

rrpillai

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 946 OF 2015
WITH
INTERIM APPLICATION NO. 685 OF 2026
INTERIM APPLICATION (ST) NO. 39154 OF 2025
INTERIM APPLICATION (ST) NO. 39159 OF 2025**

Shri Sampat Kondaji Boraste ... Appellant/Applicant

Vs.

Shri Damodar Mogal Jadhav ... Respondents
deceased

**WITH
SECOND APPEAL NO. 933 OF 2015
WITH
INTERIM APPLICATION NO. 1517 OF 2026
INTERIM APPLICATION NO. 1518 OF 2026
INTERIM APPLICATION NO. 1509 OF 2026**

Shri Deoram Kondaji Boraste ... Appellant/Applicant

Vs.

Shri Damodar Mogal Jadhav ... Respondents
deceased

**WITH
SECOND APPEAL NO. 942 OF 2015
WITH
INTERIM APPLICATION (ST) NO. 38177 OF 2025
INTERIM APPLICATION (ST) NO. 12670 OF 2024
INTERIM APPLICATION (ST) NO. 38176 OF 2025
CIVIL APPLICATION NO. 290 OF 2020**

Smt. Indira Suresh Patil ... Appellant/Applicant

Vs.

Shri Damodar Mogal Jadhav ... Respondents
deceased and Others

Mr. Girish Agrawal a/w. Ms. Chitra Darekar for the
Appellant/Applicant.

Mr. Vishal M. Dhamal for Legal Heirs of Deceased Respondent
Nos. 1 and 3.

CORAM : GAURI GODSE, J.

DATE : 27th FEBRUARY 2026

ORDER :

Civil Application No. 290 of 2020 in Second Appeal No. 942 of 2015

1. This civil application is for restoration of the second appeal which was dismissed for non-removal of office objections within the conditional time granted by the learned registrar.

2. In the facts and circumstances of the case, application is allowed and the Second Appeal No. 942 of 2025 is restored.

Second Appeal No. 946 of 2015, Second Appeal No. 933 of 2015 and Second Appeal No. 942 of 2015

3. All these second appeals are filed by the purchasers who obstructed the execution of the partition decree. Their

obstruction application was rejected by the trial court and the first appellate court confirmed rejection of the obstructions raised by the respective appellant. However, the trial court has further clarified that the names of the respective appellants (obstructionist/purchasers) be substituted in respect of the property allotted to the respective shares of their vendors.

4. Learned counsel for the appellants submits that after the partition decree, consolidation scheme was implemented. The appellants are in possession of the respective shares as per their respective sale deed. Hence, it was necessary for adjusting respective shares of the appellants as per the area purchased by them from the respective shareholders. He therefore submits that the application filed by the appellants seeking equities for allotment of the respective shares purchased by them should have been considered by both the courts.

5. Learned counsel for the appellants further submits that there is no dispute on the sale deed executed in favour of the respective appellants. Hence, the second appeal would require consideration to the extent of the appellants rights to claim the respective shares purchased by them.

6. I have perused the papers of the appeals. The suit for partition and separate possession was filed in 1979. The suit was decreed granting 1/3rd share to the plaintiff and two defendants on 13th August 1986. The defendants had preferred an appeal to challenge the partition decree, however, the appeal was dismissed. Hence, the partition decree granted on 13th August 1986 stands confirmed.

7. During the pendency of the first appeal, these appellants purchased part of the suit property from the heirs and legal representatives of the defendants. Based on their respective sale deed the appellants raised objections on execution of the partition decree. Though the applications were filed under Section 151 of the Code of Civil Procedure, 1908 ("CPC"), the first appellate court has clarified that the order passed by the trial court was by treating the application under Order XXI Rule 97 of the CPC. Hence, the appeals preferred by the appellants challenging the rejection of their objections to the execution proceedings was considered by the first appellate court on merits.

8. The first appellate court confirmed the rejection of their objection, however, examined their respective contentions

based on the sale deed executed in their favour in respect of the part of the suit properties. By referring to the proposed scheme of partition suggested under the execution clarified the entitlement of the respective appellants based on their respective sale deed. The first appellate court therefore clarified that with reference to the respective sale deed in favour of the appellants their names should be substituted to the extent of undivided share of their respective vendors. With these clarification the first appeals are disposed of.

9. The appellants have purchased the undivided share during the pendency of appeal challenging the decree for partition and separate possession. The appellants would therefore step into the shoes of the respective defendants to seek undivided share based on their respective sale deed. The appellants would therefore not be entitled to claim possession or allotment of share in respect of a specific portion by relying upon their sale deed.

10. The first appellate court has therefore rightly clarified that the appellants would be entitled to the share from their respective vendors as allotted to the respective vendors in the proposed scheme of partition suggested by the TILR.

11. I do not find any error in the observations and clarification issued by the first appellate court. The ground raised in the second appeal would not require any consideration by this court. The second appeals do not raise any substantial question of law.

12. All the second appeals are dismissed.

13. All pending civil applications / interim applications are disposed of as infructuous.

[GAURI GODSE, J.]