



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

21 WRIT PETITION NO. 4073 OF 2024

1. Mohan s/o Vishnu Matre
Age: 34 Years, Occu: Labour,
R/o. Chinchwan, Tq. Wadwani, Dist. Beed,
At present Longaon Tq. Majalgaon Dist. Beed.
2. Yogesh s/o Vishnu Matre
Age: 31 Years, Occu: Education,
R/o. Chinchwan, Tq. Wadwani, Dist. Beed,
At present Longaon Tq. Majalgaon Dist. Beed.
3. Sau. Sangita w/o Vishnu Matre
Age: 54 Years, Occu: Household,
R/o. Chinchwan, Tq. Wadwani, Dist. Beed,
At present Longaon Tq. Majalgaon Dist. Beed.

....PETITIONERS

VERSUS

1. Vishnu s/o Gopinath Matre
Age: 57 Years, Occu: Agri,
R/o. Chinchwan, Tq. Wadwani, Dist. Beed.
2. Shivaji s/o Gopinath Matre
Age: 55 Years, Occu: Agri,
R/o. Chinchwan, Tq. Wadwani, Dist. Beed.
3. Gopinath s/o Bhau Matre
Age: 82 Years, Occu: Agri,
R/o. Chinchwan, Tq. Wadwani, Dist. Beed.
4. Annapurnabai w/o Gopinath Matre
Age: 79 Years, Occu: Household,
R/o. Chinchwan, Tq. Wadwani, Dist. Beed.
5. Sanjivanibai w/o Purushottamrao Dhapate
Age: 55 Years, Occu: Household,
R/o. Manjrath road, Bank Colony Majalgaon
Tq. Majalgaon, Dist. Beed.

6. Ramesh s/o Babasaheb Matre
Age: 43 Years, Occu: Agri,
R/o. Chinchwan, Tq. Wadwani, Dist. Beed.
7. Mahadev s/o Babasahabe Matre
Age: 48 Years, Occu: Agri,
R/o. Chinchwan, Tq. Wadwani, Dist. Beed.
8. Jayshri Vishnu Matre Age: 37 Years,
Occu: Household,
R/o. Chinchwan, Tq. Wadwani, Dist. Beed.
9. Abhishek Vishnu Matre
Age: 15 Years, Minor, Under Guardian mother
Jayshri Vishnu Matre
Age: 37 Years, Occu: Household,
R/o. Chinchwan, Tq. Wadwani, Distt. Beed.
10. Rushikesh Vishnu Matre
Age: 13 Years, Minor, Under Guardian mother
Jayshri Vishnu Matre
Age: 37 Years, Occu: Household,
R/o. Chinchwan, Tq. Wadwani, Dist. Beed.

....RESPONDENTS

Mr. M. P. Kale, Advocate for Petitioners
Mr. A. V. Lavte, Advocate for Respondent Nos.1 to 5
Mr. S. J. Naik, Advocate for Respondent Nos.6 and 7
Mr. K. S. Solanke, Advocate for Respondent Nos.8 and 9

CORAM : AJIT B. KADETHANKAR, J.

DATE : 24.08.2026

ORAL JUDGMENT :-

. Rule. Rule made returnable forthwith. Considering the short issue involved in the matter, the Writ Petition is heard for final disposal at the instance of the parties.

2. Debate is on framing of proper issues u/o XIX of the Code of Civil Procedure. Petitioners – plaintiffs in a suit for partition are aggrieved by the issues framed by the Trial Court. The grievance is firstly about casting burden on the plaintiffs to prove that the suit property is an ancestral property, and secondly about not levying the burden on the defendants to prove that the suit property is their self acquired property. The Petitioners relies upon the pleadings of the parties in the Trial Court.

