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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 676 OF 2024

WITH

INTERIM APPLICATION NO. 14281 OF 2024

IN

SECOND APPEAL NO. 676 OF 2024

Nirmala Tukaram Hulswar

.....Appellant

Vs.

Balasaheb Mahadev Koingde and ors

.....Respondents

Mr. Mandar Soman i/b Mr. Ishaan Kapse for the appellant

Mr. R. M. Hardas i/b Mr. Nakul Vivek Shukla for respondent nos. 1 and 2

CORAM : GAURI GODSE, J.

DATE : 22nd NOVEMBER 2024

ORDER:

1. Heard learned counsel for the parties. Learned advocate for the appellant submits that the second appeal raises following substantial questions of law on the point that appellant's application filed under Order XLI Rule 27 of Code of Civil Procedure, 1908 below Exhibits, 34, 43 and 49 were kept pending by the first Appellate Court. He submits that if the said applications were allowed, the appellant would

have been in a position to point out that the appellant has substantial right in respect of the suit property. He submits that the second appeal would raise substantial questions of law on the additional evidence sought to be produced by the appellant.

2. I have heard learned counsels for the parties. The second appeal raises the following substantial questions of law:

I. Whether the first Appellate Court erred in keeping the applications at Exhibits 34, 43 and 49 pending?

II. Whether the additional evidence sought to be produced by way of applications at Exhibits 34, 43 and 49 would have any bearing on the merits of the suit for specific performance decreed against defendant no. 2?

III. Whether the appellant would be entitled to seek any relief by claiming to be heir of Bayakka?

3. Learned counsel for the appellant submitted that the second appeal also raises a question of law on the point of escalation of price of the suit property. However, he is unable to point out any supporting pleadings or any evidence produced on record on this ground which is

sought to be argued in the second appeal. For want of any supporting pleadings on the said point, the same cannot be decided for the first time in the second appeal.

4. Notice is waived by learned advocate appearing on behalf of respondent nos. 1 and 2. Learned advocate for respondent nos. 1 and 2 points out that respondent no. 4 has filed the second appeal challenging the same decree. Hence, learned advocate for the appellant shall serve private notice on respondent no. 4 alongwith copy of this order and file affidavit of service before the next date. Learned advocate for respondent nos. 1 and 2 submits that Second Appeal No. 718 of 2024 filed by respondent no. 4 is listed on 14th December 2024.

5. Hence, notice for final disposal on the aforesaid questions of law is made returnable on 14th December 2024. To be heard alongwith Second Appeal No. 718 of 2024.

[GAURI GODSE, J.]