



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13662 OF 2024

Bapurao S/o Rajaram Rathod,
Age: 42 years, Occ. Agri.
R/o. Rajura,
Tal & Dist: Hingoli.

.....PETITIONER
(Ori. Plaintiff)

VERSUS

1. Narayan S/o Gana Rathod,
Age: 80 years, Occu: Agri,
R/o Rajura Tal & Dist: Hingoli.
2. Laadkibai W/o Rajaram Rathod,
Age: 82 years, Occu: Household,
R/o Rajura Tal & Dist: Hingoli.
(Deleted as per the order dated 29.09.2025)
3. Ramchandra S/o Rajaram Rathod,
Age: 70 years, Occu: Agri,
R/o Rajura Tal & Dist: Hingoli.
4. Uttamrao S/o Rajaram Rathod,
Age: 52 years, Occu: Agri,
R/o Rajura Tal & Dist: Hingoli.
5. Kalavatibai W/o Bhagwan Aade,
Age: 42 years, Occu: household,
R/o Rajura Tal & Dist: Hingoli.
6. Paryagbai W/o Namdeo Chavan,
Age: 74 years, Occu: Household,
R/o Panhala, Tal Pusad,
Dist: Yavatmal.
7. Sheshabai W/o Narayan Rathod,
Age: 65 years, Occu: Agri,
R/o Rajura Tal & Dist: Hingoli.

8. Vimalbai W/o Vithalrao Gadekar,
Age: 60 years, Occ: Agri,
R/o. Pundlik Nagar,
Aurangabad, Tal & Dist: Aurangabad
(As per order dated 25.03.2025, petition
stand dismissed against Respondent Nos.2, 5 and 8)
.....RESPONDENTS
(Orig. Defendants)

Mr. P. S. Agrawal, Advocate for the Petitioner
Mr. S. S. Londhe, Advocate for Respondent nos.1 and 7

CORAM : AJIT B. KADETHANKAR, J.

DATED : 30TH MARCH, 2026

ORAL JUDGMENT:-

- . Rule. Rule made returnable forthwith.
2. Heard for final disposal by consent of Mr. P. S. Agrawal, learned Counsel for the petitioner and Mr. S. S. Londhe, learned Counsel for respondent nos.1 and 7.
3. Regular Civil Suit No.154 of 2011 has been filed by the present petitioner against the respondents seeking partition, separate possession, recovery of suit property from the subsequent purchasers, and declaration of nullity in respect of few sale deeds. It is a matter of record that the plaintiff/petitioner failed to take adequate steps within time to serve the defendant no.8 in the suit and hence, the suit came to be dismissed for default as against defendant no.8 vide order dated 06.09.2024.

4. The petitioner filed an application below Exhibit 133 before the Trial Court seeking recall of 'dismiss in default' order against defendant no.8. It appears that previously also the petitioner had filed an application below Exhibit 82 in the suit seeking recall of 'dismiss in default' order against defendant nos.7 and 8. On 21.06.2023 application below Exhibit 82 came to be allowed imposing costs of Rs.300/- on the petitioner with directions to take steps against the respondent nos.7 and 8 positively.

5. It is a matter of record that before the petitioner could take steps against the defendant no.7, he himself appeared in the suit. Therefore, only the issue of serving Court notice upon defendant no.8 remained in question. As such the plaintiff failed to take steps against the defendant no.8, and hence the suit had been dismissed in default vide order dated 06.09.2024. The petitioner filed another application below Exhibit 133 seeking recall of dismissal order and also sought restoration of suit against defendant no.8 in the light of order passed on Exhibit 82. The said application below Exhibit 133 came to be turned down by the learned Jt. Civil Judge Junior Division, Hingoli vide order dated 23.10.2024 observing that

the plaintiff failed to take adequate steps within given time against the defendant no.8, and such conduct was not justifiable at all.

6. As such the order dated 23.10.2024 passed by the Trial Court on application below Exhibit 133 is challenged by the petitioner in this Writ Petition.

7. During the pendency of this Writ Petition, it appears that the Writ Petition came to be dismissed against the respondent nos.2, 5 and 8 for want of taking steps against them. On 29.07.2025, the petitioner deleted the name of respondent no.2 seeking leave of this Court. So far as the respondent nos.5 and 8 are concerned, the petitioner sought permission from this Court under Order 5 Rule 20 of the Code of Civil Procedure, 1908, and published the Court notice in the name of respondent nos.5 and 8 in the local newspaper.

