

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1131 OF 2026

Madhavrao Appa Adhane Died Thr Lrs Kashibai Madhavrao Adhane
Died And Others

VERSUS

Kamalbai Bandu Adhane And Others

...

Advocate for the Petitioner : Mr. Pravin N Kalani & Mr. Satish M.
Kshirsagar

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : FEBRUARY 02, 2026

PER COURT :-

1. Present petition takes exception to order dated 05.01.2026 passed by Civil Judge Senior Division, Aurangabad below Exhibit-83 in Special Civil Suit No.185 of 2019, whereby application filed by petitioners for framing issue in accordance with Section 36-B of Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (for short 'Act of 1947') and referring the same to competent authority has been declined.

2. The respondents herein instituted Special Civil Suit No.185 of 2019 seeking decree of possession against defendants in respect of suit portion from land Gat No.236 admeasuring 5 H 12 Gunthas. It is the contention of plaintiffs that respondents have encroached upon area as specified in plaint and seeks decree of possession.

3. It is true that plaintiffs have referred to some mistakes in implementation of consolidation scheme, however, they clarified that

they would independently take steps for correction of clerical and arithmetical mistakes which are unconcern with plaintiffs claim for ownership.

4. In this backdrop, defendants filed an application below Exhibit-83 contending that issue as to bar under Section 36-B of the Act of 1947 needs to be framed and referred to competent authority. The Trial Court declined prayer observing that plaintiffs are not seeking any relief pertaining to scheme or raising question requiring determination by competent authority under Consolidation Act. As such, framing of issue or reference is not necessary.

5. Mr. Kalani, learned advocate appearing for petitioners took this Court through pleadings in suit and submits that in several paragraphs, plaintiffs have alleged clerical and arithmetical mistakes in consolidation record, therefore, the issue whether such mistakes have actually being caused will have to be answered by competent authority hence, reference of such issue would be imperative.

6. Having considered submissions advanced, it can be observed that respondents have claimed possession of encroached suit property. Although, they pleaded about mistakes in consolidation scheme, they are not seeking reliefs in respect of correction of clerical errors those have been caused during consolidation proceedings. The plaintiffs claim is based on measurement map relied by them and seeks possession of encroached property shown in possession of

defendants. In light of aforesaid controversy, the Trial Court has rightly framed issues putting burden upon plaintiffs to prove their case. In that view of matter, only because there is reference of mistakes in implementation of consolidation scheme, no issue arises to be framed or decided by competent authority under Section 36-B of Act of 1947.

7. In result, Trial Court is justified in refusing to frame issue or make reference to competent authority. No jurisdictional error is discernible in impugned order. Hence, writ petition stands rejected.

(S.G. CHAPALGAONKAR, J.)