

Arun Sankpal

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5035 OF 2025

Narayan Rama Fadtare Deceased Through
LHRs

..Petitioner

Versus

Mahadu Tukaram Khawale

...Respondent

Mr. Prabhakar M. Jadhav, for the Petitioner.

Mr. Sachin Hande, for the Respondent.

CORAM: N. J. JAMADAR, J.

DATED : 28th APRIL 2025

P.C.:

- 1.** Heard the learned Counsel for the Petitioner.
- 2.** The challenge in this Petition is to an order dated 18th February 2025 passed by the learned Civil Judge, Saswad, District Pune, whereby an Application (Exhibit “125”) preferred by the Petitioner-Plaintiff to recast the issues and frame an issue as to whether the Defendant established the factum of partition and delivery of possession of the Suit property to the father of the Defendant, came to be rejected.
- 3.** The Plaintiff-Petitioner has instituted the Suit for a declaration that the Plaintiff has 10 आणे 08 पै share in the Suit property. The Trial Court settled the issues on 19th July 2019. The parties went for trial. On

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the date when the matter was posted for final arguments, the Plaintiff filed an Application seeking recast of issues.

4. The learned Civil Judge was of the view that the since the Plaintiff was seeking declaration on the basis of the Gift Deed and Sale Deed, the onus was on the Plaintiff to prove the said facts. The Plaintiff had nowhere pleaded a case for partition.

5. Having regard to the averments in the Plaint and the nature of the reliefs sought by the Plaintiff, the Trial Court has correctly placed the burden of proof on the plaintiff. The proposed issue is clearly unnecessary for the determination of real question in controversy between the parties. The learned Civil Judge was justified in rejecting the Application for settlement of issues, when the matter was posted for final argument.

6. Therefore, no interference is warranted in exercise of the supervisory jurisdiction.

7. Petition stands dismissed.

[N. J. JAMADAR, J.]