



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9730 OF 2024

Baban Lahanu Sutar Died Through Lrs Sangita Baban Sutar
And Others

VERSUS

Bapusaheb Lahanu Sutar And Others

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Mr. A. B. Chormal, Advocate for the Petitioners

Mr. Saad H. Shaikh h/f Mr. Shaikh Mazhar A. Jahagirdar,
Advocate for Respondent no.1

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CORAM : AJIT B. KADETHANKAR, J.

DATED : 06TH APRIL, 2026

FINAL ORDER :-

. The respondent no.1 instituted a Regular Civil Suit No.214 of 2021 in the Court of learned Civil Judge Junior Division, Shrirampur against the defendants / present petitioners and respondent nos.2 to 4 for partition, separate possession, perpetual injunction and lease of property under Section 60 of the Transfer of Property Act, 1882. The suit summons came to be served on the petitioner on 23.10.2021. Despite that, the petitioners failed to file the written statement within time frame as per the law. Lastly, by 03.08.2024 after delay of 02 years, 06 months and 10 days, the petitioners sought to file application in the Trial Court accordingly with a prayer for condonation of delay to file the written statement.

2. Needless to mention, Written Statement sought to be filed was annexed with the application. The said application is rejected by the the learned Civil Judge Junior Division, Shrirampur vide impugned order dated 03.08.2024. Hence, the Writ Petition is filed by the legal representatives of defendant no.1 and the other defendant nos.2 and 3.

3. Mr. A. B. Chormal, learned Counsel for the petitioners would submit that the suit is for partition and separate possession with ancillary prayers. He submits that valuable rights of the petitioners are involved in the suit. He submits that the petitioner nos.1a to 1e are legal representatives of Baban Sutar, who happened to be real brother of the plaintiff. So also petitioner no.2 is also real brother of the plaintiff. The petitioner no.3 is son of petitioner no.2. He submits that the petitioners submitted before the Court about the circumstances which prevented them to file Written Statement within time. They referred to the Covid-19 pandemic that was holding the field in the year 2021-22. It is also submitted that during the said period, the petitioner no.1a lost her husband, and due to the trauma, the petitioner nos.1a to 1e could not participate the suit proceedings nor could instruct their lawyer

to file Written Statement.

4. Mr. Chormal, learned Counsel on instructions submits that if the Written Statement of the petitioners is taken on record, the rights of the parties could be crystallized properly. He make statement that the petitioners shall not protract the proceedings in the Trial Court and would assist the Trial proceedings. As such petitioners pray to allow the Writ Petition and to direct the Trial Court to permit them to place on record the Written Statement sought to be filed by the petitioners.

5. Mr. Saad H. Shaikh h/f Mr. Shaikh Mazhar A. Jahagirdar, learned Counsel for the respondent no.1 records his objection and supports the order passed by the Trial Court. He alternatively prays for imposition of costs on petitioners if Writ Petition is allowed.

6. I have gone through the paper book compilation of the Writ Petition and the application at Exhibit 42. I have also gone through the reasoning recorded by the Trial Court while rejecting petitioners' application. This is a suit for partition. Petitioner nos.1A to 1E are the legal representatives of deceased petitioner no.1/Baban Sutar. Petitioner no.1 is real

brother of original plaintiff and petitioner no.3 is son of petitioner no.2. True that there is delay of about two and a half years caused in filing the Written Statement, it is a matter for consideration that the decree sought in the suit must reach to its logical end. It is a *posteriori* that a decree in partition suit in which some parties fail to defend the suit or could not get an opportunity to represent themselves on merits, such decrees are often challenged only on the point of no opportunity of adequate hearing in the suit. The execution of partition decree is often found to be stalled on such objections. This Court while deciding the ***Writ Petition No.12117 Of 2024 (Narayan Dattarao Sontakke Vs. Nagnath Dattarao Sontakke)*** decided on **07.03.2026** has in the similar circumstances, observed in paragraph no.15 as follows:

15. In the case in hand, there are only two parties to the suit. The defendant/petitioner does not dispute his relationship with the plaintiff/respondent. The nature of the litigation is as such that the stake of defendant shall not be decided by the learned Trial Court merely on the basis of the pleadings of the plaintiff. The nature of decree sought in the suit is such that during the execution of the decree again the right of defendant will be needed to be answered. In the execution of the decrees in partition suites unless

the rights of the parties are crystallized on the basis of their pleadings in the trial, in my view the execution of decree and the object of the suit may not reach to its logical end.

7. In view of this, I am of the considered view that considering the nature of suit, the relation between the parties and the other circumstances as observed above, the petition deserves to be allowed in the interest of justice.

8. In view of the above, I pass following order:

ORDER

- i. Writ Petition stands allowed.
- ii. Order dated 03.08.2024 passed by the learned Civil Judge Senior Division, Shrirampur in Regular Civil Suit No.214 of 2021 is quashed and set aside.
- iii. The Trial Court shall take on record the Written Statement of the petitioners and shall proceed the suit accordingly.
- iv. In the circumstances, the petitioners shall pay costs of Rs.5,000/- within a period of four weeks from today.
- v. Costs to be paid to the plaintiff be paid in the Trial Court.

vi. Failure on the part of the petitioners to pay such costs within given time shall nullify the effect of this order.

vii. Petitioners shall not take unnecessary adjournments in the suit.

viii. Writ Petition stands disposed of accordingly.

(AJIT B. KADETHANKAR, J.)