

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12821 OF 2025

Janardan Kamlakar Patil

...Petitioner

Versus

Gangaram Kamlaji alias Kamlakar Patil and
ors.

...Respondents

Mr. Saurabh Butala, a/w Aishwarya Hinge, for the Petitioner.

SANTOSH
SUBHASH
KULKARNI

CORAM: N. J. JAMADAR, J.

DATED: 9th OCTOBER, 2025

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SANTOSH SUBHASH
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Oral Order:-

1. Heard the learned Counsel for the parties.
2. The challenge in this petition is to an order dated 7th March, 2025 passed by the learned Civil Judge, whereby an application preferred by the petitioner – defendant No.1 to frame additional issues came to be rejected.
3. The respondent – plaintiff is the brother of petitioner – defendant No.1. The respondent has instituted a suit for partition of the suit properties and a declaration that the plaintiff has 1/7th share in the suit property and the purported Will executed by Kamlaji alias Kamlakar Patil, the father of respondent No.1, and defendant Nos.2 to 6 is not legal and valid.

4. In the said suit, the plaintiff – respondent No.1 has averred that, the suit properties were the ancestral properties and late Kamlakar @ Kamlaji Ragho Patil had no right to dispose of the suit properties by a testamentary instrument.

5. Defenant No.1 resisted the suit by filing written statement. It was, *inter alia*, contended that late Kamlaji alias Kamlakar Patil was entitled to dispose of the suit properties by way of testamentary instrument, he had the testamentry capacity and was in a sound and disposing state of mind. The character of the property was also put in contest.

6. The learned Civil Judge framed issues including the issues as to whether the plaintiff has any share in the suit property and suit house and, if yes, what share, and whether the plaintiff proved that the Will dated 16th May, 2007 is illegal and *void-ab-initio*.

7. The petitioner – defendant No.1 filed an application to frame the following additional issues:

- “(i) Whether the Will of Kamlakar @ Kamlya Ragho Patil dated 16.05.2007 is legal?
- (ii) Whether late Kamlakar @ Kamly Ragho Patil was competent to execute the Will?
- (iii) Whether the plaintiff proves that the suit properites are ancestral properties?”

8. The learned Civil Judge was of the view that, the issue regarding the character of the suit properties was covered by

issue No.(i) framed by the Court regarding the entitlement of respondent No.1 to partition of the suit property.

9. Mr. Butala, the learned Counsel for the petitioner, submitted that the trial Court ought to have framed the issue as to the character of the suit properties as it was specifically denied by the defendants that the suit properties were the ancestral properties.

10. The proposed issue Nos.(i) and (ii), extracted above, are covered by issue No.(ii) framed by the trial Court. As regards the proposed issue No.(iii), it would suffice to note that, while considering the aspect of the entitlement of the plaintiff for the declaration that the plaintiff had 1/7th share in the suit properties and to partition, the Civil Court would be required to consider the character of the property in the hands of late Kamlakar alias Kamlaji Patil. Therefore, while deciding the said issue No.1, the trial Court shall also adjudicate the issue as to whether the suit properties were or not the ancestral properties of late Kamlakar alias Kamlaji Patil.

11. Subject to the aforesaid clarification, the petition stands disposed.

[N. J. JAMADAR, J.]