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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 165 OF 2015
WITH
INTERIM APPLICATION NO. 854 OF 2025
WITH
INTERIM APPLICATION NO. 847 OF 2025
WITH
CIVIL APPLICATION NO. 1843 OF 2015
IN
SECOND APPEAL NO. 165 OF 2015**

Daji Yeshwant Pawar Deceased ... Appellants/Applicants
through Lrs

vs.

Bajirao Yeshwant Pawar Deceased ... Respondents
through Lrs

Mr. Sandeep Patade a/w. Kayval P. Shah for Appellants/Applicants.

CORAM : GAURI GODSE, J.

DATED : 20th JANUARY 2025

ORDER:

1. Heard learned counsel for the appellants. This appeal is preferred by the heirs and legal representatives of deceased defendant no.1 to challenge the concurrent judgments and decrees for partition and separate possession. Respondent No.1 is the

original plaintiff. The trial court had partly decreed the suit and granted 8/28th share in some of the suit properties. The trial court's decree was challenged by the heirs and legal representatives of deceased defendant no.1. However, the first appellate court modified the shares by granting 1/7th share to the plaintiff, defendant no.1 and defendant nos. 4 to 8. This modification is challenged by all the heirs and legal representatives of deceased defendant no.1.

2. Learned counsel for the appellants submits that this court vide order dated 19th July 2016, had recorded submissions made on behalf of the appellants, in view of the decisions of the Hon'ble Apex Court in the case of *Prakash and Ors Vs. Phulavati and Ors*¹. Learned counsel for the appellants thus, submits that the second appeal raises substantial questions of law on the determination of the share of the parties. He however, fairly submits that the issue is now settled by the Hon'ble Apex Court in the decision of *Vineeta Sharma Vs. Rakesh Sharma*². He therefore submits that in view of the legal principles settled by the Hon'ble Apex Court, the issue regarding the determination of shares now is not required to be considered in this second appeal. He, however, submits that some

1. Civil Appeal No. 7217 of 2013

2 (2020) 9 SCC 1

of the respondents have expired. Hence, the issue regarding determination of shares in view of deceased parties will have to be considered.

3. I have perused the impugned judgments. The first appellate court in paragraph no.3 of the order has directed that the share of deceased, defendant nos. 1, 5 and 6 shall further devolve upon other respective heirs equally. In view of the legal principles settled by the Hon'ble Apex Court in the decision of *Vineeta Sharma*, the determination of the share made by the first appellate court would not require any consideration. The determination of the shares of the deceased parties can be considered at the time of actual partition as per the impugned decree. Hence, on the said ground, the second appeal would not require any consideration.

4. In view of the well settled legal principles of law, the second appeal would not require any consideration by this court. The second appeal does not raise any other substantial question of law. Hence, the second appeal is dismissed.

5. In view of dismissal of the second appeal, all pending applications are disposed of as infructuous.

(GAURI GODSE, J.)