



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

953 WRIT PETITION NO. 2059 OF 2026

Nirwarti Vithal Pastapure And Others

VERSUS

Prayagbai Ganpatrao Pastapure Died Thr. Lrs. And Others

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Advocate for Petitioners : Mr. S.V. Natu

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : February 25, 2026

PER COURT :-

1. The petitioners impugn the order dated 18.11.2025 passed by the learned 4th Joint Civil Judge Senior Division, Latur below Exhibit-210 and 213 in Special Civil Suit No.173 of 2010.

2. Petitioners herein are original defendants in the Special Civil Suit no.173 of 2010 instituted by respondent nos.2 and 3 for decree of partition and separate possession in respect of the suit properties. Petitioners/defendants appeared in the suit and filed written statement refuting the claim. The trial court framed issues at Exhibit-59 on the basis of controversy arising out of the pleadings. At this stage, petitioners as well as respondents filed respective applications for framing additional issue. Petitioner sought to frame the issue as under :-

- “1. Whether the person named i.e. Baburao Jalba Suryavanshi, Vitthal Sharad Bachpalle and Vijaykumar Dnyanoba Pastapure are necessary parties to this suit ?
2. Whether the suit of the plaintiff is barred by limitation.?”
3. Whereas, respondents filed application below Exhibit 213 for framing additional issue as under :-

“Whether defendant nos.15 to 21 proved the alienations effected by defendant nos. 1 to 13 in their favour is for the legal necessity.?”
4. Trial Court, after considering rival contentions partly allowed the application filed by petitioners below Exhibit 210, framed issue as to limitation and allowed application filed by plaintiff below Exhibit-213 to frame issue of legal necessity. The aforesaid order is subject matter of challenge in this writ petition.
5. Learned advocate appearing for petitioners submits that Trial Court erred in allowing the application Exhibit 213 and putting burden upon defendants to prove that alienations made by defendant nos.1 to 13 in favour of defendant nos.15 to 21 were for legal necessity. He would further submit that trial court ought to have totally allowed application below Exhibit- 210 and framed both the issues, as prayed.

6. Having considered submissions advanced, apparently, this is a suit for partition and separate possession of the suit properties. Alienation made by the defendant nos.1 to 13 in favour of defendant nos.15 to 21 are also subjected to challenge contending that those alienations are not binding on right of plaintiffs. Considering the dispute involved in the suit, it is apparent that Trial Court will have to examine whether sale-deeds were for legal necessity and plaintiffs would be bound by transactions made by Karta and in case, defendants fails to prove legal necessity, plaintiffs can claim right in suit property without impeded by its transfer in favour of defendant nos.15 to 21.

7. The Trial Court has rightly considered aforesaid factual and legal matrix and rightly passed orders on applications Exhibit-210 and 213. This Court do not find any infirmity in the impugned order so as to cause interference under writ jurisdiction of this Court.

8. Writ Petition stands **rejected**.

(S. G. CHAPALGAONKAR, J.)

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