



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

31 WRIT PETITION NO. 2596 OF 2025

**KADUBA SHAMRAO WAGH
VERSUS
KADUBA RAMRAO GAYKE AND ANOTHER**

...
Mr. Barlota Ambar S., Advocate for the Petitioner
Mr. Gore Ravindra Vitthal, Advocate for Respondent Nos. 1 & 2

....

CORAM : S. G. CHAPALGAONKAR, J.

DATE : 02.07.2025

PER COURT :-

1. Petitioner/Defendant impugns order dated 25.11.2024 passed by learned Joint Civil Judge, Junior Division, Phulambri below Exhibit-69 in R.C.S. No.47 of 2018, whereby Court Commissioner is appointed for measuring land Gut No.402 and 403, which are owned by plaintiffs and defendant respectively.

2. Mr. Barlota, learned Advocate appearing for petitioner submits that defendant has no objection to measure lands. However, instead of measuring only two gut numbers, Commissioner needs to be directed to measure entire land from old survey number which includes gut numbers possessed by plaintiffs, defendant and third party. According to him, at the time of implementation of consolidation scheme, incorrect areas were recorded in name of respective landholders. Accordingly area of gut numbers is wrongly mentioned

contrary to actual possession. Therefore, for the purpose of getting correction of consolidation record, defendant has already moved before Competent authorities and such proceedings are pending. According to Mr. Barlota, unless area under all three gut numbers carried from old survey number is measured, issue involved in suit cannot be set at rest.

4. Mr. Gore, learned Advocate appearing for respondents, however, opposes contentions of Mr. Barlota saying that consolidation scheme was implemented in the year 1976. Since then, areas in the names of respective landholders have been correctly shown. Now, defendant is trying to make out a case of mistake in consolidation scheme to defend illegal enjoyment property beyond his entitlement.

5. Considering submissions advanced, it can be observed that plaintiffs have specifically averred in plaint that defendant has encroached upon their land out of gut No.402. Defendant owns adjacent land in gut No.403 and he has encroached upon portion of plaintiffs' land. Area of encroachment needs to be ascertained through measurement by Land Record Authorities.

6. Looking to the controversy and prayers in plaint, Trial Court is justified in directing measurement of lands owned by parties, there is no fault in direction given by Trial Court under order dated 25.11.2024.

Petitioner may have grievance as regards to incorrect recording of area at the time of implementation of consolidation scheme; however, that cannot be subject matter of present petition. Therefore, contention raised by Mr. Barlota in this regard cannot be accepted.

7. In result, there is no merit in present petition. Hence, writ petition stands **rejected**.

[S. G. CHAPALGAONKAR, J.]

HRJadhav