



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

WRIT PETITION NO. 889 OF 2025

Ujwala Hemant Kshirsagar, Aged-66 years,
Occ-Medical Practitioner, R/o Flat No.1103, Plot no.6A,
SawanHighnes Coop. Hsg. Society, Sector No.6,
Kharghar, Navi Mumbai-410210.

PETITIONER

VERSUS

1. Dr.Ragini Pradip Kshirsagar, Aged-Adult,
Occ:Medical Practitioner, R/o Flat no.1308, Block
no.3, Uppulguda, Rajendra Nagar, Ranga Reddy,
Hyderabad (Telangana).
 2. Shubhada Prakash Mahurkar, Aged-Adult, Occ:Nil,
R/o Flat no.403, Rajkalyan Apartment, Plot no.78,
Hanuman Nagar, Nagpur – 440 024.
 3. Madhuri Jayant Tanksale, Aged-Adult, Occ: Nil,
R/o 304, Silvia Tower, Ekatmata Nagar, Nagpur-440036.
 4. Devdatta Dinanath Dasture, Aged 51 years, Occ: Business.
 5. Mrinalini Devdatta Dasture, Aged-Adult, Occ:Household.
- Nos.4 and 5 R/o Plot No.142, Yogeshwari, Hanuman
Nagar, Nagpur – 440 024.

RESPONDENTS

Shri M.D. Samel, counsel for the petitioner.
Shri Rishikesh M. Mardikar, counsel for the respondent no.1.
Shri D.V. Chauhan, Senior Advocate with Shri G.S. Gour, counsel for the
respondent nos.4 and 5.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : NOVEMBER 10, 2025

ORAL JUDGMENT

RULE. Rule is made returnable forthwith and heard finally with the consent of the learned counsel for the parties.

2. The petitioner has challenged the order dated 21.12.2024 passed by the trial Court, rejecting the petitioner's application for recasting of issues, which was filed at the stage of final arguments in the suit.

3. The petitioner is the original plaintiff in Special Civil Suit No. 290 of 2015, which is a suit for declaration, injunction, partition, and separate possession. After the written statement was filed by the defendants, issues were framed on 20.11.2015 and they were recast on 11.07.2023. After the recasting of issues, both parties led their evidence and the suit reached the stage of final hearing. At that stage, the petitioner filed an application under Order XIV Rule 2 of the Code of Civil Procedure, 1908, seeking further recasting of issues. The defendants opposed the said application and by order dated 21.12.2024, the trial Court rejected the said application. Being aggrieved, the petitioner has filed the present writ petition.

4. Shri M.D. Samel, learned counsel for the petitioner, vehemently submitted that the issues framed in the suit require recasting, having regard to the settled legal position that the burden of proving a will lies upon its propounder. He submitted that, for a just and proper adjudication of the controversy involved in the suit, a specific issue to that effect ought to have been framed. In support of his submissions, he placed reliance on the judgment of the Co-ordinate Bench of this Court in ***Kantilal Chhotalal Patel (Dead) through LRs. Lalitaben Kantilal Patel & Others Versus Madhuben Kanubhai Patel & Others*** [2023(1) Civil LJ 20]. He therefore contended that while framing the issues, the trial Court ought to have correctly placed the burden of proof upon the respective parties. Considering the subsequent development regarding the demolition of the suit house, the petitioner sought recasting of issues by adding four additional issues as stated in the application dated 16.12.2024.

5. Per contra, Shri D.V. Chauhan, learned Senior Advocate appearing for respondent nos. 4 and 5 and Shri R.M. Mardikar, learned counsel for the respondent no.1 strenuously opposed the petition. The learned Senior Advocate submitted that allowing the application for recasting of issues after the evidence of the parties was over, would cause serious prejudice to the defendants. He pointed out that the issues were initially framed on 20.11.2015 and later recast on 11.07.2023. The parties led evidence on the basis of the settled issues and at no stage did the plaintiff raise any objection thereto. Hence, the application filed at the stage of final hearing was rightly rejected. In support of his contentions, he relied upon the judgment of the Co-ordinate Bench of this Court in *Sudam Sitaram Dagade & Others Versus Uttamrao Sitaram Dagade* [2025 SCC OnLine Bom 18].

6. Having considered the rival submissions, it is undisputed that the application for recasting of issues was filed at the stage of final hearing of the suit. Although the application has been filed by invoking Order XIV Rule 2 of the Code of Civil Procedure, 1908, the power to frame additional issues or to recast existing issues is conferred upon the Courts under Order XIV Rule 5 of the Code. Be that as it may, while considering such an application, the primary consideration is whether there exists any real necessity to frame additional issues or to recast the existing ones. Upon examining the pleadings of the parties and the issues already recast on 11.07.2023, it is evident that both parties have led their evidence. It appears that after the entire evidence was over, the petitioner having realised that the burden cast upon him was not duly discharged, filed the present application for recasting of issues with a view to shift that burden.

7. Pertinent to note the plaintiff herself has categorically stated in the application at Exhibit 177 dated 16.12.2024 that the plaintiff as well as the defendant nos.1, 4 and 5 have already adduced entire best possible evidence available with them and the proposed issues can be adjudicated without reverting to the stage of evidence by any of the parties. As such, considering the fact that the best possible evidence is already led by the parties in the wake of issues which are already settled, I am of the view that even without recasting any of the issues the Court is empowered to decide the controversy which arises from the evidence led by the parties. It has to be noted that the provisions of Order 14 Rule 5 of the Code of Civil Procedure, 1908 entitles the Court to amend the issues or frame additional issues on such terms as it thinks fit as may be necessary for determining the controversy between the parties at any time before passing a decree. Thus, after the evidence is led by both the parties, the Court is entitled to decide the real controversy involved in between the parties and there is no need to recast the issues as claimed by the plaintiff. Apart from this, although the plaintiff has mentioned that there is no need to revert to the stage of the suit if there is need to recast the issues, considering the contentions raised by the petitioner and the proposed issues seeking to shift the burden on the defendant no.1, it is difficult to accept that no further evidence would be required. In view of the controversy involved, the request for recasting issues appears to be an attempt to re-open the matter for recording evidence even though the suit has reached the stage of final hearing. Needless to mention, the Court is entitled to frame additional issues at any time before passing the decree and therefore the request for recasting of the issues need not be entertained.

8. A perusal of the impugned order shows that the trial Court has given due consideration to all the relevant aspects. Pertinently, the trial Court has also considered the need for recasting the issues and by framing additional issues as mentioned in the application, it has categorically observed that the issues already framed cover the entire controversy raised through the pleadings and hence, no Perversity is seen in the order.

9. Having regard to the abovementioned factual and legal aspects, no indulgence is warranted with the impugned order under Article 227 of the Constitution of India. The petition deserves to be dismissed. Having regard to the facts of the case, since the suit is filed by the plaintiff in the year 2025 and has reached to the stage of final hearing, the same is required to be decided expeditiously. The trial Court is requested to expedite the hearing and decide Special Civil Suit no.290 of 2015 within a period of two months from the date of receipt of this judgment. The writ petition is dismissed with no order as to costs. Rule stands discharged.

(PRAFULLA S. KHUBALKAR, J.)