



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

917 WRIT PETITION NO. 5024 OF 2026

Gajendra Manohar Chavan @ Gajendra Bhausahab Chavan

VERSUS

Bainabai Bhausahab Chavan

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Advocate for Petitioner : Mr. S.B. Madde

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : May 05, 2026

PER COURT :-

1. Present writ petition takes exception to the order dated 15.4.2026 passed below Exhibit-10 in Regular Civil Appeal No.14 of 2025, whereby learned District Judge, Ahmedpur rejected petitioner's prayer to frame additional issues at the appellate stage.

2. Petitioner is defendant in Regular Civil Suit No.42 of 2021. Respondent/plaintiff instituted the suit for partition and separate possession. Petitioner/defendant appeared in the suit and took a plea that plaintiff has relinquished/surrendered her share in favour of petitioner/defendant. Trial Court, after considering pleadings and evidence tendered into service, decreed suit of plaintiff vide judgment and order dated 4.5.2024. Aggrieved petitioner filed Regular Civil Appeal

No.14 of 2025 before the District Judge, Ahmedpur. During pendency of appeal, petitioner filed an application at Exhibit-10 for framing of additional issues. It is contention of petitioner that marriage of plaintiff was solemnized during subsistence of first marriage of deceased Bhausahab Chavan. Therefore, marriage of plaintiff is invalid in terms of section 5 of Hindu Marriage Act. Plaintiff being second wife of deceased Bhausahab Chavan has no legal right to claim relief of partition in suit property. It is, therefore, contended that Trial Court ought to have framed two issues, which states as under-

- i) Does the plaintiff has right to claim partition in the suit property, if her marriage is void?
- ii) Whether suit of the plaintiff is maintainable?

3. The appellate Court observed that there is no pleadings in the written statement that plaintiff is a second wife or marriage of Bhausahab and plaintiff is invalid. On the contrary, petitioner pleaded that plaintiff Bainabai has surrendered her right in partition and admits status of Bainabai as legally wedded a wife of Bhausahab. Accordingly, rejected petitioner's application for framing issues.

4. It is trite that issues are to be framed on the basis of pleadings of parties. In the present case, petitioner has not pleaded in written statement about validity of marriage of the plaintiff and Bhausahab. On the other hand, she accepts status of the plaintiff as wife of Bhausahab and also claims that plaintiff has surrendered her share in favour of petitioner. In that view of matter, issues as prayed does not arise for consideration, particularly, there is no reason to accede with the prayers of defendant at appellate stage in absence of the pleadings to frame such issues.

5. Mr. Madde, learned advocate appearing for petitioner submits that Appellate Court has imposed exponential costs of Rs.30,000/- and made the same as condition precedent for further hearing of appeal. This Court finds that Appellate Court has recorded adequate reasons for imposing costs looking to conduct of the petitioner.

6. In result, writ petition sans merit, hence **dismissed**.

(S. G. CHAPALGAONKAR, J.)

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