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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 324 OF 2021
WITH
CIVIL APPLICATION NO. 1383 OF 2019
IN
SECOND APPEAL NO. 324 OF 2021**

Kallappa Siddhagonda Bahirgonde
and anr

.....Appellants

Vs.

Kalappa Ogyappa Birajdar

.....Respondent

Mr. Vishwanath Patil a/w Mr. Kedar Nhavkar i/b Mr. Kewal Ahya for the
appellants

Mr. Prasad Kulkarni a/w Mr. Nakul Vivek Shukla for respondent

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CORAM : GAURI GODSE, J.

DATE : 23rd APRIL 2025

ORDER:

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

(I) Considering the description of the property in the plaint and the prayers in the suit, whether the declaration of ownership given in favour of the plaintiff can be accepted as correct interpretation of the

sale deed dated 23rd March 1990 which is admittedly in respect of Gat No. 231/2?

(II) In view of the sale deed in favour of the plaintiff in respect of 2 Hectors 65 Are land of Gat No. 231/2, whether the reasons recorded for getting declaration in respect of western side of Gat No. 231 without specifying whether the declaration is in respect of Gat No. 231/2 or Gat No. 231/1, the decree could be sustainable?

2. Learned advocate appearing for respondent waives notice.
3. Call for record and proceedings. Printing is dispensed with.
4. Learned advocate for the appellants shall file private paper-book within a period of one year.

CIVIL APPLICATION NO. 1383 OF 2019:

5. Civil Application is for seeking stay to the implementation of the impugned decree. The ad-interim relief is already granted in terms of prayer clause (b).
6. The second appeal is admitted. By the impugned decree, a declaration is granted in respect of plaintiff's title and further directions are granted for fixing of boundaries as per the decree. Admittedly the

appellant is the owner of Gat No. 231/1. the dispute between the parties is with regard to actual demarcation of the respective Gat numbers. Hence, if any action is taken based on the declaration granted, it is likely to cause prejudice to the rights of the appellant. If the impugned decree is implemented and any third party rights are created based on the impugned decree, the same would result into multiplicity of proceedings.

7. Hence, during the pendency of the second appeal, there will be interim relief in terms of prayer clause (a).

8. The Civil Application is allowed in above terms.

[GAURI GODSE, J.]