

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

1037 WRIT PETITION NO. 7053 OF 2023

BANKATRAO BALIRAM GAIKWAD
VERSUS
MAHADEV BANKATRAO GAIKWAD AND OTHERS

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Advocate for the Petitioner : Mr. Madake Datta A.
Advocate for Respondent No. 1 : Mr. Sushant B. Choudhari
Advocate for Respondent Nos. 3 & 4 : Mr. Anjanwatikar Vinay
Bhalchandra and Mr. P.V. Salve

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CORAM : SIDDHESHWAR S. THOMBRE, J.
DATE : 11.12.2025

PER COURT :

1. Heard the learned Counsel for the respective parties.
2. By way of this petition, the petitioner challenges the order 14.03.2023 passed below Exh. 76 by the 3rd Joint Civil Judge, Junior Division, Kallam, District Osmanabad, whereby, the application for permission to file Additional Written Statement filed by the petitioner/original defendant No. 1 came to be rejected.
3. Mr. Madke, learned Counsel for the petitioner submits that the suit for partition and separate possession was filed by respondent No. 1 and in that suit, when the Written Statement was filed, some properties were remained to be mentioned, therefore, he filed an application below Exhibit 76 for filing additional Written Statement for the purpose of bringing all the properties on record. The learned trial Court has rejected the same only on the ground that there is no

provision to file additional written statement after framing of the issues when matter is kept for evidence of plaintiff.

4. Per Contra, Mr. Choudhari, learned Counsel for respondent No. 1 submits that the plaintiff has already closed his evidence and to that effect pursis is also filed. No-Cross order was passed against the defendant No. 1 and later he was permitted to cross-examine the witnesses and recording of evidence had also commenced. He further submits that the property intended to be brought on record by way of additional Written Statement is self acquired property and it shall not be included in the suit.

5. I have gone through the order passed by the learned trial Court and the application below Exh. 76 alongwith the additional Written Statement. In the suit for partition and separate possession, all the properties which are to be partitioned need to be included and during trial it is for the Court to decide whether those properties are self acquired or ancestral. Therefore, I deem it appropriate to permit defendant No. 1 to file additional written statement.

6. In view thereof, the Writ Petition is allowed. The order 14.03.2023 passed below Exh. 76 by the 3rd Joint Civil Judge, Junior Division, Kallam, District Osmanabad is quashed and set aside.

7. The application below Exh. 76 is allowed. The defendant No. 1 is permitted to file Additional Statement subject to cost of Rs. 10,000/- (Rs. Ten Thousand Only).

8. If defendant No. 1 files Additional Written Statement, the

petitioner is at liberty to file application for leading evidence to the effect of Additional Written Statement and the trial Court shall consider such application on its own merit.

9. The cost to be paid to the Advocate's Bar Association of this Court within a period of two weeks from today.

(SIDDHESHWAR S. THOMBRE, J.)

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