



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD
3 WRIT PETITION NO. 3915 OF 2024

Rajendra s/o Narayan Kolapkar

... Petitioner

VERSUS

1. Shaym s/o Prabhakar Kolapkar
2. Narayan s/o Shankar Kolapkar
3. Prabhakar s/o Shankar Kolapkar
4. Sindubai w/o Narayan Kolapkar
5. Sanjay s/o Narayan Kolapkar
6. Shashank s/o Narayan Kolapkar
7. Savita w/o Uday Hazare
8. Bharti w/o Nandkumar Dol
9. Manjusha w/o Sanjay Tiwatane
10. Jayashree w/o Prabhakar Kolapar
11. Yogesh s/o Prabhakar Kolapkar
12. Kunda w/o Ravindra Wadhekar
13. Shital d/o Prabhakar Kolapkar
14. Bharti Sanjay Kolapkar
15. The Manager,
The Sangamner Merchant Cooperative Bank Ltd.,
Sangamner,
Office : New Nagar Road, Sangamner,
Dist. Ahmednagar.
16. The Sarvoday Nagari Cooperative Society,
(Sahakari Patsanstha) Ltd., Sangamner,
Through its Manager,
Office : Bajarpeth, Sangamner,
Tq. Sangamner, Dist. Ahmednagar.
17. Sadhana w/o Shashank Kolapkar

... Respondents

...

Mr. Satyajeet S. Dixit, Advocate for the Petitioner

Mr. Pratik P Kothari, Advocate for Respondent No.6

Mr. Murar D. Deshpande, Advocate for Respondent Nos. 7 to 9 & 12

Mr. Ankush N. Nagargoje, Advocate for Respondent Nos. 1, 10, 11 & 13

...

CORAM : ROHIT W. JOSHI, J.

DATE : 25th AUGUST, 2025

Oral Judgment :

1. The present petitioner is defendant No.5 in Special Civil Suit No.47 of 2005 which is a Suit for partition and separate possession filed by respondent no.1. Respondent No.6 is brother of the petitioner.

2. Petitioner and respondent no.6 have filed common written statement dated 25.09.2006 and on 20.02.2013 they have filed two additional written statements. The stand taken in the written statement is that four properties mentioned in paragraph 11 of the written statement are self acquired properties of the petitioner and respondent no.6 who have purchased the same from their own earnings.

3. Perusal of the pleadings will demonstrate that according to the petitioner and respondent no.6, the said four properties are joint properties owned by the petitioner and respondent no.6. After framing of issues respondent no.1/plaintiff entered into witness box and after leading his evidence he has closed his evidence. Respondent no.6 entered the witness box on behalf of himself and the present petitioner who is his real brother. Although in the Examination-in-Chief a positive statement that respondent no.6 was deposing on behalf of himself and the present petitioner is not made, he has stated that in the cross examination he was deposing on behalf of petitioner as well. Perusal of the written statement will demonstrate that according to the pleadings

the interest of the petitioner and respondent no.6 and the defense set up by them is common. It therefore appears that respondent no.6 deposed on behalf of himself as also for the present petitioner.

4. After the evidence of all the parties was recorded and respective parties had filed evidence closing purshis the case was posted for final argument. At this stage due to sad demise of earlier advocate representing the petitioner and respondent no.6 a new advocate was appointed by petitioner and respondent no.6. At this stage, application vide Exhibit-320 came to be filed by the petitioner seeking permission to lead additional evidence. It is stated in the application at Exhibit 320 that respondent no.6 was not authorized to lead evidence on behalf of the petitioner. It is then stated that out of the four properties mentioned in paragraph 11 of the written statement, two properties were self acquired properties of the petitioner and other two belonged to respondent no.6. The said application came to be rejected by the learned Trial Court vide order dated 17.02.2024 which is subject matter of challenge in the present petition.

5. Perusal of the application at Exhibit 320 will demonstrate that according to the petitioner respondent no.6 was not authorized to lead evidence on his behalf. The petitioner therefore contends that he should be given opportunity to lead independent evidence on his behalf.

Although it is stated in the application that respondent no.6 was not authorized to lead evidence on behalf of the petitioner, no reason is assigned for the petitioner not entering the witness box himself at the stage when the suit was posted for evidence of defendant nos. 5 and 6 (petitioner and respondent no.6). It will be pertinent to mention that petitioner and respondent no.6 have filed joint written statements. As mentioned above, the stand in the pleadings is clear and explicit that all four properties mentioned in paragraph 11 of the written statement are self acquired properties of petitioner and respondent no.6. It is not the case of the petitioner going by the pleadings in his written statement that two of the properties were owned by him and two other were owned by his brother i.e. respondent no.6. The only reason for seeking permission to lead additional evidence is that the petitioner wants to lead evidence to establish that two of the said four properties are his self acquired properties. Even if the explanation offered in the application is accepted and further even if the application is allowed ignoring the fact that the no explanation is offered for entering the witness box earlier, it will not be permissible for the petitioner to lead evidence contrary to his written statement. The petitioner cannot be allowed to lead evidence to demonstrate that two of the properties enumerated in paragraph 4 of the written statement are his self acquired properties and other two are owned by his brother, respondent

no.6, since such is not the case pleaded in the written statement. It is well settled that the parties are completely bound by the stand taken in the pleadings and no evidence can be permitted to be led contrary to the pleadings. In that view of the matter no case for interference is made out.

6. Writ Petition stands **rejected** with no order as to costs.

[ROHIT W. JOSHI J.]