

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 88 OF 2026
WITH
INTERIM APPLICATION NO. 569 OF 2026

Sujit Sudhakar Samant & Ors.

Appellants
.. (Org. Plaintiffs)

Versus

Vibhakar Balkrishna Samant & Ors.

Respondents
.. (Org. Defendants)

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• Mr. Robert D'Abreo, Advocate for Appellants

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 24, 2026

P. C.:

1. Not on board. Mentioned by way of filing a praecipe dated 24.04.2026.
2. Heard Mr. D'Abreo, learned Advocate for Appellants.
3. For the sake of convenience, the parties shall be referred to in terms of their status before the Trial Court.
4. Order dated 21.11.2025 (appended at page Nos. 160-169 of AO) passed below Exh. 5 in Special Civil Suit No. 183 of 2022 is the subject matter of challenge in the present Appeal from Order (AO). Plaintiffs derive their substantial entitlement to the various properties on the basis of the last Will and Testament of one Lalita Samant. Entitlement of Plaintiffs though not having been given in the

properties by virtue of the said Will on the basis of subsequent succession in respect the said properties has been duly considered by learned Trial Court while recording the facts in paragraph Nos. 1 to 9 of the impugned order.

5. Plaintiffs' case has been *prima facie* assessed by learned Trial Court on the basis of Plaintiffs' status and holding of the subject properties. There are categorical findings returned by learned Trial Court which are the *prima facie* findings in paragraph Nos. 26 and 28 of the impugned Exh. 5 order. Though Plaintiffs have not been able to produce any document to show that as per the Will of Radhabai, they are enjoying any part or portion of the said properties since 1987 as also the fact that Plaintiffs had derived any title therefrom. Needless to state that substantive case of the Plaintiffs cannot be defeated on the basis of Exh. 5 since they have to lead evidence.

6. Though learned Advocate for Plaintiffs has taken me through the gamut of the facts of the present case, the same are *prima facie* disputed questions of facts and therefore cannot be gone into by this Court especially when the Trial Court would be the correct place for the Plaintiffs to prove their case on evidence. Hence all substantive rights of the Plaintiffs in respect of their entitlement to the suit property either by bequeathal or by operation of law or as per the Will of Radhabai which has been produced by Plaintiffs to the extent of

stating that they were enjoying the subject properties along with Lalita Samant are required to be proved by Plaintiffs in accordance with law by leading appropriate and cogent evidence. In absence of *prima facie* documentary evidence to prove the said facts, the Exh. 5 order which has been passed by the learned Trial Court cannot be interfered with. Needless to state that all contentions of Plaintiffs are expressly kept open before the Trial Court for leading appropriate evidence. Learned Trial Court is directed not to be influenced by any of the observations made in the Exh. 5 order as they are *prima facie*. The trial Court shall proceed on the basis of Suit plaint and the written statement filed by Defendants in accordance with law and Suit shall be determined on the basis of evidence led by Plaintiff and the evidence in rebuttal by Defendants.

7. At the request of learned Advocate Mr. D'Abreo, Special Civil Suit No. 183 of 2022 is directed to be expedited and it shall be heard and decided by Trial Court within a period of eight months from today.

8. With the above directions, Appeal from Order and Interim Application are both disposed.

[MILIND N. JADHAV, J.]

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by RAVINDRA
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