8. Mr. P. S. Agrawal, learned Counsel for the petitioner would submit that the notices published in the newspaper are deposited by the petitioner in this Court.

9. In view of that, Mr. S. S. Londhe, learned Counsel for the respondent nos.1 and 7 does not counter these submissions. Mr. Londhe has no objection on these

submissions that the paper publication notices are deposited in this Court by this petitioner.

10. In view of this, the Writ petition stands restored in respect of respondent nos.5 and 8 as they stood served in the Writ Petition.

11. Except 1 and 7, nobody appears for respondents. Now, the prayer of the petitioner/plaintiff to continue the suit against the respondent no.8/defendant no.8 is before me for consideration. It appears from the recitals of the order dated 23.10.2024, passed by the Trial Court that there was sheer lethargy on the part of the petitioner in taking timely steps against respondent no.8.

12. Mr. P. S. Agrawal, learned Counsel for the petitioner/plaintiff tenders apology on behalf of the plaintiff for failing to take steps within time in the Trial Court. He further undertakes that if this Court allows the petition and sets aside the order dated 23.10.2024 passed by the Trial Court, the petitioner shall pay further costs as directed by this Court and shall immediately take adequate steps to serve Court notice upon respondent no.8.

13. Mr. S. S. Londhe, learned Counsel for respondents has however strong objection to all these submissions and prayer made by the petitioner. He harps upon the observations recorded by the Trial Court which clearly indicate the lethargy on the part of the petitioner. He would submit that no further words are required to demonstrate that the petitioner is in every way interested in protracting the litigation. He would record his objection that the petitioner has not even paid the costs as directed.

14. May it be, the suit is for predominant prayers of partition and possession. The respondent no.8 as submitted by Mr. Agrawal, learned Counsel, is a subsequent transferee and is covered by the doctrine of *lis pendens* in terms of Transfer of Property Act. In a suit for partition and possession, in my view, the decree needs to be arrived at conclusion only after hearing all stake holders on merits. It would be for such stake holders to put forth their case and either seek a decree or oppose the same, as the case may be.

15. It is to be borne in mind that the defendant no.8 is a subsequent transferee/petitioner. Obviously he has derived his rights through respondent no.7. In such case Mr. Agrawal,

learned Counsel submits that he would be covered by the expression 'party bound by the decree' in view of Section 52 of the Transfer of Property Act.

16. It also needs to be considered that even if such suits are decreed, the execution of such decrees hardly reach its desired end for the reason that those are always subject to challenge only on account of non service upon the stake holders and lack of opportunity of hearing to the stake holders. In view of this, I am of the considered view that the petitioner deserves atleast a last chance to take steps against the defendant no.8 in the suit.

17. I am further of the view that granting such an opportunity will not cause any prejudice to any party, particularly the respondent no.1, who has strongly opposed the present petition. The respondent no.1 can be adequately compensated by imposing further costs on the petitioner, and as fairly agreed by Mr. Agrawal, learned Counsel.

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

ORDER

- i. Writ Petition stands allowed.

- ii. Impugned order dated 23.10.2024 passed by the Jt. Civil Judge Junior Division, Hingoli in Regular Civil Suit No.154 of 2011 is quashed and set aside.
- iii. The suit stands restored as against the defendant no.8.
- iv. The petitioner shall take appropriate steps to serve the defendant no.8 in the suit including by filing an application under Order V Rule 20 of the CPC within a period of two weeks from today.
- v. The petitioner shall also deposit a costs of Rs.2,000/- in the Trial Court within two weeks from today.
- vi. Failure on the part of the petitioner/plaintiff to pay the costs and to take adequate steps as directed above shall nullify the effect of this order.
- vii. If the petitioner take steps against the defendant no.8 as is directed above, the Trial Court is requested to pass appropriate orders in accordance with law.
- viii. Considering the fact that the suit is filed in 2011, the Trial Court is further requested to conclude the trial proceedings expeditiously and preferably within six months from the date of appearance of the defendant no.8 in the suit.
- ix. Rule made absolute in above terms.

(AJIT B. KADETHANKAR, J.)