

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8001 OF 2014

Nemgonda Sidgonda Patil Petitioner

versus

Dhanpal Sidgonda Patil & Ors. ... Respondents

.....

- Mr.N.J. Patil, Advocate i/b. S.R. Page, Advocate for the Petitioner.
- Mr.Amit B. Borkar, Advocate for the Respondent No.6.

**CORAM : MRS.MRIDULA BHATKAR, J.
DATE : 29th MARCH, 2017.**

P.C. :

1. This petition is directed against the order dated 15/03/2014 passed by learned 13th Joint Civil Judge, Junior Division, Kolhapur, below Ex.34 in RCS No.1013/12. The dispute is in respect of settlement of the issues. The plaintiff i.e. the petitioner has filed the suit for partition against the defendants who are the respondents. On 09/02/2012, the learned trial Judge has framed issues. Thereafter, the defendant Nos.1, 5 and 6 filed application Ex.34 for recasting of issues

framed at Ex.31. The said application was allowed and the learned trial Judge passed following order;

“2] Issue No.1 is deleted. Issue Nos.2 to 4 & 6 are recast and converted in one issue casting burden on the plaintiff. Issue Nos.7 to 10 are kept as it is.”

2. Heard learned counsel for the petitioner. His submission that the defendant Nos.1, 5 and 6 have pleaded in the written statement about the oral partition other than written partition by registered deed of partition dated 22/10/2002, is found correct. The learned counsel for the petitioner submits that the observations of the learned trial Judge that no say was filed in this suit, is incorrect.

3. The learned counsel for the respondent after perusal of the said registered deed has submitted that the said deed is in respect of only Kolhapur property and not pertaining to Chinchwad property and therefore the issue No.1 is to be maintained with modification as follows:

“Whether the defendant Nos.1, 5 and 6 prove oral partition in respect of the properties owned by the joint family except properties mentioned in the registered deed dated 22/10/2002?”

4. It transpires from the submissions of learned counsel for the petitioner and the respondent that as per the petitioner i.e. the plaintiff, he alongwith respondent No.1 i.e. defendant No.1 has started a business independently in respect of properties mentioned in issue Nos.2, 3, 4 and 6 and it is the say of the petitioner i.e. the original plaintiff that the properties are self acquired and therefore the order of the trial Judge in respect of recasting the issue Nos.2, 3, 4 and 6 by clubbing it as one issue, by placing burden on the plaintiff, is found correct. Thus, the writ petition is partly allowed.

(MRIDULA BHATKAR, J.)