

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO.10309 OF 2014

Mallinath s/o Gangadhar Mairan,
Age 57 years, Occu. Agri.,
R/o Osmanabad, Taluka and
District Osmanabad,
at present Subhash Nagar,
Ring road, Barshi, Taluka Barshi,
District Solapur

..Petitioner
(Orig. defendant No.1)

Versus

1. Basveshwar Gangadhar Mairan, Age 59 years, Occu. Business, R/o Osmanabad, Taluka and District Osmanabad
2. Vaijinath @ Sham Gangadhar Mairan, Age 48 years, Occu. Business, R/o Osmanabad, Taluka and District Osmanabad
3. Mahadeo @ Milind Gangadhar Mairan, Age 39 years, Occu. Business, R/o Osmanabad, Taluka and District Osmanabad
4. Amar s/o Gangadhar Mairan, Age 36 years, Occu. Business, R/o Osmanabad, Taluka and District Osmanabad
5. Gopal s/o Gangadhar Mairan, Age 36 years, Occu. Business, R/o Osmanabad, Taluka and District Osmanabad
6. Ramling Dhondiba Karajkhede, Age 64 years, Occu. Agri. & business, R/o Osmanabad, Taluka and Dist. Osmanabad
7. Rajedra s/o Murlidhar Kirkase, Age 50 years, Occu. Business, R/o Acharya Galli, Osmanabad Taluka and District Osmanabad

8. Watchala Vithalrao Khaladkar,
Age Major, Occu. Household,
R/o Osmanabad, Taluka and
District Osmanabad
- (9) Gangadhar s/o Narayan Talekar } Petition is
Age major, Occu. Agri., } dismissed as
R/o Osmanabad, Taluka } against R.No.9
and District Osmanabad } as per Order
} Dt.20.2.2015
10. Savita Dadasaheb Kaldate,
Age Adult, Occu. Household,
R/o Ganesh Nagar, Osmanabad,
Taluka and District Osmanabad
- .. Respondents
Resp.No.1 to 5 are Orig.
Plaintiffs and
Resp.No.6 to 10 are Orig.
defendants)

Mr R.V. Naiknavare, Advocate for petitioner
Mr V.S. Tanwade, Advocate for respondents No.1 to 5
Mr B.M. Dhanure, Advocate for respondent No.6
Petition is dismissed as against respondent No.9

CORAM : N.W. SAMBRE, J.

DATE : 18th November 2015

PER COURT

Heard.

2. The present petitioner – original defendant No.1 to Regular Civil Suit No.92 of 2012 was proceeded without written statement.

3. The suit is for partition and separate possession and as such, the petitioner moved an application Exh.77 for setting aside 'No Written Statement' order which according to learned Counsel for the respondents No.1 to 5 – original plaintiffs was not objected to rather consented for. The Court below noticed that the reasons cited for prayer for setting aside 'No Written Statement' order is germane to the cause and as such rejected the application.

4. Heard learned Counsel for the petitioner and respondents. It is noted that this Court, by an order dated 2nd December 2014 had directed the present petitioner to deposit costs of Rs.7,500/- before the learned trial Court in Regular Civil Suit No.92 of 2012, which is stated to have been complied with by the petitioner.

5. Looking to the nature of litigation, particularly the partition suit, it will be appropriate, in my opinion, to permit the petitioner to file the written statement by granting application Exh.77, subject to payment of total costs of Rs.15,000/- of which Rs.7,500/- is already deposited by the petitioner before the trial Court.

6. As such, order dated 25th September 2014, passed by learned Joint Civil Judge, Senior Division, Osmanabad below Exh.77 in Regular Civil Suit No.92 of 2012 is quashed and set aside and the petitioner is permitted to file written statement subject to depositing the balance amount of Rs.7,500/- within a period of two weeks from today before the trial Court. The payment of costs shall be condition precedent and the parties who are appearing before the trial Court will be entitled to the costs in equal share, for which a common order be passed by the learned trial Court.

10. Writ Petition stands allowed in above terms.

(N.W. SAMBRE, J.)