

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 3135 OF 2026

Janabai Geetaram Kale

VERSUS

Savita Bhausahab Walunj And Others

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Advocate for the Petitioner : Mr. Nimbalkar Aniruddha A

AGP for Respondent/State : Mr. R.K. Ingole

Advocate for Respondent Nos.1, 3 to 5 : Mr. V.S. Bedre

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : JUNE 10, 2026

PER COURT :-

1. Present writ petition takes exception to order dated 10.02.2026 passed below Exhibits 179 and 180 in Regular Civil Suit No.180/2019 by 5<sup>th</sup> Joint Civil Judge, Senior Division, Ahmednagar, whereby petitioners prayer for issuing witness summons by reopening evidence came to be rejected.

2. The petitioner is defendant in Regular Civil Suit No.180/2019. The suit is instituted for relief of partition and separate possession of suit property. The petitioner had filed written statement, however, later on he filed an application seeking permission to file additional written statement and same was rejected. The petitioner approached this Court against said order. This Court by setting aside order passed below Exhibit-132 directed Trial Court to decide application afresh in light of other evidence and material on record. In pursuance to order passed by this Court, petitioner's

application was reconsidered and he was allowed to file additional written statement by imposing cost of Rs.10,000/-. In light of aforesaid development, petitioner filed an application below Exhibit-179 seeking permission to lead additional evidence in light of additional written statement. The Trial Court rejected said application observing that petitioner is trying to prolong the suit by filing application one after another instead of finally arguing the matter. The petitioner thereafter filed another application below Exhibit-180 for issuance of witness summons to lead evidence in respect of partition deed No.1274 of 1960. The Trial Court refused to entertain said application observing that issuing witness summons would amount to setting clock back and putting trial at the stage of evidence, which is now posted for final arguments.

3. It is true that suit is pending since long and it was posted at the stage of final hearing when petitioner moved an application below Exhibit-180 for issuing witness summons. The record indicates that petitioner was permitted to file additional written statement. He took the defence of previous partition and filed a registered partition deed, which is given Exhibit-175. Since it is a 30 year old document, it has been given exhibit, however, the burden is put on shoulder of petitioner to prove the theory of previous partition. In that view of matter, petitioner will have to lead evidence to prove contents of

document at Exhibit-175. This Court finds that petitioner needs to be given an opportunity to lead evidence in respect of partition deed.

4. In that view of matter, writ petition is allowed. The impugned orders are quashed and set aside.

5. The petitioner is given liberty to examine witness of his choice. The petitioner shall lead his evidence within a period of six weeks from today without seeking any adjournment on any count. Once evidence of petitioner is closed, parties shall proceed to finally argue the suit.

6. The Trial Court shall endeavour to decide suit within a period of four months from today.

**(S.G. CHAPALGAONKAR, J.)**