

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 822 OF 2024
WITH
INTERIM APPLICATION NO. 15989 OF 2024

Sagar Sanjay Shinde and Ors. ...Appellants
Versus
Jayashree Janardhan Awatade and Ors. ...Respondents

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Mr. Ashok Tajane a/w Mr. Balaji Shinde for the Appellants.

CORAM : M.M. SATHAYE, J.
DATE : 18th JUNE, 2025

P.C. :

1. Heard learned Advocate for the Appellants. Second Appeal is urgently moved on the ground that notice of measurement pursuant to the decree of partition has been received.

2. The Appellants are Defendant Nos.11 to 13 who claim to be bonafide purchasers without notice of part of the suit property to the extent 2 H 2 R in Gat No. 459/2 at post Ankoli, Taluka Mohol, District-Solapur. The suit is decreed granting share to the Plaintiffs. Three first appeals arising out of the decree for partition were heard together and dismissed by the impugned Judgment and Order dated 19.08.2024.

3. Learned Advocate for the Appellants submitted that the Appellants are in possession of the property purchased by them under a registered sale deed and they are bonafide purchasers for value without notice. He submits that the aspect of legal necessity has not been

considered by the Courts below, as no issue or point is framed in that regard, despite the Appellants' witness deposing that Defendant Nos. 1 and 2 had executed sale deed in favour of Defendant Nos. 4 to 8 for legal necessity, who in turn has alienated portion of the suit property in favour of the Appellants.

4. Issue notice to the Respondents, returnable on 16.07.2025. Private notice is permitted to Respondent Nos. 1 to 4/Plaintiffs, in addition to the Court's notice.

5. Learned Advocate for the Appellants fairly submitted that the measurement is already completed, however he expressed apprehension that complete possession may be taken. He also fairly submitted on instructions that part of 2H 2R portion out of Gat No.459/2 i.e. around 2 Acres portion has been already demarcated.

6. In view of the aforesaid, by way of ad-interim protection, it is directed that process of measurement under execution of the partition decree may proceed, however actual handing over of the possession shall not be effected, if not already effected.

7. Further request of the Appellants about stay to the effect of the decree *vis-a-vis* apprehended action of change of mutation entry, will be considered on the next occasion.

8. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)