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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 178 OF 2025

Sushilabai Rathunath Shewale

.....Appellant

Vs.

Shantaram Bhima Mahajan
(Shewale) and ors

.....Respondents

Mr. Narayan Bubna Advocate for the Appellant

CORAM : GAURI GODSE, J.

DATE : 4th MARCH 2025

ORDER:

1. Heard learned counsel for the appellant. This appeal is preferred by the plaintiff to challenge the judgment and decree passed by the first Appellate Court. The trial Court had decreed the suit for specific performance in favour of the appellant. The decree was challenged by the plaintiffs by filing an appeal. The first Appellate Court modified the decree restraining it only to the undivided interest of defendant nos. 1 and 2 who had signed the agreement. Aggrieved by the said modification, this appeal is preferred by the plaintiff.

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2. Learned counsel for the appellant submits that the first Appellate Court ignored that the suit property was a joint family property and defendant no. 3's husband had signed as a witness to the suit agreement. He submits that defendant no. 3 had also executed power of attorney in the name of her husband. He, thus submits that the suit agreement will also bind defendant no. 3's share. He submits that this crucial aspect has been ignored by the first Appellate Court and has erroneously held that the agreement would not bind defendant no. 3's share. He, thus, submits that the second appeal would raise the substantial question of law.

3. I have perused papers of the second appeal. There is no dispute that defendant no. 3 has not signed the said agreement. Mere defendant no. 3 being aware about the said agreement cannot be a ground to contend that the said agreement would also bind defendant no. 3. There is also no dispute that all the three defendants have undivided share in the suit property. Hence, considering the admitted facts that defendant no. 3 has not signed the suit agreement, no fault can be found in the modification made by the first Appellate Court. The first Appellate Court has rightly modified the decree by holding that the said agreement would bind the undivided interest of only defendant

nos. 1 and 2 who signed the agreement. When admittedly defendant no. 3 has not signed the suit agreement, there cannot be any specific performance granted against her in respect of her undivided 1/3rd interest.

4. Hence, the impugned judgment would not require any interference by this Court. The arguments raised on behalf of the appellant do not raise any question of law.

5. The second appeal is therefore, dismissed.

[GAURI GODSE, J.]