

*rrpillai*

**4IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
SECOND APPEAL NO. 26 OF 2024  
WITH  
INTERIM APPLICATION NO. 511 OF 2024**

Sachin Vasant Pawar and Others                      ...      Appellants/Applicants  
Vs.  
Vasant K Pawar (Decd)                                      ...      Respondents  
through LRs Vaibhav Vasant Pawar and Others

Mr. Kuldeep U. Nikam for the Appellants.

**CORAM : GAURI GODSE, J.**

**DATE : 2<sup>nd</sup> MAY 2025**

**ORDER :**

1. By the impugned judgments and decrees, appellants' prayer for partition is rejected by referring to an application filed at Exhibit 138. The prayer for partition was initially for four properties. However, after death of Vasant the plaintiffs contended that their names are already entered into revenue record for the properties at Sr. No. 2, 3 and 4 in the plaint. Hence, they filed application at Exhibit 138 for amendment. In view of the amendment it appears that the plaintiffs restricted their prayer for partition only in respect of Gat No. 148.

2. Deceased Vasant had already created third party right in respect of Gat No. 148. Hence, even if the plaintiffs are held entitled to partition and separate possession on the ground that the suit properties were ancestral properties, the prayer for partition and separate possession could not have been granted only for one property. The defendants/purchasers would be entitled to claim right in at least Vasant's undivided share. Hence, I do not see any fault in the reasons recorded by both the courts in refusing the prayer for partition and separate possession.

3. Learned counsel for the appellants however seeks time to place on record the copy of the application at Exhibit 138 and the order passed below it. He submits that inspite of the said order the suit for partition and separate possession with regard to only one property would be maintainable and sustainable.

4. To give an opportunity to the learned counsel for the appellants to place on record the application and the order passed below Exhibit 138, list the second appeal on 2<sup>nd</sup> July 2025.

**[GAURI GODSE, J.]**