

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

WRIT PETITION NO.601 OF 2009
WITH
CIVIL APPLICATION NO.14511 OF 2019
IN WP/601/2009
WITH
CIVIL APPLICATION NO.13665 OF 2015
IN WP/601/2009

RAJENDRA LAXMAN JADHAV
VERSUS
LAXMAN RAMA JADHAV AND ORS

...
Advocate for the Petitioner : Shri K.R.Doke
Advocate for Respondents 1 to 6 : Shri S.G.Chapalgaonkar
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 20th December, 2019

Per Court:

1 I have heard the learned advocates for the respective sides.

2 The only issue involved in this matter is whether, by the impugned order dated 13.11.2008, the Trial Court has rightly refused to delete issue no.1 and rightly deleted issue no.2 from RCS No.334/2006.

3 Issue nos.1 and 2 read as under :-

"१. वादीने दावा मिळकत हि त्यांची वडिलोपार्जित असल्याचे सिद्ध केले आहे काय?

२. प्रतिवादी क्रं.१ ने दावा मिळकत हि स्वकष्टाने संपादित केली असल्याचे सिद्ध केले आहे काय?"

4 It is conceded that defendant no.1 is the father of the plaintiff
as well as defendant 2. It is undisputed that the father has passed away.

5 Insofar as issue no.1 is concerned, the plaintiff claims that the
said issue be deleted. Apparently, the suit is for partition and separate
possession. The plaintiff and defendant no.2 are biological brothers. The
deceased defendant no.1 is the father of these two brothers. The moment
the plaintiff demands partition, it is necessary that the suit property must
be proved to be a joint family property meaning that it has to be an
ancestral property. Since the suit rests on this foundation, the Trial Court,
by the impugned order, has rightly refused to delete issue No.1.

6 Insofar as issue No.2 is concerned, it is also undisputed that it
is nobody's case that defendant no.1 purchased the property from his
income. The case of defendant no.1 is that he paid the purchase price to
purchase the property after being declared as a protected tenant.

7 It is, therefore, apparent that issue no.2 was wrongly framed
by the Trial Court and has rightly been deleted by the impugned order.

8 This Writ Petition, being devoid of merit is, therefore,
dismissed. Rule is discharged.

9 Since RCS No.334/2006 was stayed by this Court and is
pending for the last 13 years, the Trial Court shall decide the said suit as
expeditiously as possible and in any case, on or before 30.06.2020, by
giving highest priority to this matter. The litigating sides are precluded

from seeking unnecessary adjournments.

10 The pending Civil Applications do not survive and stand
disposed off.

kps

(RAVINDRA V. GHUGE, J.)