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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 476 OF 2023
IN
INTERIM APPLICATION NO. 14104 OF 2023
IN
SECOND APPEAL NO. 476 OF 2023**

Shantabai Sumatilal Shah ... Appellants
(Deceased through LRS)

Shashikant Sumatilal Shah and Others

Vs.

Ramesh Manikchand Gujar and Others ... Respondents

Mr. Vijay Killedar for the Appellants.

CORAM : GAURI GODSE, J.

DATE : 22nd JULY 2024

ORDER :

1. Heard the learned counsel for the appellants. The Second Appeal is admitted on the following substantial questions of law :

(i) Whether in view of admissions given by defendant no. 1 in paragraph nos. 10 and 11 of the written statement both the courts ought to have held that the suit properties were joint ancestral family properties ?

(ii) Whether in the absence of any valid document for relinquishment of the plaintiffs' share, prayer for partition and separate possession could have been refused ?

(iii) Whether the description of property no. 1B in the plaint amounts to proper description in accordance with Order VII Rule 3 of the CPC entitling the plaintiff to seek partition and separate possession ?

(iv) Whether both the courts below erred in relying upon the judgment of Hirabai w/o. Harji Ingale v/s. Pralhad Deorao and Ors. Reported in 1980 Mh.L.J. 494, which is overruled by the judgment in the case of Kesharbai Jagannath Gujar v/s. State of Maharashtra reported in 1980 SCC OnLine Bom 233 ?

2. In addition to court notice, appellant to serve the respondents by private service and file service affidavit.
3. Call for record and proceedings.
4. Printing is dispensed with.
5. Appellant shall file private paper book within one year from today.

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6. Due to technical error soft copy of the papers are not accessible. Learned counsel for the appellant has tendered original affirmed copy of the interim application. Same is taken on record.

7. Rule on interim relief in terms of prayer clause (c) is made returnable after ten weeks.
8. In addition to court notice, appellant to serve the respondents by private service and file service affidavit before the next date.
9. Till next date there will be ad-interim relief in terms of prayer clause (c).
10. Stand over to 7th October 2024.

[GAURI GODSE, J.]