



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

WRIT PETITION NO. 10066 OF 2024

1. Bajranglal S/o. Hiralal Joshi
Age: 75 years, Occu: Agri
2. Govind S/o. Hiralal Joshi
Age: 57 years, Occu: Agri

Both R/o. Tilak Nagar,
Latur, Tq. & Dist. Latur

.....PETITIONER
(Ori. Defendant 1 and 2)

VERSUS

1. Vinay Brijlal Joshi
Age: 44 years, Occu: Business,
R/o. Central Hanuman,
Tq. And Dist Latur
2. Vishal Brijlal Joshi
Age: 42 years, Occ. Business,
R/o. Central Hanuman,
Tq. And Dist. Latur
3. Triveni Bhagwan Nagla
Since Deceased Through LRs
- 3A. Arjun Bhagwandas Nagla
Age: 27 years, Occ. Business,
R/o. Central Hanuman,
Tq. And Dist Latur
- 3B. Anjali Bhagwandas Nagla
Age: 24 years, Occ. Business,
R/o. Central Hanuman,
Tq and Dist Latur
- 3C. Bhagwandas Ghanshamdas Nagla

Age: 56 years, Occ. Business,
R/o. Malakpet, Hyderabad, Talangana

4. Vandana Kamleshji Pande
Age: 46 years, Occ. Household,
R/o Balwadi (M.P.)

5. Kalawatibai Brijlal Joshi
Age: 74 years, Occ. Household,
R/o. Central Hanuman,
Tq and Dist. Latur

.....(Respondents 1 to 5 Orig. Plaintiffs)

6. Giridhar Shrinivas Joshi
Age: Major, Occu. Business,
R/o Chandralok Building, Tilak Nagar,
Latur.

.....(Original Defendant No.6)

7. Shivkanya Vasudev Vyas
Age: major, Occ. Household
C/o Bajranglal S/o. Hiralal Joshi
R/o. Tilak Nagar,
Latur, Tq. & Dist. Latur

8. Kiran Sunilkumar Pande
Age: Major, Occ. Household
C/o Bajranglal S/o. Hiralal Joshi
R/o. Tilak Nagar,
Latur, Tq. & Dist. Latur

9. Gopal Shrinivas Joshi
Age: Major, Occ. Household,
R/o. Central Hanuman,
Tq. And Dist. Latur

10. Sushma Dheerajkumar Jaju
Age: Major, Occ. Household,
C/o Gopal Shrinivas Joshi
Central Hanuman,
Tq. And Dist. Latur.

11. Geeta Radhakishan Upadhyay
Age: major, Occ. Household,
C/o Gopal Shrinivas Joshi
Central Hanuman,
Tq. And Dist. Latur
12. Gayatri Nandlalji Joshi
Age: Major, Occ. Household,
C/o Gopal Shrinivas Joshi
Central Hanuman,
Tq. And Dist. Latur.
13. Shobha Rambilasji Oza
Age: Major, Occ. Household,
C/o Gopal Shrinivas Joshi
Central Hanuman
Tq. And Dist. Latur
14. Jayshri Ravikuman Oza
Age: Major, Occ. Household,
C/o Gopal Shrinivas Joshi
Central Hanuman
Tq. And Dist. Latur
15. Dnyaneshwari Ramankumar Joshi
Age: Major, Occ. Household,
C/o Gopal Shrinivas Joshi
Central Hanuman,
Tq. And Dist. Latur
16. Radhika Dhanraj Joshi
Age: Major, Occ. Household,
C/o Gopal Shrinivas Joshi
Central Hanuman
Tq. And Dist. Latur
17. Geetabai Dhanraj Joshi
Age: Major, Occ. Household,
C/o Vikas Oza
Sri Laxmi Presidency, Plot 156,
Flat No.202, 3rd floor, Old Vasavi Nagar,

Karkhana Block (A)
Secunderabad

18. Nirmala Vikas Oza
Age: Major, Occ. Household
R/o As above
19. Shivanand Mallikarjun Jawale
Age: Major, Occ. Business
R/o Gawali Galli, Latur
20. Gajanan Mallikarjun Jawale
Age: Major, Occ. Business,
R/o Gawali Galli, Latur
21. Rajesh Ramkrishna Vyas
Age: Major, Occ. Business
R/o Papvinash Road, Latur
22. Sanjay Ramkrishna Vyas
Age: Major, Occ. Business
R/o Papvinash Road, Latur
23. Ramchandra Sundaram Varma
Age: Major, Occ. Business
R/o Nandi Stop, Latur
24. Suresh Ramchandra Varma
Age: Major, Occ. Business
R/o Nandi Stop, Latur
25. Shrilal Ramkishan Agrawal
Age: Major, Occu. Business
R/o Near Vivekanand Hospital, Latur
26. Mohanlal Ramkishan Agrawal
Age: Major, Occ. Business,
R/o Zinganappa Galli, Near Azad Chowk,
Latur
27. Vishnudas Ramkishan Agrawal

Age: Major, Occ. Business,
R/o Babasaheb Paranjape Road,
Near Sneha Offset,
Latur.

