

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO.2681 OF 2023**

Vishwanath Eknath Gangavane

... Petitioner

Versus

Ramesh Nanasaheb Nirgude

... Respondent

— —  
Mr. Sudhir S. Hardikar, for the Petitioner.

Mr. Jaydeep Deo for the Respondent.  
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**CORAM : SHARMILA U. DESHMUKH, J.**

**DATE : July 24, 2023.**

**P. C. :**

1. By this petition, the challenge is to the final decree application No.357 of 1992. Learned counsel for the Respondent has objected to the maintainability of the writ petition. He would further contend that the final decree proceedings was challenged by way of Civil Appeal No.416 of 2016, which came to be dismissed, as against which the Second Appeal was filed, which was withdrawn by the Petitioner. He draws support from the provisions of Section 97 of the Code of Civil Procedure, 1908, which reads thus:

*“97. Appeal from final decree where no appeal from preliminary decree.—Where any party aggrieved by a preliminary decree passed after the commencement of this*

*Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree.”*

2. Learned counsel appearing for the Petitioner fairly concedes that considering provisions of Section 97 of the Code of Civil Procedure, 1908, the writ petition, as such will not be maintainable. In view thereof without going into the merits of the writ petition, the writ petition stands dismissed as not maintainable. Liberty to the Petitioner to adopt appropriate remedy as per the law.

**( Sharmila U. Deshmukh, J. )**