

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2882 OF 2025

Lakshman Shankar Kambli and ors. ...Petitioners

Versus

Ashok Rajaram Kambli and ors. ...Respondents

Mr. Sanskar Marathe, for the Petitioners.

CORAM: N. J. JAMADAR, J.

DATED: 3rd MARCH, 2025

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PC:-

1. Heard the learned Counsel for the petitioners.
2. The challenge in this petition is to an order dated 18th July, 2024 passed by the learned Civil Judge, whereby the learned Civil Judge declined to frame an additional issue in the nature of casting burden on defendant Nos.1 to 6 to establish as to whether the suit properties described at Sr.Nos.2 to 4 are the self-acquired properties of the predecessor-in-title of defendant Nos.1 to 6.
3. The suit has been instituted for partition and separate possession of the purportedly joint family properties. Issues were settled on 21st April, 2024. The learned Civil Judge has *inter alia* framed an issue as to whether the plaintiffs prove that the suit properties were jointly acquired by the

predecessor-in-title of the plaintiffs and defendants in the name of the deceased Rajaram Kambli out of joint family properties.

4. The learned Civil Judge was of the view that the primary burden lay on the plaintiffs to establish that the suit properties were joint family properties. The learned Civil Judge referred to the decision of the Supreme Court in the case of *D. S. Lakshamaiah vs. L. Balasubramanyam*¹.

5. It is essentially a matter of onus of proof. The plaintiffs will have to establish that the joint family had a nucleus and such nucleus was sufficient to acquire the disputed properties. Once such evidence is adduced, onus would shift on the defendants to establish that the said properties were acquired out of their separate properties. Thus the impugned order is not such that it warrants interference in exercise of the supervisory jurisdiction.

6. The petition stands dismissed.

[N. J. JAMADAR, J.]

1 LAWS (SC) 2003 8 107.