

AGK

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

WRIT PETITION NO.3125 OF 2023

Digitally
signed by
ATUL
GANESH
KULKARNI
Date:
2023.12.06
17:52:54
+0530

Dattatray Sadashiv Magar

... Petitioner

V/s.

Tanaji Sadashiv Magar & Ors.

... Respondents

Mr. Anilkumar K. Patil for the petitioner.

Mr. Rahul Khot i/by Mr. Vikas M. Mali for the respondents.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 6, 2023

P.C.:

1. The petitioner/original plaintiff in a suit for partition is challenging order passed by the Trial Court refusing to recast issue casting burden on the plaintiff to prove suit property to be joint family property.

2. The Trial Court observed that in a suit for partition, initial burden is always on the plaintiff to prove existence of sufficient nucleus. Thereafter it will be for the defendant to prove self-acquisition of the property. Based on such observation, the Trial Court refused to recast issue which casts burden on the plaintiff to prove nature of the suit property and joint family property.

3. Considering the position of law referred by the Trial Court, in my opinion, no interference in the impugned order is called for.

4. The writ petition accordingly stands dismissed. No costs.

(AMIT BORKAR, J.)