

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13960 OF 2025

Arun Bhagvanta Chor (Salunkhe) & Ors.

.. Petitioners

Versus

State of Maharashtra & Ors.

.. Respondents

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- Mr. Suresh Barne, Advocates for Petitioners
- Mr. Hamid Mulla, AGP for Respondent Nos. 1 to 4 - State
- Mr. Omkar S. Banbe i/by Mr. Kiran Mohite, Advocates for Respondent Nos. 5 and 6

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CORAM : MILIND N. JADHAV, J.

DATE : NOVEMBER 10, 2025

P. C.:

1. Heard Mr. Barne, learned Advocates for Petitioners; Mr. Mulla, AGP for Respondent Nos. 1 to 4 - State and Mr. Banbe, learned Advocate for Respondent Nos. 5 and 6.

2. Mr. Barne would submit that challenge in the Petition is maintained to the order whereby in execution proceedings, partition of the properties carried out by the Statutory Officer on behalf of Collector after filing of the precept and executing the partition decree passed by learned Court having been effected leads to some discrepancy. According to him, he has two fold grievance. He would submit that though due procedure of law has been followed after receipt of precept by Taluke Inspector of Land Records and after hearing the parties and carrying out measurements, his grievance is

that fertile portion of the land has been offered by way of partition to the private Respondent Nos. 5 and 6 in the present Petition.

3. Insofar as the issue of offering fertile land to the private Respondents and non-fertile land to Petitioners is concerned, the same cannot be the subject matter of Petition since it relates to *prima facie* disputed questions of facts which were in fact primarily not pleaded before any Court. This issue regarding fertility and non-fertility of land in the respective shares allocated to Petitioner and private Respondents ought to have been resolved in the decree which was passed by the trial Court which was executed by the executing Court. Once the said decree has been executed and if Petitioners have any grievance with respect to execution of the said decree by virtue of the impugned order, the challenge to the same lies before the appropriate Statutory Appellate Court and not by way of a Writ Petition in this Court.

4. This Court cannot be a Court of the first instance to determine and adjudicate the above disputed question of fertility and non-fertility of the land allotted to the parties in execution. Hence on the ground of maintainability, present Petition is not maintainable and therefore dismissed. Needless to state that all rights of Petitioners seeking appropriate relief with respect to the issue agitated in the present Petition is expressly kept open to be agitated before the

appropriate Competent Court / Forum as available to Petitioners in law after ensuring that any challenge filed by Petitioners shall be determined after hearing the private Respondents also.

5. With the aforesaid directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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