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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 538 OF 2024
WITH
INTERIM APPLICATION NO. 642 OF 2025
WITH
INTERIM APPLICATION NO. 12255 OF 2024
IN
SECOND APPEAL NO. 538 OF 2024**

Subhas Rambhau Dham ... Appellant/Applicant

vs.

Janabai Baburao Dham Deceased ... Respondent

Mr. Sandeep Phatak a/w. Mr. Adhik Kadam for Appellant/Applicant.

Mr. K.K. Malpathak for Respondent Nos. 2 to 5.

CORAM : GAURI GODSE, J.

DATED : 21st JANUARY 2025

ORDER:

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

l) In the absence of any specific findings of partition by metes and bounds, whether the property can be accepted as the exclusive property of Baburao based on redemption of a mortgage, in as much as at the most redemption of a mortgage by Baburao would

entitle him to keep a charge on the property and claim share towards the mortgage money from the other co-sharer?

II) Whether based on the document of redemption of mortgage with respect to the suit property bearing Gat No. 322, Baburao can be held to be exclusive owner, in the absence of any document of title in favour of Baburao in respect of the original survey No. 67/3A, 57/3B, 56/B12?

III) Whether the findings recorded by both the courts in accepting the suit property as exclusive property of Baburao would amount to incorrect appreciation of evidence on record and incorrect applicability of law on the rights of one of the co-sharers based on redemption of the property belonging to the joint family?

IV) Whether both the courts erred in not correctly appreciating the pleading and oral evidence on record, which would indicate that the suit property is a joint family property and thus, the plaintiff would be entitled to seek partition and separate possession?

2. Learned advocate for respondent nos. 2 to 5 waives notice.

3. In addition to Court notice, learned advocate for the appellant to serve the remaining respondents, by private notice and file affidavit of service.

4. Call for records and proceedings.
5. Printing is dispensed with.
6. Learned advocate for the appellant shall file private paper-book within a period of one year from today.

INTERIM APPLICATION NO. 12255 OF 2024

7. Rule on interim relief in terms of prayer clause (a) is made returnable on 1st April 2025.
8. Learned advocate for respondent nos. 2 to 5 waives notice.
9. In addition to Court notice, learned advocate for the applicant to serve the remaining respondents, by private notice and file affidavit of service before the next date.
10. Till next date, the parties shall not create any third party rights in respect of the suit property.

(GAURI GODSE, J.)