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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 448 OF 2024
WITH
INTERIM APPLICATION NO. 9942 OF 2024**

Sadashiv Maruti Shinde

... Appellant

Vs.

Smt. Rajubai Somnath Shinde and Others

... Respondents

Mr. Sujeet Bugade for the Appellant.

CORAM : GAURI GODSE, J.

DATE : 16th AUGUST 2024

ORDER :

1. Heard learned counsel for the appellant. The Second Appeal raises following substantial questions of law :

(i) Whether in view of the observations made by the First Appellate Court in paragraphs 24 and 25 of the impugned judgment, it was necessary for the First Appellate Court to exercise powers under Order 41 Rule 33 read with Rule 23A and 25 of the Code of Civil Procedure, 1908 ("CPC") and remand the matter to the trial court and grant an opportunity to defendant no. 2 to examine the attesting witness as prayed in the application at Exhibit 149 ?

(ii) Whether in the absence of any cross objections filed by defendant no.2 the First Appellate Court by exercising powers under Order 41 Rule 33 of CPC could have set aside the order passed under Exhibit 149 and allowed the prayer of defendant no. 2 as prayed in the application at Exhibit 149 ?

2. Issue notice for final disposal at admission stage on the aforesaid questions of law. Notice is made returnable on 18th October 2024.

3. Office is directed to issue notice alongwith copy of this order. In addition to court notice notice, learned Advocate for the appellant shall serve the respondents by private notice alongwith copy of this order and file service affidavit before the next date.

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4. Issue notice to respondent returnable on 18th October 2024. In addition to court notice learned counsel for the applicant to serve the respondent by private service and file service affidavit before the next date.

5. Till next date by way of ad-interim relief, only handing over of possession shall remain stayed.
6. It is clarified that the final decree proceeding can go on as directed in the impugned decree.

[GAURI GODSE, J.]