



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

WRIT PETITION NO. 13878 OF 2023

**ARIF KHAN DAUD KHAN
VERSUS
DEOMAN BANSI KHANSARE AND OTHERS**

...
Mr. Shaikh Mujtaba Gulam Mustafa, Advocate for the Petitioner.
Mr. K. R. Doke, Advocate for Respondent No.5.

...

**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 11th JULY, 2025.**

P.C.:-

1. The petitioner impugns order dated 08.06.2023 passed by Judicial Magistrate First Class, Jafrabad in Regular Civil Suit No.183/2018 below Exhibit-25, by which respondent no.5 is added as party to the suit.

2. The learned Advocate appearing for petitioner submits that petitioner filed suit seeking decree of removal of encroachment and possession in respect of Gut No.193 to the extent of 62.24 R against respondent nos.1 to 4 alleging that they have encroached upon his property. During pendency of suit, Commissioner was appointed under Order XXVI Rule 9 of Code of Civil Procedure. The report of Commissioner is on record.

3. It is further submitted that respondent no.5, who is unconcerned with suit property, filed application under Order I Rule 3 of Code of Civil Procedure for adding him as

party/defendant. The learned Trial Court allowed said application, although respondent no.5 can neither be necessary nor proper party.

4. Mr. Doke, learned Advocate appearing for the respondent no.5 invites the attention of this Court to the order passed by the District Superintendent of Land Records, Jalna, which shows that certain mistakes occurred during the consolidation scheme, particularly in relation to Survey No.74, which was divided into four gut numbers i.e. Gut Nos.173, 193, 194, and 195. Mr. Doke would submit that in fact suit property is in possession of respondent no.5, but due to mistake in consolidation record, his name was not shown and now proposal is pending for correction of the record under Section 31 of Consolidation Act. Mr. Doke would further point out that after passing of impugned order, petitioner has moved application before Trial Court to delete name of respondent nos.1 to 4 and, therefore, now only respondent no.5 is party to suit. He would, therefore, urge that no indulgence is required in the impugned order.

5. Having considered submissions advanced, *prima facie*, it appears that petitioner is seeking decree of possession in respect of landed property, which is part of Gut No.193. It is not disputed before this Court that Gut No.193 is carved out from erstwhile

Survey No.74. The order passed by Superintendent of Land Record clarifies that claim of respondent no.5 as regards to mistake/error occurred during consolidation scheme is accepted. Although aforesaid order is subject matter of Appeal, *prima facie*, it can be relied to accept the case of respondent no.5 that he is interested in suit property. In such case, he would be a proper party, although he may not be necessary party. In that view of the matter, no indulgence is required in Writ jurisdiction of this Court. Hence, Writ Petition stands rejected.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/July-2025