

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

WRIT PETITION NO. 10654 OF 2018

**ATMARAM UTTAM GAWARE
VERSUS
SUDHAKAR UTTAMRAO GAWARE AND OTHERS**

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Advocate for the Petitioner : Shri D. G. Nagode

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 24th SEPTEMBER, 2018.

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PER COURT :

1. The petitioner is aggrieved by the order dated 30/07/2018, by which, the Trial Court has refused to permit the petitioner to lead common evidence in RCS No. 39/2010 alongwith RCS No. 481/2013.

2. Grievance is that this Court, by order dated 19/07/2013 passed in Writ Petition No. 9719/2012, has recorded that the litigating sides had agreed that this petitioner Atmaram would file his separate suit and if it is so filed within one month, the same will be heard and disposed off alongwith RCS No.29/2010. By the impugned order dated 30/07/2018, the Trial Court has refused permission to this petitioner to lead

common evidence in both the suits. Contention is that when both the suits are for partition and separate possession, it would be appropriate for the parties to lead common evidence.

3. I find that the impugned order need not be interfered with for two reasons. Firstly, that this Court did not permit the clubbing of the fresh suit alongwith RCS No. 39/2010. Secondly, the Trial Court has recorded that different stands have been taken by the litigating sides in both the suits. The defendants in each of these suits who have switched roles as plaintiffs and defendants in the second suit, have taken a stand that the suit properties mentioned in the two different suits are self-acquired properties. The petitioner plaintiff in the second suit is the defendant in the earlier suit taking the same stand of self-acquired properties. The Trial Court has, therefore, permitted all the litigating sides to independently lead evidence in both the suits and thereafter, the two suits could be decided.

4. I do not find that the impugned order could be termed as being perverse or erroneous or likely to cause gross injustice

to the petitioner keeping in view the law laid down by the Honourable Apex Court with regard to the supervisory jurisdiction of this Court in the matters of *Syed Yakoob V/s K. S. Radhakrishnan*, AIR 1964 SC 477 and *Surya Dev Rai V/s Ram Chander Rai*, AIR 2003 SC 3044.

5. This petition is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

shp/-