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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 48 OF 2025
WITH
INTERIM APPLICATION ST NO. 4531 OF 2025
INTERIM APPLICATION ST NO. 4528 OF 2025
IN
SECOND APPEAL NO. 48 OF 2025**

Ramdas Suresh Sukale and anr

.....Appellants

Vs.

Popat Ganpat Sukale and ors

.....Respondents

Mr. Sahil A. Pandire Advocate for the Appellants

CORAM : GAURI GODSE, J.

DATE : 12th FEBRUARY 2025

ORDER:

INTERIM APPLICATION ST NO. 4528 OF 2025:

1. Heard learned counsel for the applicants. Learned counsel for the applicants submits that he has filed two separate applications for bringing on record names of heirs and legal representatives of deceased respondent nos. 2 and 7. Interim Application Stamp No. 4528 of 2025 is for bringing on record names of heirs and legal representatives of deceased defendant no. 2. Learned counsel for the applicants submits that appellant no. 1 is the son of respondent no. 2 and appellant no. 2 is wife of respondent no. 2. He submits that

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respondent no. 2 i.e. original defendant no. 2 expired during the pendency of the first appeal. However, inadvertently, he was not shown as deceased. He submits that the heirs and legal representatives of deceased respondent no. 2 are already on record in different capacity as the present appellants, who are the original plaintiffs. He, therefore, submits that there is no abatement; However, there is delay in making necessary amendment to show respondent no. 2 as deceased.

2. Learned counsel for the applicants submits that in the same application, he has also prayed for deleting the name of respondent no. 7. He further submits that the heirs and legal representatives of deceased respondent no. 7 are already on record in different capacity as respondent nos. 1 to 6. He submits that respondent no. 7 expired on 19th December 2010 i.e. during the pendency of the first appeal. He submits that the heirs and legal representatives are already on record of deceased respondent nos. 2 and 7. Hence, there is no question of any abatement. He, however, submits that there is delay in making a prayer for amendment to show them as deceased and heirs and legal representatives are already on record.

3. In the facts and circumstances of the case, delay in filing the

application is condoned and the appellants are permitted to delete name of respondent nos. 2 and 7.

4. Amendment to be carried out within two weeks.

SECOND APPEAL NO. 48 OF 2025:

5. I have heard learned counsel for the appellants on merits of the second appeal. The second appeal is admitted on the following substantial questions of law:

(I) In view of the relations between the appellants(plaintiffs) with defendant no. 2, whether they would be entitled to partition and separate possession of their share through defendant no. 2?

(II) When the suit properties are Hindu joint family properties and the parties are claiming through original holder Ganpat, whether both the Courts erred in not granting partition and separate possession to the plaintiffs?

(III) In view of death of defendant no. 2 through whom the plaintiffs are claiming the share, whether the plaintiff no. 1 being son of defendant no. 2 would be entitled to seek partition and separate possession?

(IV) In view of the settled legal principles regarding plaintiff no. 1's entitlement to seek share through defendant no. 2, whether the suit for partition and separate possession could have been dismissed?

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

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

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

INTERIM APPLICATION ST NO. 4531 OF 2025:

9. Rule on interim relief in terms of prayer clause (a) is made returnable on 5th May 2025.

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

11. During the pendency of the application, there will be ad-interim relief in terms of prayer clause (a).

[GAURI GODSE, J.]