



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 7196 OF 2024

Jayesh Bakimchand Lodaya, aged about 53 years,
Occ: Business, R/o Karanja, Tq. Karanja, District Washim.

PETITIONER

VERSUS

1. Deokumar Rukhabadas Chaware,
aged about 41 years, Occ: Nil.
2. Shashikant Narendrakumar Chaware,
aged about 70 years, Occ: Nil.
3. Pradip Rajkumar Chaware, Aged about 62 years, Occ: Nil.
4. Amal Rajkumar Chaware, Aged about 52 years, Occ: Nil.

Nos.1 to 4 R/o Karanja Lad, Tq. Karanja Lad Dist.Washim.

5. Vilas Shantikumar Chaware (deceased)
Through Legal heirs.
- 5-a. Anjali Vilas Chaware, Aged about 70 years,
Occ: Household work, R/o Karanja Lad,
Tq. Karanja Lad, District Washim-444105.
- 5-b. Amit Vilas Chaware, Aged about 47 years,
Occ: Business & Cultivator, R/o Karanja Lad,
Tq. Karanja, District Washim-444105.
- 5-c. Parag Vilas Chaware, Aged about 49 years,
Occ: Business, R/o Anjangaon Surji,
Tq. Anjangaon Surji, District Amravati 444705.
6. Nirajan Shantikumar Chaware (deceased)
Through legal heirs.
- 6-a. Kumud Niranjan Chaware, Aged about 62 years,
Occ: Household & Agriculture.
- 6-b. Ninad Niranjan Chaware, Aged about 48 years,
Occ: Business
- 6-c. Navnit Niranjan Chaware, Aged about 42 years,
Occ: Teacher.

Nos.6-a to 6-b R/o Karanja, Tq. Karanja,
District Washim – 444705.

7. Bharat Shantikumar Chaware (deceased)
Through legal heirs.
- 7-a. Sushil Bharatkumar Chaware,
Aged about 46 years, Occ: Business,
R/o Chaware Line, Karanja, Tq. Karanja,
District Washim-444705.
- 7-b. Vijaya Bharatkumar Chaware,
Aged about 72 years, Occ: Household,
R/o Chaware Line, Karanja, Tq.Karanja,
District Washim-444705.

8. Manoj Ganpatlal Khandelwal, aged about 45 years,
Occ: Nil, R/o 1st Floor, above Dilipraj Goenka
Office, Opposite Janta Commercial Bank,
Old Cotton Market, Akola.
 9. Manikant Shivaji Mota, Aged 75 Yrs. Occ:Business.
 10. Vijay Umarsi Lodaya, aged 72 yrs. Occ:Business.
 11. Gunwantiben Umarsi Lodaya,
aged 90 yrs. Occ: Household.
- Nos.9 to 11 R/o Karanja, Tq. Karanja, District Washim.
12. State of Maharashtra Through Collector, Washim.
 13. Superintendent of Land Records,
Washim, Dist. Washim.
 14. Dy.Superintendent of Land Records, Karanja,
Tq. Karanja, District Washim.
 15. Mr.Ujade, Measurer-Surveyor, Office of
Dy.Superintendent of Land Records,
Karanja, Tq. Karanja, District Washim.
 16. The Tahsildar, Karanja, Dist. Washim.

RESPONDENTS

Dr.Mrs. R.S. Sirpurkar, Counsel for the petitioner.
Shri M.R. Joharapurkar, Counsel for the respondent nos.1 to 8.
Shri S.V. Narale, Assistant Govt. Pleader for the respondent nos.12 to 14 and 16.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE ON WHICH THE ARGUMENTS WERE HEARD : SEPTEMBER 11, 2025

DATE ON WHICH THE JUDGMENT IS PRONOUNCED: SEPTEMBER 29, 2025

JUDGMENT

RULE. Rule made returnable forthwith. Heard finally by consent of the learned counsels for parties.

2. This writ petition filed under Article 227 of Constitution of India seeks indulgence of this Court with the order passed by the trial Court on an application under Order XIV Rule 5(2) of the Code of Civil Procedure, 1908 (for short, 'the Code').

3. The petitioner, who is the original defendant no.1 in the suit, has filed this writ petition challenging the order passed by the rial Court on the application filed under Order XIV Rule 5(2) of the Code seeking recasting of issues.

4. Short controversy involved in the instant petition is about necessity of recasting Issue No.5 as framed by the trial Court placing burden upon the plaintiffs as well as the defendants to prove their ownership on various portions of land from field Survey No.21/2, based on the pleadings of parties.

