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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
SECOND APPEAL NO. 228 OF 2020  
WITH  
CIVIL APPLICATION NO. 220 OF 2020**

Late Shri Sampat Bhaguji ... Appellants/Applicants  
Gade (Deceased thru LRS)  
Smt. Indubai Sampat Gade and Others

Vs.

Mrs. Suman Madhukar Kasar and Others... Respondents

Mr. G. R. Agrawal a/w. Ms. Naiana P. Boraste for the  
Appellants/Applicants.

**CORAM : GAURI GODSE, J.**

**DATE : 1<sup>st</sup> OCTOBER 2024**

**P.C.**

1. Learned counsel for the appellants submits that respondent no. 8 was joined as there was a charge created in favour of the bank. He submits that in view of subsequent development respondent no. 8 would not be a necessary party. He therefore seeks leave to delete respondent no. 8 from the Second Appeal as well as Civil Application.

Leave granted. Amendment to be carried out within four weeks.

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

- (i) On death of plaintiff no. 2 i.e. Narmadabai whether the shares of all the defendants and plaintiff no. 1 are required to be determined or whether the share given to plaintiff no. 2 will devolve upon plaintiff no.1 being her sole surviving heir?
- (ii) Whether on death of plaintiff no. 2 a preliminary decree could have been passed for redetermining the shares of the parties ?
- (iii) Whether the decree for partition and separate possession passed in Civil Appeal 75 of 1996 has to be termed as a final decree and shares of the parties on death of plaintiff no. 2 can be determined in execution proceeding or whether it is necessary to pass an additional preliminary decree for redetermining the shares in view of death of plaintiff no. 2 ?
- (iv) Whether for determining the shares of the parties it is

necessary to apply the theory of notional partition on death of Bhaguji Gade and accordingly determine the shares of Bhaguji's children and sole surviving widow ?

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

**Civil Application No. 220 of 2020**

7. Rule on interim relief in terms of prayer clause (b) and (c) is made returnable on 21<sup>st</sup> January 2025.
8. In addition to court notice, learned Advocate for the applicants to serve the respondents by private service and file service affidavit before the next date.

**[GAURI GODSE, J.]**