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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 242 OF 2024

WITH

INTERIM APPLICATION NO. 7987 OF 2024

IN

SECOND APPEAL NO. 242 OF 2024

Shri Krishna Pandurang Mhatre

.....Appellant

Vs.

Sou. Mai Baliram Thakur and anr

.....Respondents

Mr. Vijay Gharat for the appellant

CORAM : GAURI GODSE, J.

DATE : 9th SEPTEMBER 2024

ORDER:

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

I. Whether the first Appellate Court erred in not considering the pleadings of the defendant that Pandurang had two more daughters. Hence, for determining the shares of the parties, whether the other

two daughters of Pandurang were necessary parties to the suit?

II. Whether determination of 1/3rd share to the plaintiffs is erroneous in the absence of any specific findings of facts recorded on the plaintiffs being legitimate children through Kalawati being legally wedded wife of Pandurang?

III. In the event the plaintiffs are not held to be legitimate daughters of Pandurang, whether the plaintiffs would be entitled to 1/3rd share as decreed by the first Appellate Court or whether the plaintiffs would be entitled to seek a share in Pandurang's share?

2. In addition to Court notice, learned advocate for the appellant shall serve the respondents by private notice and file affidavit of service.

3. Call for record and proceedings. Printing is dispensed with.

4. Learned advocate for the appellant shall file private paper-book within a period of one year.

INTERIM APPLICATION NO. 7987 OF 2024:

5. Rule on interim relief in terms of prayer clause (a) is made returnable on 18th November 2024.
6. In addition to Court notice, learned advocate for the appellant shall serve the respondents by private notice and file affidavit of service.
7. By way of ad-interim relief, there will be stay only to the actual handing over of physical possession. The final decree proceedings for partition shall proceed.
8. During the pendency of the interim application, the appellant shall not create any third party interest in the said property.

[GAURI GODSE, J.]