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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 161 OF 2025

Arvind Purshottam Barve
(Since deceased through LR's)

.....Appellants

Vs.

Pushpawati Shrikrishna Janorkar
Since Decd thr. LR's

.....Respondents

Mr. S. S. Patwardhan a/w Mr. Ajay Raje Nimbalkar Advocate for the
Appellants

CORAM : GAURI GODSE, J.

DATE : 24th FEBRUARY 2025

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ORDER:

1. Heard learned counsel for the appellants. This appeal is preferred by the defendants to challenge the judgment and decree passed by the first Appellate Court granting injunction and separate possession.

2. Learned counsel for the appellants submits that there was prior partition between Purshottam and his brothers. He submits that in the prior partition, the amount paid to other co-sharers was paid by

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defendant no. 1 and thus, the plaintiffs would not be entitled to seek partition and separate possession. He submits that the plaintiffs admit the memorandum of partition between Purshottam and his brothers. He, therefore, submits that in view of the admission by the plaintiffs regarding prior partition, the trial Court rightly dismissed the suit. He, however, submits that though a memorandum of prior partition was admitted by the plaintiffs, the first Appellate Court erred in granting partition and separate possession. He, therefore, submits that the second appeal would raise substantial question of law on the point that once prior partition is admitted, whether the plaintiffs would be entitled to seek partition and separate possession.

3. I have perused the papers of the second appeal. The plaintiffs are claiming $1/3^{\text{rd}}$ share through Purshottam. The plaintiffs are daughters of Purshottam and defendant no. 1 is the son. Defendant no. 2 is wife of defendant no. 1. The theory of prior partition relied upon by the learned counsel for the appellants is discussed by the first Appellate Court in detail. The theory of prior partition is between Purshottam and his brothers. Hence, the first Appellate Court held that the suit property given to the share of Purshottam would be his property and the plaintiffs being daughters would be entitled to seek

partition and separate possession. There is nothing on record to indicate that there was partition between the heirs of Purshottam. Once it is admitted that the suit property was the property of Purshottam and he died intestate, the plaintiffs being daughters of Pushottam cannot be denied partition as prayed. The first Appellate Court has therefore, rightly decreed the suit for partition and separate possession.

4. The ground of prior partition would therefore, not require any consideration by this Court. The second appeal does not raise any substantial question of law.

5. The second appeal is dismissed.

[GAURI GODSE, J.]