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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 322 OF 2024
WITH
INTERIM APPLICATION NO. 7845 OF 2024
IN
APPEAL FROM ORDER NO. 322 OF 2024**

Shri Babu Gopal Mandekar and Ors ... Appellants/Applicants
vs.

Lt. Maruti Kale Mandekar (Deceased) ... Respondent

Mr. R.M. Haridas i/b. Mr. Prasad P. Kulkarni for Appellants.
Mr. Sachin Gawade for Respondent No.8.

CORAM : GAURI GODSE, J.

DATED : 7th JANUARY 2025

ORDER:

1. Heard learned counsel for the parties. The appeal from order raises the following substantial questions of law:

I) The trial court's decree for partition and separate possession was not opposed by defendant nos. 8 to 10 who filed the first appeal, the said defendants though served failed to appear in the suit and the suit proceeded ex-parte against them. In view of these facts, whether the first appellate court

was justified in setting aside the decree for partition and remanding the matter to the trial court for deciding it afresh by permitting the said defendants to file a written statement?

II) Whether the order passed by the first appellate court permitting defendant nos. 8 to 10 to file written statement is sustainable in the absence of any specific findings regarding justifying the absence of the said defendants in the trial court, though they were served with the suit summons?

III) Whether setting aside the trial court's decree can be said to be justified for the reasons recorded in the impugned order, and whether it would be necessary to remand the appeal to the first appellate court for deciding on merits?

2. Issue notice to the respondents for final disposal of the appeal on the aforesaid questions of law. Notice is made returnable on 12th March 2025.

3. Learned advocate for Respondent no. 8 waives notice.

4. In addition to Court notice, learned advocate for the appellants to serve the remaining respondents, by private notice and file affidavit of service, before the next date.

5. **INTERIM APPLICATION NO. 7845 OF 2024**

6. Rule on interim relief in terms of prayer clause (a) is made returnable on 12th March 2025.

7. Learned advocate for Respondent no. 8 waives notice.

8. In addition to Court notice, learned advocate for the applicants to serve the remaining respondents, by private notice and file affidavit of service, before the next date.

9. Till next date, there will be ad interim relief in terms of prayer clause (a).

(GAURI GODSE, J.)