



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

WRIT PETITION NO.14339 OF 2025

Rajesh S/o Ramkrushna Mote,
Aged 63 years, Occu. Private Service,
R/o House No.49, Gut No.18,
Near Watre Tank, Meera Nangar, Padegaon,
Chhatrapati Sambhajinagar.

..Petitioner
(Ori Intervener)

Versus

1. Vijaykumar S/o Wamanrao Gaikwad,
Aged 23 years, Occu. Agri & Private Service,
R/o. Ahmedpur, Tq. Ahmedpur, Dist. Latur ..Ori Plaintiff
2. Abdul Alim S/o Mohmmmed Kasim Shaikh,
Aged 66 years, Occu. Agri.
R/o Ahmedpur, Tq. Ahmedpur, Dist. Latur ..Ori Defendant
..Respondents

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Mr. R. S. Patil, Advocate for the Petitioner.
Ms. M. S. Mhase, Advocate for Respondent No.1.
Mr. S. C. Swami, Advocate for Respondent No.2.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 23rd MARCH, 2026.

PRONOUNCED ON : 08th APRIL, 2026.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. By consent of parties, matter is taken up for final hearing at the admission stage.
2. The petitioner takes exception to order dated 06.11.2025 passed below Exhibit-14 by Civil Judge Senior Division, Ahmedpur in Regular Civil Suit No.1026/2023, whereby petitioner's application seeking impleadment as party has been rejected.

3. The respondent no.1 instituted Regular Civil Suit No.1026/2023 before Civil Judge Senior Division, Ahmedpur claiming relief of permanent injunction against respondent no.2. It is contention of respondent no.1/plaintiff that his father Wamanrao Gaikwad was in actual possession and engagement of suit plot admeasuring 5045.76 sq. ft. out of Survey No.37/2/4 situated at village Ahmedpur, District Latur. However, 7/12 extract wrongly mentions name of defendant-Abdul Alim Mohammed Kasim Shaikh. Taking disadvantage of revenue entries, defendant is trying to obstruct and interfere in possession of plaintiff over suit property.

4. The petitioner filed application seeking his impleadment as defendant no.2 on ground that Regular Civil Suit No.217/1984 was instituted by father of respondent no.2. The suit was dismissed in favour of petitioner's father. The petitioner's father expired on 04.04.2024. Till his death, he was in possession of suit property. The plaintiff or defendant are unconcerned with same. The petitioner is in possession of suit property since death of his father. The present collusive suit has been filed by respondents i.e. plaintiff and defendant. However, Trial Court rejected petitioner's application holding that rights of parties have been attained finality in Second Appeal No.202/2015. The compromise decree passed in Regular Civil Appeal No.9/2009 (renumbered as RCA

No.253/2011) has attained finality and present petitioner cannot claim any right in respect of suit property. His presence is not required for effective adjudication of dispute in suit.

5. Mr. Patil, learned Advocate appearing for petitioner would submit that Regular Civil Suit No.217/1984 was instituted by father of respondent no.2 seeking recovery of possession against petitioner's father and respondent no.1. In that suit, issues were framed, evidence was recorded and finally it was held that petitioner's father is owner and possessor of suit property being chief promoter of Bhagyanagar Co-operative Society. In light of aforesaid findings, right of petitioner's father was approved. Thereafter, respondent no.2 filed Regular Civil Appeal No.253/2011 and collusive compromise decree dated 05.01.2015 was obtained by respondent no.1's father and respondent no.2. Although petitioner's father was party to Appeal, his name was deleted and collusive compromise decree was secured giving right in favour of father of respondent no.1 over present suit property. He would submit that till this date petitioner is in possession of suit property and collusive decree in Regular Civil Appeal No.253/2011 is not binding upon him. The present suit is another attempt to secure one more decree to defeat right and interest of petitioner.

6. Per contra, Ms. Mhase, learned Advocate appearing for respondent no.1 supports impugned order. She would submit that

decree passed in Regular Civil Appeal No.9/2009 has attained finality. The challenge to said compromise decree by petitioner on ground that such decree is obtained by fraud is rejected by this Court. It is held that petitioner has no *locus standi* to take exception to compromise decree. The present suit is filed against respondent no.2, who disturbed possession of respondent no.1/plaintiff. The petitioner is neither necessary nor proper party. In support of her contentions, she relies upon observations of Supreme Court in case of ***Nak Engineering Complanly Pvt. Ltd. Vs. Tarun Keshrichand Shah and Ors.*** (Arising out of ***SLP*** © ***Nos.6024-6025 of 2022*** decided on ***05.01.2026***).

7. Having considered submissions advanced by learned Advocates appearing for respective parties, it can be observed that suit property was subject matter of Regular Civil Suit No.217/1984. It was a suit instituted by father of respondent no.2 against father of petitioner and father of respondent no.1. The suit was dismissed on 19.12.2008. The respondent no.2 had filed Regular Civil Appeal No.9/2009 in Court of District Judge at Udgir. The name of petitioner's father was shown as respondent no.2 in Appeal. However, Appeal was withdrawn against him vide application filed below Exhibit-17, which was allowed on 15.04.2009. Thereafter, parties arrived at amicable settlement. The area to the extent of 5780 sq. ft. was given to Mr. Wamanrao Gaikwad i.e. father of

respondent no.1. Accordingly, compromise decree was passed. The petitioner's father Ramkrushna Mote challenged said decree in Second Appeal No.202/2015. This Court dismissed Appeal observing that, since there was no executable decree passed against petitioner's father, he had no locus to take exception to compromise decree passed by Appellate Court.

8. Perusal of pleading in present suit i.e. Regular Civil Suit No.1026/2023 suggests that suit is instituted by respondent no.1 seeking simplicitor relief of perpetual injunction against respondent no.2. It cannot be disputed that in light of compromise decree, father of respondent no.1 became owner of suit property. However, because of alleged obstruction by respondent no.2, suit is filed. In light of judgment and decree in Second Appeal No.202/2015, petitioner cannot claim his right to implead in suit. It is well settled that necessary party is one, without whom final decree cannot be passed or final adjudication of *lis* cannot be made. In present case, there is nothing to show that relief claimed in suit would anyway affect petitioner, when he failed to show semblance of right in suit property.

9. In result, this Court do not find any good ground to exercise Writ jurisdiction under Article 227 of Constitution of India to cause interference in impugned order. Hence, writ petition sans merits. Hence, dismissed.

10. Rule stands discharged.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/March-2026