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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 221 OF 2024
WITH
INTERIM APPLICATION NO. 7607 OF 2024
IN
SECOND APPEAL NO. 221 OF 2024**

Neeta Sudhakar Surve and Ors ... Appellants/Applicants

vs.

Ravindra Sitaram Shetye (Deceased) through
Lrs and Ors ... Respondents

Mr. Atul Damle, Senior Advocate through VC for
Appellants/Applicants.

CORAM : GAURI GODSE, J.

DATED : 17th MARCH 2025

ORDER:

1. Heard learned senior counsel for the appellants. Appeal is admitted on the following substantial questions of law:

I) In view of the admission on the part of the defendants that the suit property was purchased in the name of Gangaram, i.e. pre decessor in title of plaintiffs, whether the burden would be upon the defendants to plead and prove that the document in the name of Gangaram was only as an

ostensible owner and real owner was defendant no.1's father?

II) In view of the admission by the defendants in the written statement, whether the suit could have been dismissed only on the ground that the plaintiff failed to enter into witness box, in as much as the burden would be upon the defendants to plead and prove the intention of the parties to purchase the property Benami in the name of Gangaram and that consideration amount was paid by defendant no. 1's father?

III) In view of the well settled legal principles regarding burden upon the person claiming to be the real owner to prove that the property was purchased in the name of the ostensible owner, whether the suit could have been dismissed on the ground of the plaintiff failing to lead any oral evidence?

2. In addition to the Court notice, learned advocate for the appellants to serve the respondents, by private notice and file affidavit of service.

3. Call for records and proceedings.

4. Printing is dispensed with.

5. Learned advocate for the appellants shall file private paper-

book within a period of one year from today.

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6. Rule on interim relief in terms of prayer clause (b) is made returnable on 2nd July 2025.

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

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

(GAURI GODSE, J.)