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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 745 OF 2023**

**WITH**

**INTERIM APPLICATION NO. 2090 OF 2024**

**IN**

**SECOND APPEAL NO. 745 OF 2023**

Shamrao Ganpatrao Ghatge  
(Decd. Thr. LRs) Shri. Padmakar  
Shamrao Ghatge and ors

.....Appellants

**Vs.**

Sarjerao Ganpatrao Ghatge (Thr. LRs)  
Smt. Shakuntala Sarjerao Ghatge and ors

.....Respondents

Mr. Niranjana Bhavake a/w Ms. Drishti Madhani a/w Ms. Swamini  
Thakur a/w Mr. Anurag Ramekar i/b Bhavake and Associates  
Advocates

**CORAM : GAURI GODSE, J.**

**DATE : 7<sup>th</sup> MAY 2025**

**ORDER:**

1. This appeal arises out of the impugned judgment and decree which is subject matter of Second Appeal No. 194 of 2023. Second Appeal No. 194 of 2023 is preferred by original defendant no. 8. Present second appeal is preferred by the plaintiff and defendant nos. 2 to 7. Both the second appeals arise out of the same decree for

partition and separate possession. Connected Second Appeal No. 194 of 2023 is admitted on 13<sup>th</sup> December 2024. In the present second appeal, similar questions of law are raised. Hence, this second appeal is admitted on the same questions of law which read as under:

(I) When the relation between the parties is not in dispute, whether the share granted by the trial court to defendant nos. 8 to 11 could have been set aside by the first appellate court by relying upon the partition deed dated 15<sup>th</sup> April 1985, in as much as even the said partition deed does not give any share to defendant nos. 8 to 11?

II) In the absence of any document of partition deed dated 15<sup>th</sup> April 1985, produced on record and in the absence of any findings recorded about partition and separate possession between the parties by metes and bounds, whether the reasons recorded by the first appellate court to reverse the trial court's decree for partition would be sustainable in law?

#### **INTERIM APPLICATION NO. 2090 OF 2024:**

2. Rule on interim relief in terms of prayer clause (a) and (b) is made returnable on 25<sup>th</sup> July 2025.

3. In addition to Court notice, learned advocate for the applicants shall serve the respondents by private notice and file affidavit of service before the next date.
4. Since the impugned decree is for partition and separate possession, by way of ad-interim relief, there will be stay to the actual handing over of physical possession.
5. During the pendency of the application, the parties shall not create any third party rights in respect of the suit property.
6. To be heard along with Second Appeal No. 194 of 2023.

**[GAURI GODSE, J.]**