

varsha

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 459 OF 2017
WITH
INTERIM APPLICATION NO. 821 OF 2025
WITH
CIVIL APPLICATION NO. 852 OF 2017
IN
SECOND APPEAL NO. 459 OF 2017**

Shri Madhav Dhingana Nirbhavane ... Appellants/Applicants
and Anr

vs.

Shri Narhari Madhav Nirbhavane ... Respondents
and Ors

Mr. Rameshwar N. Gite a/w. Mr. Sushant N. Tare, Mr. Hiten A. Raut,
Ms. Pratiksha Shelke for the Appellants.

Ms. Rukmini Khairnar i/b. Mr. P.N. Joshi for Respondent Nos. 1 and
4.

CORAM : GAURI GODSE, J.

DATED : 20th JANUARY 2025

ORDER:

1. Heard learned counsels for the parties. The second appeal is
admitted on the following substantial questions of law:

I) When there was no dispute that some of the suit properties
were ancestral properties, whether the suit for partition and separate

Note : This is the corrected order pursuant to speaking to minutes order dated 4th February 2025.

possession could have been dismissed by holding that the properties purchased in the name of defendant no.1 were his self acquired property without any sufficient evidence about his independent income?

II) When some of the properties belong to the joint family, whether the findings recorded by both the courts to accept properties in the name of defendant no.1 as his self acquired properties would be sustainable in the absence of any pleadings and supporting evidence that they were purchased from the independent income of defendant no.1?

III) Whether the findings recorded by both the courts in accepting the suit properties as self acquired properties of defendant no.1 would amount to incorrect appreciation of pleadings and evidence on record?

2. Learned advocate for respondent nos. 1 and 4 waives notice.
3. Office is directed to issue notice to remaining respondents.
4. In addition to Court notice, learned advocate for the appellants to serve the said respondents, by private notice and file affidavit of service.
5. Call for records and proceedings.

Note : This is the corrected order pursuant to speaking to minutes order dated 4th February 2025.

6. Printing is dispensed with.

7. Learned advocate for the appellants shall file private paper-book within a period of one year from today.

INTERIM APPLICATION NO. 821 OF 2025

8. This application is for bringing on record names of heirs and legal representatives of deceased appellant no.1. Learned counsel for the appellants submits that appellant no. 2 and respondent nos. 1, 3 and 4 are the heirs and legal representatives of deceased appellant no.1, who are already on record in different capacity. He submits that appellant no.2 and respondent nos. 1 and 3 are sons of deceased appellant no.1. He therefore seeks leave to delete the name of appellant no.1.

9. Learned counsel for the appellants further submits that respondent no.2 was wife of appellant no.1. Hence, appellant no.1 and respondent nos. 1 and 3 i.e. sons of appellant no. 1 and respondent no.2 are already on record in different capacity. He therefore seeks leave to delete the name of respondent no.2. Leave granted. Learned advocate for the appellant to delete the name of appellant no.1 and respondent no.2. Amendment in second appeal and pending application to be carried out within three weeks.

10. Interim application is disposed of in above terms.

CIVIL APPLICATION NO. 852 OF 2017

11. Rule on interim relief in terms of prayer clause (b) is made returnable on 1st April 2025.

12. Learned advocate for respondent nos. 1 and 4 waives notice.

13. Office is directed to issue notice to remaining respondents.

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

15. During the pendency of the application the parties shall not create any third party rights in respect of the suit property.

(GAURI GODSE, J.)