



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

906 WRIT PETITION NO.10068 OF 2024

**NAGRAJ PANDURANG PATIL & ANOTHER
VERSUS
YUVRAJ PANDURANG PATIL**

...
Advocate for the petitioners : Mr.S.T.Mahajan

...
**CORAM : ARUN R. PEDNEKER, J.
DATE : 11.10.2024**

P.C. :

1] By the present petition, the petitioners challenge the order dated 27.06.2024 passed by the District Judge-1, Jalgaon below Exh. 21 in RCA No.157/2021 whereby the application seeking remand of the matter to the trial Court is rejected.

2] Heard the learned counsel for the petitioners. The respondent - plaintiff filed Special Civil Suit No.122/2014 for partition and separate possession in the Court of Civil Judge Senior Division, Jalgaon. Similarly, the petitioners have also filed Regular Civil Suit No. 19/2024 in

the Court of Civil Judge Junior Division, Erandol, District Jalgaon for declaration and permanent injunction on the basis of registered will of his father Pandurang Shenpadu Patil dated 25.10.2010 in respect of land Gat No.384 to the extent of 86 R and Gat No.385 to the extent of 46 R. situated at Bhalgaon, Tq. Erandol, Dist. Jalgaon. This suit is thereafter transferred to the CJSD, Jalgaon and renumbered as RCS No.81/2015. The trial Court, by common judgment and order dated 17.08.2021, partly allowed the Special Civil Suit No.122/2014 and dismissed Regular Civil Suit No.81/2015. Being aggrieved by the said order, the petitioners preferred RCA No. 157/2021 before the District Judge, Jalgaon. In the said Appeal, the petitioners also moved an application at Exh. 21 for framing following additional issues :

Does the plaintiff Yuvraj prove that the Agriculture Land Gat No. 163, 270, 385 and House bearing Gram Panchayat No. 193, 194 are joint family property and that family had sufficient nucleus from which the suit properties have been purchased?

It was contended before the Appellate Court that the issue requires to be framed and burden has to be

cast upon the plaintiff to prove that the agriculture land Gat No.163, 270, 385 and house bearing Gram Panchayat No.193 and 194 are joint family property and that family had sufficient nucleus from which the suit properties have been purchased. It appears that original issue no.1, which was framed in Special Civil Suit No.122/2014, as under :

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| 01. Does plaintiff prove that the property mentioned in plaint para no.1 is ancestral property of plaintiff and defendants ? | ...Yes, Except Lands bearing Gat No.272/2/A & 389. |
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As per the issue no.1, the property mentioned in plaint para no.1 is as under :

- i) Agricultural land bearing Gat No.162 ad-measuring 0-H 52-R;
- ii) Agricultural land bearing Gat No.163 ad-measuring 0-H 55-R;
- iii) Agricultural land bearing Gat No.270 ad-measuring 1-H 59-R;
- iv) Agricultural land bearing Gat No.384 ad-measuring 0-H 86-R;
- v) Agricultural land bearing Gat No.385 ad-measuring 0-H 46-R;
- vi) Agricultural land bearing Gat No.389 ad-measuring 1-H 33-R;
- vii) House bearing Grampanchayat No.50 ad-measuring 6000sq. ft.;

viii) House bearing Grampanchayat No. 193 ad-measuring 6000sq. ft.;

ix) House bearing Grampanchayat No.194 ad-measuring 6000sq. ft.;

All situated at village Bhalgaon, Tq. Erandol, Dist. Jalgaon.

x) Agricultural land bearing Gat No.272/2/A ad-measuring 0-H 90-R; situated at village Gondgaon, Tq. Bhadgaon, Dist. Jalgaon.

All these properties are hereinafter referred as "suit properties"

The properties mentioned at serial Nos. (iii), (v), (viii) and (ix) are the same properties and the burden is cast upon the plaintiff to demonstrate that particular properties are the joint family properties. Thus there is no need to reformulate the issue at appellate stage and refer it to the trial Court for adjudication. I do not see any error in the impugned order passed by the District Court. The Writ Petition is accordingly dismissed.

[ARUN R. PEDNEKER]
JUDGE