

SA Pathan

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

**INTERIM APPLICATION NO.2485 OF 2023
IN
WRIT PETITION (ST) NO.24421 OF 2019**

Suneet Ramniklal Shah & Anr ... Applicants

V/s.

Rajesh Ramniklal Shah & Ors. ... Respondents

**WITH
WRIT PETITION (ST) NO.24421 OF 2019**

**WITH
WRIT PETITION NO.3686 OF 2023**

Suneet Ramniklal Shah & Anr ... Petitioners

V/s.

Rajesh Ramniklal Shah & Ors. ... Respondents

Mr. Vaibhav Jagdale i/by Mr. Shailesh Kharat, for
applicants/petitioners.

Mr. Narayan Bubna, for respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 27, 2023

P.C.:

INTERIM APPLICATION NO.2485 OF 2023

1. For the reasons stated in the application, the application is allowed in terms of prayer clauses (a) and (b).
2. The office objections to be removed within four weeks from

today.

3. In case the petitioner fails to remove office objections, order dated 14 June 2022 will stand revive automatically.

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4. Challenge in this writ petition is to the order dated 12 June 2019 directing defendants in a suit for partition to lead their evidence first.

5. It appears that the respondent No.1 filed Special Civil Suit No.71 of 2015 seeking partition and separate possession of one fifth share. The defendants had filed written statement raising defence of execution of Will in their favour.

6. According to defendants, all suit properties are bequeathed in their favour by Ramniklal Shah.

7. The Trial Court framed issues as under:

1) Does the plaintiff prove that, he has one fifth share in the suit property?

2) Is the plaintiff entitled for relief of partition, Separation Possession and perpetual injunction as claimed?

3) What Order?

तसेच मे. कोर्टने जादा मुद्दा नं.४ हा देखील काढलेला आहे.
तो खालीलप्रमाणे;

4) Do the defendant No.1 proves that, deceased Ramaniklal executed will on 7 October 2011 in favour of defendant Nos.1 in fit state of mind?

8. On perusal of the issues, it appears that burden to prove one

fifth share in suit property and entitlement to claim relief of partition is on the plaintiff. Burden to prove the Will is on defendant No.1. Therefore, in my opinion, it was for the plaintiff to lead oral evidence before the defendant No.1 leads his evidence.

9. It appears that during pendency of the petition plaintiff has examined himself. Therefore, plaintiff shall lead his oral evidence and after completion of his evidence, defendants shall lead their evidence.

10. On overall consideration of aforesaid reasons, the impugned order cannot be sustained.

11. The impugned order dated 12 June 2019 passed by the 2nd Joint Civil Judge, Senior Division, Malegaon in Special Civil Suit No.71 of 2015 is quashed and set aside.

12. The application below Exhibit 52 in Special Civil Suit No.71 of 2015 is dismissed.

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13. The application to cross-examine the plaintiff has been rejected by the impugned order.

14. In view of order passed in Civil Writ Petition (ST) No.24421 of 2019, in my opinion, it would be in the interest of justice that the petitioner be given opportunity to cross-examine the plaintiff.

15. Hence, the impugned orders dated 7 December 2022 and 8 February 2023 are quashed and set aside. The petitioners are

permitted to cross-examine the plaintiff without any delay.

16. Considering the facts of the case, the petitioner shall pay to the defendant cost of Rs.10,000/-.

17. Considering pendency of this writ petition and interim relief granted, in my opinion, it would be in the interest of justice to direct the Trial Court to decide Special Civil Suit No.71 of 2015 as expeditiously as possible and in any case within 6 months from today.

(AMIT BORKAR, J.)