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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 113 OF 2025

WITH

INTERIM APPLICATION NO. 1767 OF 2025

IN

SECOND APPEAL NO. 113 OF 2025

Mumtaz Ahmedali Yargatti

.....Appellant

Vs.

Annasaheb Malhari Wagge and ors

.....Respondents

Mr. Pradeep Dalvi a/w Ms. Priya Dalvi Advocate for the Appellant

CORAM : GAURI GODSE, J.

DATE : 11th FEBRUARY 2025

ORDER:

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

(I) Whether defendant no. 1 was entitled to lead secondary evidence to prove the execution and contents of the agreement for sale dated 5th March 2002 executed by the original owner in her favour?

(II) Whether the first Appellate Court erred in not considering defendant no. 1's right to lead secondary evidence as contemplated under Section 65 of the Indian Evidence Act?

(III) In view of the source of possession pleaded by defendant no. 1 through the original owner, whether the plaintiff would be entitled to seek possession from defendant no. 1 based on subsequent title allegedly acquired by the plaintiff from the original owner?

(IV) In view of the pleadings of defendant no. 1 regarding her source of possession, whether her possession could have been held as unlawful entitling the plaintiff to seek possession from defendant no. 1 on the ground of title?

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

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

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

INTERIM APPLICATION NO. 1767 OF 2025:

5. Rule on interim relief in terms of prayer clause (a) is made returnable on 6th May 2025.
6. In addition to Court notice, learned advocate for the applicant shall serve the respondents by private notice and file affidavit of service before the next date.
7. There will be ad-interim stay in terms of prayer clause (a) during the pendency of the application.
8. The appellant shall not create any third party rights in respect of the suit property and part with possession in favour of any third party.

[GAURI GODSE, J.]