28. Ravindra Gopikishan Agrawal,
Age: Major, Occ. Business,
R/o Ambejogai Road, Ner Amba hanuman,
Latur

29. Rajendra Gopikishan Agrawal
Age: Major, Occ. Business,
R/o Arvi Road,
Latur

30. Basantibai Madanlalji Vyas
Since Deceased through LRs

30/1. Dwarkaprasad Madanlalji Vyas
Since deceased through LRs

30/1/1. Vijay Dwarkaprasad Vyas
Age: Major, Occ. Business,
R/o Achal Nagar, Samnika Nagar,
In front of Ekyant Mangal Karyalaya,
Nanded

30/2. Satyanarayan Madanlal Vyas
Age: Major, Occ. Business,
R/o D. No.5-1-248, Jambag,
Near Ganesh Mandir, Hyderabad

30/3. Rameshchandra Madanlal Vyas
Age: Major, Occ. Business,
R/o House No. 8-80, Dharmawaramn,
Narsameth Road, Warangal-506330

30/4. Sarla Mishrilal Tiwari
Age: Major, Occ. Household,
R/o Balajipeth, Malegaon, Jalgaon

- 30/5. Sushila Jagdishji Tiwari
Age: Major, Occ. Household,
R/o Ramsetu Pool, Rambaug, Malegaon
- 30/6. Savita Badrilalji Purohit
Age: Major, Occ. Household,
R/o Shani Peth, Dal Phad,
3rd Galli, Jalgaon
31. Bablibai (jaikuwar) Jagannathji Nagala
Since deceased through LRs
- 31/1. Shivnarayan Jagannathji Nagala
Since deceased through LRs
- 31/1/1.Omprakash Shivnarayan Nagala
Age: Major, Occ. Business,
- 31/1/2.Pawan Shivnarayan Nagala
Age: Major, Occ. Business
Both R/o Janaki Niwas, Marwadi Bazaar, Tandur,
Ranga Reddy, (T.S.)
- 31/2. Ramprasad Jagannath Nagala
Age: Major, Occ. Business,
C/o Satyanarayan Jagannath nagala
In front of Goshala, Goshala Road,
Nijamabad (T.S.)
- 31/3. Satyanarayan Jagannath Nagala
Age: Major, Occ. Business,
In front of Goshala, Goshala Road,
Nijamabad (T.S)
- 31/4. Kaushalyabai Mangilalji Tiwari,
Since deceased through LRs
- 31/4/1.Leela Hamkumar Upadhyay
Age: Major, Occ. Household,
R/o 14.5.79/80, Badarwadi, Begambahar,
Near Faruki Hospital, Hyderabad-12

31/5/1.Govindprasad Hariprasad Upadhyay
Age: Major, Occ. Business

31/5/2.Surendra hariprasad Upadhyay
Age: Major, Occ. Business,
Both R/o Om Bhavan, Kodkha Wadi, Hyderabad

31/5/3.Jyoti Shailendraji Tiwari
Age: Major, Occ. Household
R/o H. No.15-7-181, Gandhi Galli,
Bagam Bazar, Near Brilliant Grammer School,
Hyderabad

31/6. Geetabai Badrinarayanji Vyas
Age: Major, Occ. Household,
R/o Household No.30-284/104/5,
Chandragiri Colony, Near DAV School,
Safilgudda, Hyderabad

31/7. Ajodyabai Bhagwandas Pandit
Age: Major, Occ. Household,
R/o Sitaram Peth, Tandur, (T.S.)

31/8. Santoshdevi Purushottamji Tiwari
Age: Major, Occ. Household,
R/o House No.51/1/303, 2nd Floor,
Lane No.15, Sikh Galli, Jambagh,
Hyderabad 500095

32. Shakuntalabai Shrivallabhji Vyas
Age: Major, Occ. Household,
R/o Liverpool, 1679T, United Kingdom

33. Sulochana Govindram Vyas
Since deceased through LRs

33/1. Sangeeta Babulal Vyas
Age: Major, Occ. Household,
R/o Ghode Ki Kabar, Shamkunj Apartment,
Gyanbagh Colony, Flat No.601, Hyderabad