5. Dr.R.S. Sirpurkar, learned counsel for petitioner vehemently submitted that impugned order passed by the trial Court rejecting the application filed by the petitioner-defendant no.1 for recasting of issue is unsustainable in law. She submitted that in view of the controversy involved in the suit, the burden to prove ownership over land bearing Survey No.21/2 should have been entirely put upon the plaintiffs. She submitted that the plaintiffs have filed the suit for mandatory and permanent injunction alongwith damages and they have claimed title and ownership over the suit properties on the basis of sale-deeds in their favour. She submitted that although the defendant no.1 has filed written statement denying title and ownership of the plaintiffs, burden to prove the title and ownership entirely rests upon the plaintiffs. She therefore submitted that the trial Court had powers to recast the issues under Order XIV Rule 5(2) of the Code and since burden is unnecessarily shifted on the defendant no.1 *vide* Issue No.5, recasting of said issue is necessary.

6. Opposing the writ petition, Shri M.R. Johrapurkar, learned counsel for respondent nos.1 to 8 supported the impugned order. He submitted that the issues are framed by the Court on the basis of pleadings of the parties and no case is made out for recasting the issues at this stage.

He submitted that although the Court is empowered to recast the issues at any stage, in view of the specific stand taken by the defendant no.1 in his written statement, the burden is rightly placed upon the defendant no.1 as well. By inviting attention of the Court to the written statement filed in the suit and the cross-examination of the witnesses, he submitted that the application filed by the defendant no.1 is an attempt to avoid the real controversy involved in the suit. He submitted that in view of the categorical answers given by the plaintiffs' witnesses during cross-examination, the defendant no.1 has realized about his inability to prove his case on the basis of his own pleadings. He also submitted that the application for recasting of issues is filed after examination of nine witnesses of the plaintiffs and after the evidence closing pursis is filed on record. He therefore submitted that the application is rightly rejected by the trial Court.

7. While considering the rival contentions, it is clear that the controversy revolves around the necessity for recasting of Issue No.5 which is reproduced below:-

“७. वादी व प्रतिवादी हे सिद्ध करतात काय, की त्यांच्या मालकीच्या सर्व्हे नं.२१/२ मधील कोणती जागा किंवा प्लॉट आहे?”

It has to be noted that the issues are framed by the Court on the basis of pleadings of the parties. It is crucial to note that the defendants in the suit have pleaded in their written statement that the defendant nos.1 to 4 are in settled possession of the suit properties and they are co-owners of

Field Survey No.21/2. A perusal of the plaint shows that the plaintiffs have claimed their ownership over Field Survey No.21/2. As such, for deciding the real controversy involved in the suit, the issue as to the ownership of the parties became vital.

8. The position of law with respect to the provisions of Order XIV Rule 5 of the Code is fairly settled. A reference to the judgment of this Court at the Principal Seat in *Shraddha Associates, Pune & Another Versus St.Patrick's Town Co-operative Housing Society Ltd. & Others* [(2003) 2 **Mah LJ 219**] is beneficial in this regard. While dealing with the position of law, it is held by the Single Bench of this Court that framing of issues is the obligation of the Court in order to find out the exact nature of the controversy and to narrow down the scope of the dispute between the parties so as to enable both the parties to the proceedings to know the exact nature of the case which they are required to meet in the proceedings.

9. Having regard to the pleadings of the parties, particularly the written statement of the defendant nos.1 to 4 claiming co-ownership over Field Survey No.21/2, the burden was required to be placed upon the defendants as well to prove their ownership. It is crucial to note that the plaintiffs have already led their evidence on the basis of issues framed by the Court, including Issue No.5. The application for recasting of issues is filed by the defendant no.1 after the evidence of the plaintiffs is closed. It thus appears that the defendant no.1 wants to avoid the burden placed

upon him. In such situation, I am of the firm view that for deciding the real controversy involved in the suit, the plaintiffs as well as the defendants are required to establish their respective ownerships over Field Survey No.21/2. As such, in my considered view, Issue No.5 is rightly framed. The parties are entitled to lead their respective evidence to prove the issues including Issue No.5.

10. A perusal of the impugned order shows that the trial Court has given due consideration to the factual aspects and legal position with respect to Order XIV Rule 5(2) of the Code. The impugned order is well reasoned and need no interference on any count. There is no need of indulgence under Article 227 of the Constitution of India. The writ petition is therefore dismissed. Rule stands discharged. No costs.

(PRAFULLA S. KHUBALKAR, J.)