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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL ST NO. 2676 OF 2025
WITH
INTERIM APPLICATION NO. 1922 OF 2025
IN
SECOND APPEAL ST NO. 2676 OF 2025**

Angad Vishnu Sangade, Since
Deceased through LRs

.....Appellants

Vs.

Darshan Ashok Kulkarni and anr

.....Respondents

Mr. Ashok Tajane a/w Mr. Y. G. Thorat for the appellants
Mr. Shardul Diwan for respondents

CORAM : GAURI GODSE, J.

DATE : 26th FEBRUARY 2025

ORDER:

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

(I) Whether the suit could have been rejected at the threshold on the ground that it was barred under Order XXIII Rule 4(a) of Code of Civil Procedure, 1908 (CPC) on the ground that it is filed on the same subject matter and the same cause of action of the earlier suit which

was unconditionally withdrawn?

(II) In view of the unconditional withdrawal of the earlier suit, whether the present suit would be barred under Order XXIII Rule 4(a) of CPC on the ground that the second suit is filed on the same cause of action?

2. Issue notice for final disposal of the second appeal at the admission stage on the aforesaid questions of law.

3. Learned advocate appearing for the respondents waives notice.

4. List the second appeal for final disposal at admission stage on 2nd April 2025.

INTERIM APPLICATION NO. 1922 OF 2025:

5. Learned counsel for the respondent on instructions submits that during the pendency of the appeal, the respondent would not obstruct the plaintiff's possession or create any third party rights in respect of the suit property. Statement accepted.

6. The appellant shall also not create any third party rights or part with possession of the suit property in favour of any third party during the pendency of the appeal.

7. Stand over to 2nd April 2025.
8. To be listed at the end of high on board matters.

[GAURI GODSE, J.]