

VRJ

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

WRIT PETITION NO.12788 OF 2019

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RAMESH
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Date: 2023.10.31
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Deepak Dharmaji Ombale (Deceased)

Through Legal Heirs & Ors.

... Petitioners

V/s.

Dharmaji Tatyaba Ombale & Ors.

... Respondents

Mr. Ankit Rajput with Mr. Vinayak J. Phadke i/by Mr.
Vinayak J. Phadke for the petitioners.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 30, 2023

P.C.:

1. The petitioners are original plaintiffs who filed a suit for partition and separate possession. In the said suit, based on the pleadings, the Trial Court framed issues which cast burden on the plaintiffs to prove nature of the suit property. The burden to prove the extent of self-acquisition of defendants is cast on them.

2. In such a suit, the petitioners filed an application seeking direction against the defendants to start evidence as per Order 18 Rule 1 of the Civil Procedure Code, 1908. It is well settled that in a suit for partition only, defendants can raise defense for previous partition. It is for the plaintiffs to prove their case.

3. Considering the issues framed, in my opinion, in absence of defense of previous partition there is no legal infirmity in the

impugned order.

4. The writ petition is, therefore, dismissed. No costs.

(AMIT BORKAR, J.)