- 33/2. Sunil Govindram Vyas
Age: Major, Occ. Business,
R/o In front of Jalaram Market
Jawahar Road, Amarawati
- 33/3 Sandip Govindramji Vyas
Age: Major, Occ. Business,
R/o In front of Jalaram Market,
Jawahar Road, Amarawati
- 33/4. Seema Jitendra Joshi
Age: Major, Occ. Household,
R/o Flat No.11, Jaigopal Society,
Near old Municipal Corporation,
Jawahar Market, Devi Chowk,
Nashik Road, Nashik 412101
- 33/5. Kirti Deepakji Purohit
Age: Major, Occ. Household,
R/o 19, Gonda Ki Chowki,
Sati Marg, Ujjain, M.P. 456006
34. Parvati Satyanarayan Upadhyay
Since deceased through LRs
- 34/1. Shalini Omprakash Upadhyay
Age: Major, Occ. Household,
R/o 11-1-545, In side Bhuigoda kaman,
Agapura, Hyderabad
- 34/1. Jyoti Dineshkumar Nagala
Age: Major, Occ. Household,
R/o Near Saibaba Temple,
Kabutarkhana, Hyderabad
- 34/3. Vijata Shamsundar Koleriya
Age: Major, Occ. Household,
R/o Kopiya Naka, Begam Bazr,
14-5-305-10-307,
Hyderabad

34/4. Shita Nandkumar Tiwari
Age: Major, Occ. Household
R/o 14/4/271, Begam Bazar,
Dipa Narsing Home Galli (Joshiwadi)
Hyderabad.

.....**RESPONDENTS**
(Ori. Defendants)

Mr. A. N. Sabnis, Advocate for the petitioners
Ms. Anjali Dube, Advocate for the respondent no.6.

CORAM : ROHIT W. JOSHI, J.

DATED : 22ND AUGUST, 2025

JUDGMENT :-

. The present petition is preferred by defendant nos.1 and 2 in Special Civil Suit No.36 of 2020, pending on the file of the learned 2nd Joint Civil Judge, Senior Division, Latur. Respondent nos.1 to 5 are the original plaintiffs and the other respondents are original defendants. However, the parties will be referred as plaintiff and defendants.

2. The suit filed by respondent nos.1 to 5 was ordered to be dismissed vide order dated 03.12.2022. However, the plaintiffs did not take any effective steps for restoration of the suit and therefore, the defendant no.6 filed application at Exhibit 159 to set aside the order dated 03.12.2022 and to

grant permission to take effective steps for securing presence of the said defendants.

3. The said application came to be rejected vide order dated 11.12.2023, on the ground that the same was barred by limitation in view of Article 122 of the limitation Act, 1963. The defendant no.6 therefore filed another application vide Exhibit 162, seeking condonation of delay in filing application and for setting aside order dated 03.12.2022, passed below Exhibit 1 as also for restoration of suit against defendant no.7 to 12 and 24.

4. Thereafter, two other applications were filed vide Exhibit 162 for condonation of delay and restoration of suit and Exhibit 163 for setting aside the order of dismissal of suit against defendant nos.7 to 12 and 14, passed on 03.12.2022, and to restore the suit. The petitioners opposed the said applications by filing reply raising a contention that the said application was not maintainable at the behest of the defendant no.6 and that the same was also barred in view of principles of *res-judicata* in view of rejection of the earlier application at Exhibit 159.

5. The learned Trial Court allowed the applications at Exhibits 162 and 163 vide common order dated 25.06.2024. The learned Trial Court has observed that the suit dismissed under Order 9, Rule 5 can be ordered to be restored.

6. The learned Advocate for the petitioners does not dispute the said legal position. However, his contention is that the application ought to have been filed by the plaintiffs and not by the defendant no.6. He further contends that the application could not have been allowed in view of rejection of the earlier application filed for the same relief which was filed vide Exhibit 159. The learned Advocate also contends that the learned Trial Court has erred in ordering transposition of the defendant no.6 as plaintiff. In this regard, his submission is that there is no application or prayer for transposition of defendant no.6 as plaintiff and that even if the power is exercised *suo moto*, the petitioners/defendant nos.1 and 3 were not put to notice and accordingly were not heard on the aspect of transposition. He further contends, although, the plaintiffs and defendant no.6 want that a decree for partition be passed, the foundation of the case is not the same.

