

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO. 151 OF 2026

Kavita Ashok Suryavanshi ..Appellant

Versus

Kamalabai Ashok Suryavanshi & ors. ...Respondents

WITH

INTERIM APPLICATION NO. 2317 OF 2026

IN

SECOND APPEAL NO. 151 OF 2026

Mr. Suresh M. Sabrad a/w Mr. Vikram Walawalkar, Mr. Amey C Sawant, Mr. Pratik Sabrad, Ms. Neha Zanje, Mr. Eshwaree Kudalkar, for the Appellant.

CORAM : N. J. JAMADAR, J.

DATE : 01st APRIL 2026

Oral Order :

1. Heard the learned Counsel for the Appellant.
2. The challenge in this appeal is to a judgment and order dated 09th December, 2025 passed by the learned District Judge whereby the appeal preferred by the appellant against an order dated 10th August, 2017 passed by the learned Civil Judge, thereby rejecting the obstruction proceeding taken out by the appellant under Order XXI Rule 97 of the Code of Civil Procedure, 1908, came to be dismissed.
3. The appellant is the daughter of Defendant No. 1, by his second wife. The first wife and daughter of the Defendant No. 1 had filed suit for partition against Defendant No. 1 and his second wife and son, which came to be decreed.

4. Mr. Sabrad, the learned Counsel for the appellant, submitted that, the Courts below have proceeded on an incorrect premise that, the suit properties were ancestral properties. Inviting the attention of the Court to the observations of the trial Court, in the judgment dated 02nd November, 2005, in Regular Civil Suit No. 23/2001, it was submitted by Mr. Sabrad that, as the Defendant No. 1 therein - the father of the appellant, had claimed that, the suit property was allotted to him in a partition, the character of the suit property did not remain ancestral.

5. In RCS No. 23/2001 the learned Civil Judge has recorded a categorical finding that, the suit properties were the ancestral properties. The decree passed in RCS No. 23/2001 was modified, and the suit for partition and separate possession was decreed qua Plaintiff No. 2 therein and dismissed qua the Plaintiff No. 1. The said decree in RCA No. 56/2005 attained finality as no further appeal was preferred against the said decree.

6. The appellant has filed obstruction proceedings on the premise that, when the RCS No. 23/2001 was instituted for partition and separate possession, she was four years of age,

and without impleading the appellant as a party defendant, the decree in the said suit came to be passed.

7. The crucial question that bears upon the executability of the decree is the character of the suit property in RCS No. 23/2001. The trial Court as well as the Appellate Court have recorded the findings that, the suit property therein was the ancestral property. The Appellate Court modified the decree, thereby declaring that the Plaintiff No. 2, the daughter of Plaintiff No. 1, and Defendant No. 1 only, were entitled to one and half share in the suit properties. Even, the brother of the appellant who was impleaded as Defendant No. 3 in the said suit was not granted any share in the suit property. This determination by the Appellate Court appears impeccable as a child born out of a void or voidable marriage, which has been annulled, will have rights to or in the property of his parents and not in the property of any other parents. (*Revanasiddappa & Anr vs Mallikarjun & Ors.*¹)

8. As there are findings that, the suit properties in RCS No. 23/2001 were the ancestral property and the said decree has attained finality, the Courts below were justified in rejecting the obstruction proceedings at the instance of the appellant.

1 (2023) 10 SCC 1

9. Mr. Sabrad, the learned Counsel for the appellant, submitted that, the appellant has instituted RCS No. 40/2014 seeking partition and separate possession of her share in the suit property. The said suit was dismissed and an RCA No. 33/2022 preferred thereagainst is sub-judice before the District Court. It was submitted that, till the said appeal is decided, the execution and operation of the decree in RCS No. 23/2001 be stayed.

10. The appellant would be at liberty to avail the remedies as available in law in RCA No. 33/2022. However, no stay to the execution and operation of the decree in RCS No. 23/2001 can be granted in the obstruction proceedings.

11. The Second Appeal thus stands disposed with liberty to the appellant to avail the remedies in RCA No. 33/2022, as available in law. In the event, any interim application is filed in the said appeal, the Appellate Court is requested to decide the same on its own merits and in accordance with law, without being influenced by the orders impugned in this appeal.

12. In view of the disposal of the Second Appeal, the Interim Application also stands disposed.

[N. J. JAMADAR, J.]