

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 2631 OF 2026

Dattatray Dagdu Gaikwad

VERSUS

The State Of Maharashtra And Others

...

Advocate for the Petitioner : Mr. Sushant Baburao Choudhari

AGP for Respondent/State : Mr. S.R. Yadav-Lonikar

...

CORAM : S. G. CHAPALGAONKAR, J.

DATED : MARCH 11, 2026

PER COURT :-

1. Present petition is filed with following reliefs :

“B) By issuing Writ of Certiorari or any other Writ or Direction in the like nature, the Notice issued by the present Respondent No. 2 Dtd. 03.02.2026 (Wrongly mentioned as 03.02.2025) and consequently the Possession taken by the Circle Inspector Dtd. 11.02.2026 and the Possession Receipt Dtd. 11.02.2026 may kindly be quashed and set aside.”

2. R.C.S. No. 10 of 2021 was filed by respondent nos.3 to 5 against respondent no.6/father of petitioner seeking relief of possession in respect of land Gat No.360 to the extent of 75 R. During pendency of suit, petitioner has filed an application seeking his impleadment as party to suit. The Trial Court rejected said application vide order dated 09.05.2025. It was contention of petitioner that respondent no.6 has partitioned suit land and handed over in his possession.

3. The suit which was instituted by respondent nos.3 to 5 seeking possession against father of petitioner has been decreed by

Trial Court. The respondent no.6/father of petitioner is said to have filed appeal against decree, however, till this date, there is no order granting stay to execution of decree. The decree was put to execution in terms of order passed by Trial Court and ultimately, possession has been delivered to decree holders, by Tahsildar. A Tabe Pavti is also issued.

4. It is contention of petitioner that he holds right and possession over suit property. He had raised objection before Tahsildar in execution, however, without considering such objection, panchnama is prepared thereby showing dispossession of petitioner and handing over possession in favour of respondent nos.3 to 5. Mr. Choudhari in support of his contention, relies upon observations of Hon'ble Supreme Court in case of *Brahmdeo Chaudhary Vs. Rishikesh Prasad Jaiswal* reported in *AIR 1997 SC 856*.

5. Undisputedly, petitioner is claiming his right through his father i.e. respondent no.6. The respondent no.6 has suffered decree in R.C.S. No.10 of 2021. The petitioner claimed that he had acquired right in suit property on the basis of partition effected by respondent no.6 during pendency of suit. The application of petitioner for intervention is already considered and rejected by Trial Court. In this background, petitioner cannot claim independent right in suit property. Further, during course of execution of decree, the Tahsildar cannot consider the objection as raised by petitioner. The petitioner

has not raised any obstruction or objection to execution of decree before Civil Court. The Tahsildar has executed decree as passed by Court and prepared panchnama regarding delivery of possession in favour of respondent nos.3 to 5.

6. In this background, there is no reason to entertain present writ petition. Writ Petition stands rejected.

7. Needless to state that petitioner may exhaust his remedy as permissible under law, if he has any independent right in property.

(S.G. CHAPALGAONKAR, J.)