7. Per contra, the learned Advocate for respondent no.6 contends that the earlier application at Exhibit 159 was rejected on merits only on the ground that it was barred by limitation. She contends that since the application was rejected only on the ground of limitation, it was open to the defendant no.6 to file the fresh application with a prayer for condonation of delay. She further contends that since, the suit is a suit for partition and separate possession, the defendant should also be considered to be a plaintiff and therefore, application for restoration of suit can be entertained at the behest of the defendant. She further elaborates that laws of procedure are a handmaid of justice and should be interpreted and applied to advance the cause of justice. In support of her contention, she has placed reliance on judgment of the Hon'ble Supreme Court in the matter of ***Bhagwan Swaroop and Ors Vs. Mool Chand and Ors.***, reported in ***AIR 1983 SCC 355.***

8. As regards transposition, her contention is that the defendant has specifically supported the case of the plaintiffs and has justified the demand for partition. It is her contention that the defendant no.6, although, arrayed as a defendant, he

is in fact also a plaintiff since, he is also supporting the claim of partition and separate possession. As regards contention regarding divergence of pleadings, the learned Advocate contends that the material pleadings in the plaint are not disputed, however, there is a difference with respect to certain factual aspects with respect to the properties which do not have any bearing of the merits of the claim. She contends that such divergence is not material and based on that the petitioners cannot contend that the case of plaintiffs and defendant no.6 is different. She therefore, prays for dismissal of the petition.

9. As regards the first contention with respect to rejection of the earlier application filed vide Exhibit 159, perusal of the said order will demonstrate that the said application was rejected on the ground that it was filed beyond the prescribed period of limitation. The learned Advocate for the respondent no.6 is right in her contention that rejection of the earlier application on the ground of delay will not bar a subsequent application which is properly filed seeking condonation of delay alongwith relief of restoration.

10. To counter the other contention by the learned Advocate for the petitioner that the application for restoration could not have been entertained at the behest of the defendant no.6, the learned Advocate for the respondent no.6 has placed reliance on the judgment in the matter of ***Bhagwan Swaroop (supra)***. The said case arises out of an appeal in partition suit. The respondent no.1 in the said appeal had died and since, steps for bringing his legal representatives on record were not taken, the appeal had abated against the said respondent. The legal representatives of respondent themselves moved an application for bringing their names on record.

11. The High Court rejected the application. In this context, the Hon'ble Supreme Court has held that in a suit for partition and separate possession, position of plaintiffs and defendants is interchangeable and that each adopts the same position with respect to the other. It was observed that if there was delay in bringing legal representatives of deceased respondent no.1 on record, only the legal representatives could have raised objection in this regard by contending that since the appeal had abated against respondent no.1, their share in the

suit property was crystallized by virtue of the decree impugned in the appeal and that the question could not be reopened. In this regard, the Hon'ble Apex Court has reiterated settled legal principle that laws of procedure must be interpreted and applied to advance the cause of justice.

12. In view of the aforesaid, the technical objection raised by the learned Counsel for the petitioners deserves to be discarded. It will be pertinent to mention that cause of action in a suit for partition is a recurring cause of action and even if the suit was to be dismissed in its entirety on account of dismissal against some of the defendants and consequently on the ground that all co-owners were not parties, in view of such dismissal, a fresh suit for partition and separate possession could obviously be filed. It is also settled that the power of filing fresh suit in case of dismissal of suit in default is not applicable to suit for partition since, every demand for partition of joint property and denial or refusal gives a fresh cause of action for filing suit for partition. These legal principles are well settled by a catena of judgments of the Hon'ble Supreme Court and almost all High Courts including this Court. Consequently, merely because steps for restoration

of suit against some of the defendants were taken by one of the defendants, does not adversely affect the rights of the petitioners who are defendant nos. 1 and 2 in the said suit.

13. The last contention by the learned Counsel for the petitioners is with respect to transposition ordered by the learned Trial Court. The learned Trial Court was of the opinion that applications at Exhibits 162 and 163 could be entertained at the behest of defendant no.6, only on transposition of the defendant no.6 as plaintiff and therefore, the learned Trial Court has ordered transposition of defendant no.6 as plaintiff and has allowed the applications at Exhibits 162 and 163 filed by the defendant no.6. In this regard, the objection raised by the learned Advocate for the petitioners that transposition is permitted without any application as also without any advance intimation to the petitioners about the same as resulted in breach of principles of natural justice, appears to be correct. It does not appear from reading of the order that the learned Trial Court has put the petitioners/defendant nos.1 and 2 to notice about the proposed transposition. The petitioners/defendant nos.1 and 2 are not heard on the aspect of transposition. In view of the

aforesaid, impugned order cannot be sustained to the extent it directs transposition of defendant no.6 as plaintiff.

14. In view of the reasons recorded above, Writ Petition is partly allowed as under:

i) Clause 2 of the order dated 25.06.2024, passed by the learned 2nd Joint Civil Judge, Senior Division, Latur on application at Exhibits 162 and 163 in Special civil Suit No.36 of 2020, thereby ordering transposition of defendant no.6 in the said suit as plaintiff is quashed and set aside.

ii) Liberty is granted to the defendant no.6 to move application for transposition, if he so desires. The said application if filed, be decided on its own merits in accordance with law.

iii) Rest of the order dated 25.06.2024, passed below Exhibits 162 and 163 is maintained.

15. Civil Application, if any, stands disposed of.

(ROHIT W. JOSHI, J.)