any right in favour of the present appellant, the issue regarding the suit house property being the exclusive property of defendant no.1 is not required to be examined in this second appeal. Defendant no.1 has accepted the decree for partition and separate possession; hence, at the behest of the appellant, the issue regarding the status of the suit house property is not required to be examined in this second appeal.

8. Therefore, The arguments raised on the appellant's behalf would not require any consideration by this court. The second appeal does not raise any substantial question of law. Hence, in the facts and circumstances of the case, the interim application for restoration of the second appeal is allowed in terms of prayer

clauses (a), (b) and (c).

9. For the reasons recorded above, the second appeal is dismissed.

(GAURI GODSE, J.)