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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 316 OF 2024
WITH
INTERIM APPLICATION NO. 8745 OF 2024**

Kallappa Shantvirappa Patil and Others ... Appellants

Vs.

Malamma Chandrakant Tolnur and Others ... Respondents

Mr. Ajjit Alange for the Appellants.

Mr. Vishwanath Patil a/w. Mr. Akshay Naidu for Respondent No. 1.

CORAM : GAURI GODSE, J.

DATE : 9th SEPTEMBER 2024

ORDER :

1. Heard learned counsel for the parties. The Second Appeal is admitted on the following substantial questions of law :

(i) Whether the sale deed executed by Shantivirappa in favour of defendant no. 2 during his life time can be said to be binding on the plaintiffs ?

(ii) Whether the plaintiffs would be entitled to seek partition and separate possession in respect of the property described

as 1D which was sold by Shantivirappa in favour of defendant no.2, when admittedly the suit properties described as 1A to 1C were self acquired properties of Shantivirappa out of which suit property 1D was sold during the life time of Shantivirappa ?

(iii) Whether the plaintiff would be entitled to seek partition and separate possession in respect of the suit properties on the ground that it was a Joint Family property ?

(iv) Whether both the courts erred in not deciding the issue with regard to whether the properties already sold during the life time of Shantivirappa were available for partition and separate possession after death of Shantivirappa ?.

2. Mr.Patil waives notice for respondent no.1. In addition to court notice, learned Advocate for the appellants to serve the remaining respondents by private service and file service affidavit.

3. Call for record and proceedings.

4. Printing is dispensed with.

5. Learned Advocate for the appellants shall file private paper book within one year from today.

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6. Rule on interim relief in terms of prayer clause (b) is made returnable on 18th November 2024.

7. Mr.Patil waives notice for respondent no.1. In addition to court notice, learned Advocate for the applicants to serve the remaining respondents by private service and file service affidavit.

8. Till next date the ad-interim relief already granted to continue.

9. During the pendency of the application, no third party right should be created in respect of the suit property.

[GAURI GODSE, J.]