

rrpillai

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 289 OF 2019
WITH
INTERIM APPLICATION NO. 12266 OF 2024**

Pramod Govind Kshirsagar and Anr. ... Appellants/Applicants

Vs.

Arvind Krushnaji Kshirsagar ... Respondents

(POA) 1A. Yogesh Arvind

Kshirsagar (Deshmukh) and Others

Mr. Shrishailya S. Deshmukh for the Appellants/Applicants.

Mr. Nikhil Wadikar i/b. Mr. Nandu Pawar for Respondent No. 1A.

CORAM : GAURI GODSE, J.

DATE : 16th DECEMBER 2024

ORDER :

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

- (i) When the decree for partition and separate possession passed on 21st December 1979 has attained finality whether the application filed as Dairy Application No. 15 of 2005 would be maintainable which amounts to seeking modification in the decree ?

(ii) Whether the regular first appeal filed by respondent no. 1 challenging the order passed by the executing court below Dairy Application No. 15 of 2005 was maintainable ?

(iii) Whether the directions issued by the impugned order directing the executing court to take note of the observations in the order passed by the Apex Court confirming a decree for partition and separate possession would be sustainable in as much as there is no dispute that the Hon'ble Apex Court by order dated 5th December 1995 dismissed the appeals preferred by respondent no. 1 thereby confirming the decree for partition and separate possession passed on 27th December 1979 ?

(iv) Whether respondent no. 1 is entitled to seek modification of the partition decree by filing application styled as Dairy Application No. 15 of 2005 ?

(v) Whether directions issued by the executing court in Dairy Application No. 15 of 2005 and modified by the learned District Judge in the impugned order would amount to going beyond the jurisdiction of the executing court in execution proceedings filed for partition and separate possession pursuant to the partition

decree dated 21st December 1979 which is confirmed up to the Hon'ble Apex Court ?

2. Learned Advocate for the respondent no. 1A waives notice.
3. In addition to court notice, learned Advocate for the appellants to serve the remaining respondents by private service and file service affidavit.
4. Call for record and proceedings.
5. Printing is dispensed with.
6. Learned Advocate for the appellants shall file private paper book within one year from today.

Interim Application No. 12266 of 2024

7. Rule on interim relief in terms of prayer clause (a) is made returnable on 10th March 2025.
8. Learned Advocate for the respondent no. 1A waives notice.
9. In addition to court notice, learned Advocate for the applicants to serve the remaining respondents by private service and file service affidavit before the next date.

10. Till next date there will be ad-interim stay in terms of prayer clause (a).

11. During the pendency of this interim application the parties shall not create any third party interest in respect of the suit properties.

[GAURI GODSE, J.]