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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 517 OF 2020

WITH

INTERIM APPLICATION NO. 12055 OF 2024

INTERIM APPLICATION NO. 18070 OF 2022

IN

SECOND APPEAL NO. 517 OF 2020

Ashok Pitambar Shete
(Since Decd. Thr. LRs) and ors

.....Appellants

Vs.

Sakhubai Ananta Shinde
(Since Decd. Thr. LRs) and ors

.....Respondents

Mr. Yatin Malvankar Advocate for the Appellants

Mr. Vishwanath S. Talkute for respondent nos. 1A, 1C, 1D, 1D1, and
1D5

IRESH
MASHAL

CORAM : GAURI GODSE, J.

DATE : 26th FEBRUARY 2025

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ORDER:

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

(I) Despite recording positive findings in favour of the plaintiff regarding execution of the suit agreement, payment of earnest amount

and filing of the suit immediately after the knowledge of dismissal of Regular Civil Suit No. 181 of 1988, whether the reasons recorded by the first Appellate Court for not exercising the discretionary jurisdiction under Section 20 of the Specific Relief Act would be sustainable?

(II) Whether the reasons recorded by the first Appellate Court for reversing the trial Court's finding and refusing specific performance would amount to incorrect appreciation of the evidence on record?

(III) Whether the findings recorded by the first Appellate Court on the independent share of defendant no. 2 would amount to travelling beyond the pleadings and evidence of defendant no. 2?

(IV) In view of the first agreement executed by Umabai and the second agreement signed by defendant no. 2 on behalf of Umabai, whether the suit agreements, would be binding upon the defendants who claim through Umabai?

2. The issue with regard to abatement, if any, against the deceased respondents is kept open.

3. Learned advocate appearing for respondent nos. 1A, 1C, 1D, 1D1, and 1D5 waives notice.

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

5. Call for record and proceedings. Printing is dispensed with.

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

INTERIM APPLICATION NO. 18070 OF 2022:

7. This application is for bringing on record names of heirs and legal representatives of deceased respondent no. 1B.

8. Issue notice to proposed respondent nos. 1B1 to 1B5 as mentioned in paragraph no. 5 of the application.

9. In addition to Court notice, learned advocate for the applicants shall serve the said respondents with notice of second appeal and the interim application, by private notice and file affidavit of service before the next date.

INTERIM APPLICATION NO. 12055 OF 2024:

10. This application is for bringing on record names of heirs and legal representatives of deceased respondent no. 1E.

11. Issue notice to proposed respondent nos. 1E(i) 1E(v) as mentioned in paragraph no. 7 of the application.
12. In addition to Court notice, learned advocate for the applicants shall serve the said respondents with notice of second appeal and the interim application, by private service and file affidavit of service before the next date.
13. Notice in all the applications is made returnable on 18th July 2025.

[GAURI GODSE, J.]