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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 435 OF 2024
WITH
INTERIM APPLICATION NO. 10621 OF 2024
IN
SECOND APPEAL NO. 435 OF 2024**

Digambar Pandurang Pawtekar
(Deceased Through Legal Heirs)

.....Appellants

Vs.

Shri. Purushottam Gopinath Waikar
Charitable Trust

.....Respondent

Ms. Sangita S. i/b Mr. Amey Borwankar for the appellants

CORAM : GAURI GODSE, J.

DATE : 24th JULY 2024

ORDER:

1. Heard learned counsel for the appellant. Learned counsel for the appellant submits that appellants are pressing this second appeal only to the extent of property no. 1A. Hence, second appeal is admitted

only with regard to property no. 1A on the following substantial questions of law:

- (i) Whether both the Courts ought to have framed an issue of jurisdiction of Civil Court, with regard to defendant's claim of defendant no. 3 having been inducted as tenant in respect of property no. 1A.
- (ii) Whether both the Courts ought to have taken into consideration whether in view of the claim of tenancy of defendant no. 3 in respect of property no. 1A, Civil Court would get jurisdiction to decide the suit so far as property no. 1A is concerned?
- (iii) Whether the first Appellate Court erred in not framing a point on determination of defendant no. 3's tenancy rights inspite of allowing the application for producing additional evidence and had taken on record copies of judgment and decree in RCS No. 937 of 1983 and the documents in respect of Small Causes Suit No. 2626 of 1975 by way of additional evidence?

2. Call for record and proceedings. Printing is dispensed with.
3. Appellants to file private paper-book within a period of one year from today.

INTERIM APPLICATION NO. 10621 OF 2024:

4. Rule in terms of prayer clause 8 (1) is made returnable after 10 weeks.
5. Till next date, there will be ad-interim relief in terms of prayer clause 8(1) only to the extent of property no. 1A, subject to appellant's not creating any third party rights and not parting with the possession at property no. 1A.

[GAURI GODSE, J.]