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

**WRIT PETITION NO.9787 OF 2023**

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Hanumant Sopan Darade

... Petitioner

**V/s.**

Shrimant Sopan Darade & Ors.

... Respondents

Mr. Sharadchandra Mhaispurkar for the petitioner.

Mr. Devashish Godbole with Ms. Niharika Chandurkar  
for the respondents.

**CORAM : AMIT BORKAR, J.**

**DATED : DECEMBER 19, 2023**

**P.C.:**

1. Defendant Nos.1 & 13 in a suit for partition are challenging order passed by the Trial Court refusing to recast issues framed in a suit for partition.

2. The plaintiffs filed suit for partition contending that partition of agricultural land was effected in the year 1985. However, house properties were not partitioned. In the said suit, defendant Nos.1 & 13 filed counter-claim seeking partition of agricultural lands. The Trial Court framed following issue:

“7A. Do defendants No.1 & 13 prove that suit properties mentioned in their counter-claim are never partitioned?”

3. Defendant Nos.1 and 13, therefore, filed an application for framing following issue:

“1) Whether plaintiff prove that oral partition is effected in respect of agricultural properties of plaintiff and defendant Nos.1 to 10 family in the year 1985?”

4. It is well settled that in a suit for partition, the burden to prove is on the person defending such suit who raises a plea of previous partition. In the facts of the case, counter-claim filed by defendant Nos.1 & 13 seeks partition of agricultural properties. The plaintiff is contesting such counter-claim with the averment that there was previous partition of agricultural lands. Therefore, essentially it is the plaintiff who raises plea of previous partition. Therefore, burden to prove is on the plaintiff. Hence, it is necessary that issue No.1 needs to be framed.

5. The impugned order is modified to the extent of framing issue No.1. Issue No.7A stands deleted.

6. It is made clear that the Trial Court shall decide issue No.1 along with other issues.

7. The writ petition stands disposed of in above terms. No costs.

**(AMIT BORKAR, J.)**