3. A suit for partition opens with first pleading of the Plaintiff(s) that the suit property is his/her/their ancestral property. In reply, the respondents/defendants, in their written statement dispute such contention. Ordinarily, the defense is that already partition has taken place, or the suit property is self-acquired property of the defendant. On the basis of the material facts leading to controversy, the Trial Court frames issues.

4. Order XIV of the Code of Civil Procedure provides of framing of issues, which reads thus :

1. Framing of issues.—(1) *Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.*

(2) *Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.*

(3) *Each material proposition affirmed by one party and denied by the other shall form the subject of distinct issue.*

(4) Issues are of two kinds:

(a) issues of fact,

(b) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements if any, and ¹[after examination under rule 2 of Order X and after hearing the parties or their pleaders], ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.

5. In the case in hand, Petitioners/plaintiffs averred that the suit property is ancestral property of the plaintiffs and the defendants. The defendants disputed the contention and submitted that it is their self acquired property. On the basis of the material controversy arising between the parties, the Trial Court while framing issues under Order XIV of the Code of Civil Procedure framed various issues wherein at Serial No.1, the burden was cast on the plaintiffs to prove that the suit property is an ancestral property.

6. Mr. Mahesh P. Kale, learned Advocate for the petitioners would submit that since the defendants have stated in the written statement that the suit property is their self-acquired property, the Trial Court ought to have framed such an issue. His further contention is that the Trial Court wrongly framed issue casting burden on them to prove that the suit property is an ancestral

property.

7. Mr. Kale submits that since it is a specific case of the defendants that the suit property is their self acquired property, burden must be on the defendants to prove the special defense. Thus, an application for modification in issues was filed on behalf of the plaintiffs. However, the Trial Court declined to modify the issues referring to the pleadings of the parties and Issue No.1. Thus, Mr. Kale, learned Advocate for the petitioners prays for allowing the writ petition.

8. The petition is strongly opposed by the defendants. Learned Advocate for the defendants/respondents would submit that the petition is contrary to the spirit of the Order XIV of the Code of Civil Procedure, and the settled position of law in respect of a suit for partition. He would submit that the defendants are bound to contend that the property is their self-acquired property or partition has already taken place, as the case may be. That, accordingly in the case in hand the defendants have rightly replied that the suit property is his self acquired land. It does not thereby mean that the burden is initially cast on the defendants to prove that the suit property is their self-acquired property. Thus, the learned Advocate for the respondents prays for dismissal of the writ petition.

9. I have heard the learned Advocates for the parties at length. It is not in dispute that in a suit for partition, the defendants have raised an objection to the contentions raised by the plaintiffs about the nature of the suit property. The very first averment in a suit for partition is that the suit property is ancestral property/joint family property of the plaintiffs and the defendants. On this averment alone, the suit begins. The cause of action to file the suit arises only because the other side has disputed the plaintiffs' claim and denied the right claimed by the plaintiffs over the suit property as if it is an ancestral property. Obviously, such controversy is placed before the Court through the pleadings of the defendants.

10. It is trite law that one who seeks partition of joint family property or ancestral property has to prove that the property is ancestral property/joint family property. However, the presumption of jointness of property fundamentally varies corresponding to the defense raised by the defendants as to whether it is claimed that the suit property is self acquired property or the partition has already taken place. In the former, the principle burden is on the plaintiffs to prove that the suit property is a joint family property or ancestral property. Once they prove it, the onus shifts on the defendants to prove that it is their self acquired property. In the later, once the plaintiffs primarily proves that the suit property is joint or ancestral property, the burden heavily rests on the defendants who claims that already partition has taken place.

11. For the reasons recorded above, I do not comprehend the submission of Mr. Kale, learned Advocate for the petitioners that Issue No.1 was wrongly framed. The Trial Court has not committed any error while passing the impugned order. I do not find any infirmity in the view expressed by the Trial Court.

12. In view of this, the Writ Petition fails and is accordingly dismissed.

13. Rule stands discharged.

[AJIT B. KADETHANKAR, J.]

PRW