

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

WRIT PETITION NO.11937 OF 2019

MADHUKAR EKNATH KATAMPALLE
VERSUS
BHANUDAS EKNATH KATAMPALLE AND ANOTHER

...
Advocate for the Petitioner : Shri Adgaonkar Ravibhushan P.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 27th September, 2019

Per Court:

1 The petitioner, who is the original defendant no.1 in RCS No.79/2017, is aggrieved by the impugned order dated 13.06.2019 passed by the Trial Court vide which the application exhibit 43 filed by the petitioner seeking recasting of issues, has been rejected.

2 The learned advocate for the petitioner has strenuously criticized the impugned order and submits that any plaintiff, who seeks partition and separate possession in a suit, has to first prove that the suit property is a joint family ancestral property. It is only the ancestral properties that can be put in a common hotchpotch and the self acquired property cannot be a subject matter of the suit.

3 I find from the written statement filed by the petitioner that on the one hand, he has bluntly denied all the pleadings of the plaintiff

including that the suit property is an ancestral property and on the other hand, he has averred that the same suit property was earlier subject matter of the partition and there was partition prior to the filing of the suit. So also, the petitioner nowhere identifies any of the suit properties which are self acquired.

4 In view of the above, I do not find that the impugned order passed by the Trial Court could be termed as being perverse or erroneous.

5 This Writ Petition being devoid of merit is, therefore, dismissed.

kps

(RAVINDRA V. GHUGE, J.)